<table>
<tr><td>SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203</td><td rowspan="2">DATE FILED: March 13, 2024 1:47 PM

▲COURT USE ONLY▲</td></tr>
<tr><td>Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board</td></tr>
<tr><td>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #160 (“Public Athletic Programs for Minors”)

Petitioner: Lori Hvizda Ward,

v.

Respondents: Linda White and Rich Guggenheim,

and

Title Board: Theresa Conley, Jeremiah Berry, and Kurt Morrison</td><td></td></tr>
<tr><td>Attorneys for Petitioner:

Mark G. Grueskin, #14621
Nathan Bruggeman, #39621
David Beller, #35767
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Denver, Colorado 80202
303-573-1900 (telephone)
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mark@rklawpc.com; nate@rklawpc.com;
david@rklawpc.com</td><td>Case Number:</td></tr>
<tr><td colspan="2">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #160 (“PUBLIC ATHLETIC PROGRAMS FOR MINORS”)</td></tr>
</table>

Lori Hvizda Ward ("Petitioner"), registered elector of the County of Larimer and the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #160 ("Public Athletic Programs for Minors").

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #160.

Linda White and Rich Guggenheim (hereafter "Proponents") proposed Initiative 2023-2024 #160 (the "Proposed Initiative"). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on February 21, 2024, at which time titles were set for 2023-2024 #160. On February 28, 2024, Petitioner filed a Motion for Rehearing, alleging that Initiative #160 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), the Board lacks jurisdiction to set titles, and that the Title Board set titles which are misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure and will mislead voters.

The rehearing was held on March 6, 2024, at which time the Title Board granted the Motion only to the extent that the Board made changes to the titles.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUNDS FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because it lacked jurisdiction to set titles for the Initiative. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether Initiative 160 violates the single subject requirement by regulating participation in female public school athletics but imposing liability for violations on a wide array of non-school associations or organizations hosting, organizing, or facilitating those athletic events.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to correct the titles to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 13th day of March, 2024.

s/ Mark G. Grueskin
Mark G. Grueskin, #14621
Nathan Bruggeman, #39621
David Beller, #35767
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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Nathan Bruggeman, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #160 ("PUBLIC ATHLETICS PROGRAMS FOR MINORS")** was sent electronically via Colorado Courts E-Filing this day, March 13, 2024, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Kyle M. Holter
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

And via FedEx Overnight Delivery to:

Linda White
22931 E. Del Norte Circle
Aurora, CO 80016

And

Rich Guggenheim
755 E. 19th Ave
Apt 339
Denver, CO 80203

/s Nathan Bruggeman

DATE FILED: March 13, 2024 1:47 PM

STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE

I, **JENA GRISWOLD,** Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #160 'Public Athletics Programs for Minors'".....

.....**IN TESTIMONY WHEREOF** I have unto set my hand .....
and affixed the Great Seal of the State of Colorado, at
the City of Denver this **8**th day of March, 2024.

Jena Griswold

SECRETARY OF STATE

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 22-32-116.6 as follows:

22-32-116.6. Extracurricular and interscholastic athletic activities fairness - definition. (1) (a) FOR PURPOSES OF THIS SECTION, "BIOLOGICAL SEX" MEANS EITHER THE FEMALE OR MALE SEX LISTED ON THE STUDENT'S OFFICIAL BIRTH CERTIFICATE IF THE CERTIFICATE WAS ISSUED AT OR NEAR THE TIME OF THE STUDENT'S BIRTH.

(b) FOR PURPOSES OF THIS SECTION, "PUBLIC ATHLETICS PROGRAM FOR MINORS" MEANS A PUBLIC SCHOOL, PUBLIC SCHOOL DISTRICT, ACTIVITIES ASSOCIATION OR ORGANIZATION HOSTING, ORGANIZING, OR FACILITATING PUBLIC SCHOOL ATHLETICS, OR PRIVATE SCHOOL WHEN ITS STUDENTS OR TEAMS COMPETE AGAINST A PUBLIC SCHOOL.

(2) (a) ANY INTERSCHOLASTIC, INTRAMURAL, OR CLUB ATHLETIC TEAM, SPORT, OR ATHLETIC EVENT THAT IS SPONSORED OR SANCTIONED BY A PUBLIC ATHLETICS PROGRAM FOR MINORS MUST BE DESIGNATED AS ONE OF THE FOLLOWING, BASED ON THE BIOLOGICAL SEX AT BIRTH OF THE PARTICIPATING STUDENTS:

(I) FEMALES, WOMEN, OR GIRLS;
(II) MALES, MEN, OR BOYS; OR
(III) COEDUCATIONAL OR MIXED.

