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ELECTIONS
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2007-2008 #89 ("ATTORNEY FEES")

John A. Sadwith and Scott Wolfe ("Petitioners"), being registered electors of the State of Colorado, through his undersigned counsel, and in accordance with C.R.S. § 1-40-107 (1), respectfully submits the following Motion for Rehearing with respect to the actions of the Ballot Title Board (the "Board") at the hearing held on April 16, 2008 regarding Proposed Initiative 2007-2008 #89 ("Attorney Fees") (hereinafter the "Initiative"). Petitioners request a rehearing on the following issues:

I. Violation of Single Subject Requirement

A. The Board is without jurisdiction to set a title for the Initiative because it contains at least two separate subjects in violation of Colo. Const. art. V, § 1 (5.5) and C.R.S. § 1-40-106.5.

B. Specifically, the Initiative amends Article 17 of Title 13 of the Colorado Revised Statutes so as to create a series of mandatory disclosure requirements applicable to certain attorneys. Those disclosure requirements include estimates of the time that will be required to handle a claim, an estimate of costs the client will likely incur with respect to a claim, and the existence and terms of agreements with co-counsel. None of these disclosures is necessarily related to, dependent upon, or connected with contingent attorney fees.

C. In addition to these mandatory disclosures, the Initiative would impose new recordkeeping and reporting requirements on certain attorneys. These requirements include monthly reports on the “progress in the case,” and thus are separate from and unrelated to contingent attorney fees.

D. The Initiative also establishes an enforcement scheme through which an attorney would be subject to a civil action for failing to satisfy the mandatory disclosure, recordkeeping, or reporting requirements, and could be subject to exemplary damages for intentionally failing to do so.

E. Separate from the mandatory disclosure, recordkeeping, and reporting requirements, the Initiative also imposes a series of limits on the rights of certain individuals to contract for legal services. Specifically, the Initiative places a series of caps on the compensation an attorney and client can agree upon in the context of a contingency fee arrangement. In addition, the Initiative would establish an absolute maximum compensation rate of \$500 per hour applicable to any attorney and client who enter into a contingent fee agreement. In doing so, the Initiative directly conflicts with the provisions of C.R.S. § 13-17-304 (1) (a) (III), which establishes a maximum compensation rate of \$1000 per hour with respect to certain contingency fee agreements. Likewise, it conflicts with C.R.S. § 8-43-403, which addresses the presumptive reasonableness of contingent fee agreements in matters related to workers compensation benefits.

F. The Initiative would authorize civil claims against an attorney who entered into an agreement in violation of the compensation limits. It also creates a new procedure through

which a client could petition a court or a committee of any bar association for a determination as to the reasonableness and fairness of any contingent fee.

G. In addition to these two separate and distinct subjects, the Initiative further addresses the subject of legislative action with the addition of an unprecedented prohibition upon amendment or repeal of any portion of the Initiative for a period of ten years absent supermajority votes in both the State House of Representatives and the State Senate. This supermajority requirement is no way necessarily linked to either of the other subjects addressed by the Initiative.

H. Proponents' statement that the prohibition against legislative amendment or repeal, which appears with the heading, "Two-Thirds Vote Required," is merely a "suggestion" to the General Assembly can have no bearing on the Board's determination of single subject compliance, which must focus on the plain language of the Initiative as drafted. *See, e.g., In the Matter of the Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 279-80 (Colo. 2006) (single subject review does not consider subsequent legislative action or court enforcement regarding an unclear mandate).

I. In summary, the Initiative addresses at least three distinct and separate subjects: 1) mandatory disclosure, record keeping, and reporting requirements applicable to certain attorneys; 2) limitations on the rights of certain attorneys and their clients to negotiate and agree upon a fee for professional legal services; and 3) a limitation on the authority of the General Assembly to amend or repeal any portion of the Initiative. By joining together these disconnected and incongruous matters in a single act, the Initiative violates the single subject requirement and the Board is without jurisdiction to set a title for it.

II. Unfair and Misleading Title

A. The title, ballot title, and submission clause (the “Title”) set by the Board do not correctly and fairly express the true intent and meaning of the Initiative.

B. In particular, the Title states only that the Initiative concerns “contingent attorney fees,” limits the amount of those fees, requires disclosure of “certain information regarding attorney fees,” and permits a client to sue an attorney who “fails to disclose the specified information.”

C. Absent from the Title is any reference whatsoever to the unprecedented prohibition on the General Assembly’s authority to amend or repeal the Initiative. For this reason alone, the Title fails to “unambiguously state the principle of the provision sought to be added, amended, or repealed.” C.R.S. § 1-40-106 (3) (b). Moreover, “the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear,” *id.*, given that a voter receives no notice whatsoever from the Title that this measure can be neither amended nor repealed through the normal legislative process.

D. Moreover, the Title does nothing to inform voters of the Initiative’s separate and distinct disclosure, recordkeeping, and reporting requirements that do not relate to attorney fees.

E. Likewise, the Title does not advise voters that the Initiative creates a cause of action against an attorney, including exposure to exemplary damages, for negotiating a fee arrangement with a client that fails to comply with the compensation limits.

F. In addition, the Title does not advise voters of the inherent conflict with, and likely repeal of, C.R.S. § 13-17-304 and C.R.S. § 8-43-403, each of which establishes reporting requirements and compensation limits for certain contingency fee agreements.

G. For each of these reasons, the Title fails to correctly and fairly express the true intent and meaning of the Initiative, and fails to clearly identify the effect of a “yes” or “no” vote on it. The Title should therefore be stricken.

Respectfully submitted this 23rd day of April, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was filed with the Secretary of State via hand delivery and served via U.S. Mail on the following:

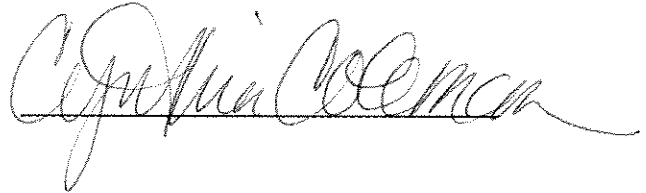
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A handwritten signature in black ink, appearing to read "Scott E. Gessler", written over a horizontal line.