(b) ONLY FEMALE STUDENTS, BASED ON THEIR BIOLOGICAL SEX AT BIRTH, MAY PARTICIPATE ON ANY TEAM OR IN A SPORT OR ATHLETIC EVENT DESIGNATED AS BEING FOR FEMALES, WOMEN, OR GIRLS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE ELIGIBILITY OF ANY STUDENT TO PARTICIPATE IN ANY INTERSCHOLASTIC, INTRAMURAL, OR CLUB ATHLETIC TEAM, SPORT, OR ATHLETIC EVENT DESIGNATED AS FOR MALES, MEN, OR BOYS OR DESIGNATED AS COEDUCATIONAL OR MIXED.

(c) A GOVERNMENTAL ENTITY SHALL NOT TAKE ANY ADVERSE ACTION AGAINST A PUBLIC ATHLETICS PROGRAM FOR MINORS OR ANY EMPLOYEE OR GOVERNING BOARD MEMBER OF THE SCHOOL, SCHOOL DISTRICT, OR ASSOCIATION OR ORGANIZATION BECAUSE OF ITS OR THEIR COMPLIANCE WITH THIS SUBSECTION (2).

(3) (a) IF A STUDENT IS DEPRIVED OF AN ATHLETIC OPPORTUNITY OR SUFFERS DIRECT OR INDIRECT HARM AS A RESULT OF A VIOLATION OF SUBSECTION (2) OF THIS SECTION, THE FEMALE STUDENT HAS A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF, DAMAGES, AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST THE PUBLIC ATHLETICS PROGRAM FOR MINORS THAT CAUSED THE HARM.

(b) A CIVIL ACTION PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION MUST BE INITIATED WITHIN TWO YEARS FROM THE DATE THE ALLEGED HARM OCCURRED. A PARTY PREVAILING ON A CLAIM BROUGHT PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION IS ENTITLED TO MONETARY DAMAGES, INCLUDING ANY PSYCHOLOGICAL, EMOTIONAL, AND PHYSICAL HARM SUFFERED, REASONABLE ATTORNEY FEES AND COSTS, AND ANY OTHER APPROPRIATE RELIEF.

(c) A GOVERNMENTAL ENTITY OR PUBLIC ATHLETICS PROGRAM FOR MINORS IS NOT LIABLE TO ANY STUDENT BECAUSE OF ITS COMPLIANCE WITH SUBSECTION (2) OF THIS SECTION. THE FAILURE TO COMPLY WITH SUBSECTION (2) OF THIS SECTION IS A WAIVER OF SOVEREIGN IMMUNITY FOR THE CIVIL ACTIONS AUTHORIZED IN SUBSECTION (3)(a) OF THIS SECTION.

(4) THE STATE SHALL ASSUME FINANCIAL RESPONSIBILITY FOR ANY EXPENSE RELATED TO THE LAWSUIT OR COMPLAINT INCURRED BY A PUBLIC ATHLETICS PROGRAM FOR MINORS OR AN EMPLOYEE OR MEMBER OF THE PUBLIC ATHLETICS PROGRAM FOR MINORS BECAUSE OF ITS COMPLIANCE WITH SUBSECTION (2) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 24-10-106, **amend** (1)(i) and (1)(j); and **add** (1)(k) as follows:

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(i) An action brought pursuant to section 13-21-128; or

(j) An action brought pursuant to part 12 of article 20 of title 13, whether the conduct alleged occurred before, on, or after January 1, 2022; or

(k) An action brought pursuant to section 22-32-116.6 (3)(a).

SECTION 3. Severability. If any provision of this initiative or the application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this initiative that can be given effect without the invalid provision or application, and to this end the provisions of this initiative are declared to be severable.

SECTION 4. Effective date - applicability. This measure shall be effective on and after the date it is declared by proclamation of the governor to have been adopted by the registered electors of the state and shall apply to instances occurring on or after the effective date.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #160[1]

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes restricting participation in athletic programs based on biological sex at birth, and, in connection therewith, requiring a public school, private school that competes against a public school, or a school activities association to designate each interscholastic, intramural, or club athletic team, sport, or event as female, male, or coeducational; only allowing females as designated on their birth certificate issued at or near birth to compete in a female designated athletic team, sport, or event; prohibiting a governmental entity from taking adverse action against an entity or person for compliance with statutory requirements; establishing a private cause of action for a female student who suffers harm as a result of noncompliance; requiring the state to assume financial responsibility for any expense related to a lawsuit or complaint related to compliance; and waiving sovereign immunity for failure to comply.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes restricting participation in athletic programs based on biological sex at birth, and, in connection therewith, requiring a public school, private school that competes against a public school, or a school activities association to designate each interscholastic, intramural, or club athletic team, sport, or event as female, male, or coeducational; only allowing females as designated on their birth certificate issued at or near birth to compete in a female designated athletic team, sport, or event; prohibiting a governmental entity from taking adverse action against an entity or person for compliance with statutory requirements; establishing a private cause of action for a female student who suffers harm as a result of noncompliance; requiring the state to assume financial responsibility for any expense related to a lawsuit or complaint related to compliance; and waiving sovereign immunity for failure to comply?

Hearing February 21, 2024:
Single subject approved; staff draft amended; titles set (2-1, Morrison)
The Board made a technical correction to the text of the initiative.
Board members: Theresa Conley, Kurt Morrison, Jerry Barry
Hearing adjourned 3:31 P.M.

[1] Unofficially captioned **"Public Athletics Programs for Minors"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #160[1]

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes restricting participation in female school athletic programs based on biological sex at birth, and, in connection therewith, requiring a public school, private school, or a school activities association to designate each interscholastic, intramural, or club athletic team, sport, or event as female, male, or coeducational; only allowing females as listed on their birth certificate issued at or near birth to compete in a female-designated team, sport, or event and exposing these entities to liability for not complying with this measure; prohibiting any governmental entity from taking any adverse action against an entity or person for compliance with this measure; allowing a female student who suffers direct or indirect harm due to noncompliance to sue; waiving a public school's and public school district's immunity for such lawsuits; and requiring the state to assume financial responsibility for any expense related to a lawsuit or complaint related to compliance.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes restricting participation in female school athletic programs based on biological sex at birth, and, in connection therewith, requiring a public school, private school, or a school activities association to designate each interscholastic, intramural, or club athletic team, sport, or event as female, male, or coeducational; only allowing females as listed on their birth certificate issued at or near birth to compete in a female-designated team, sport, or event and exposing these entities to liability for not complying with this measure; prohibiting any governmental entity from taking any adverse action against an entity or person for compliance with this measure; allowing a female student who suffers direct or indirect harm due to noncompliance to sue; waiving a public school's and public school district's immunity for such lawsuits; and requiring the state to assume financial responsibility for any expense related to a lawsuit or complaint related to compliance?

Hearing February 21, 2024:
Single subject approved; staff draft amended; titles set (2-1, Morrison)
The Board made a technical correction to the text of the initiative.

[1] Unofficially captioned **"Public Athletics Programs for Minors"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Board members: Theresa Conley, Kurt Morrison, Jeremiah Barry
Hearing adjourned 3:31 P.M.

Rehearing March 6, 2024:
Motion for rehearing granted only to the extent changes were made to the title (3-0).
Board members: Theresa Conley, Kurt Morrison, Jeremiah Barry
Hearing adjourned 11:03 A.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Lori Hvizda Ward,
Objectors,

v.

Linda White and Rich Guggenheim,
Designated Representatives of Initiative 2023-2024 #160.

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #160

Through legal counsel, Lori Hvizda Ward, registered elector of Larimer County, hereby files this motion for rehearing on Initiative 2023-2024 #160.

On February 21, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #160:

> *Shall there be a change to the Colorado Revised Statutes restricting participation in athletic programs based on biological sex at birth, and, in connection therewith, requiring a public school, private school that competes against a public school, or a school activities association to designate each interscholastic, intramural, or club athletic team, sport, or event as female, male, or coeducational; only allowing females as designated on their birth certificate issued at or near birth to compete in a female designated athletic team, sport, or event; prohibiting a governmental entity from taking adverse action against an entity or person for compliance with statutory requirements; establishing a private cause of action for a female student who suffers harm as a result of noncompliance; requiring the state to assume financial responsibility for any expense related to a lawsuit or complaint related to compliance; and waiving sovereign immunity for failure to comply?*

In setting this title, the Board erred in the ways set forth below.

I. The Board lacked jurisdiction due to #160's single subject violations.

There are two types of single subject violations at issue here that are coupled with the limit on participation in athletic activities in schools.

A. The single subject statement "restricting participation in athletic programs based on biological sex at birth" is inconsistent with the portion of the measure that specifically prohibits restrictions on the basis of biological sex at birth.

The single subject statement, attempting to encapsulate the essence of the measure, states its goal is "restricting participation in athletic programs based on biological sex at birth." That statement is inaccurate, reflecting a bifurcated measure that restricts participation and doesn't restrict participation.

The measure is explicit. "Nothing in this section shall be construed to restrict the eligibility of any student to participate" in an athletic event "for males, men, or boys, or coed or mixed." Proposed Section 22-32-116.6(2)(b). This portion of the measure quite clearly does not "restrict[] participation in athletics programs based on biological sex at birth" as the single subject statement asserts. A measure that both creates a restriction and prohibits a restriction based on a person's sex designated at birth cannot fit within the single subject statement in this title.

The measure thus violates the single subject requirement.

B. The measure creates a new standard for compensable injury – "indirect emotional harm."

Under #160, lawsuits may be filed to seek remedies for "indirect" harms. Proposed Section 22-32-116.6(3)(a). It's hard to know what this entails precisely, but it is clear that "indirect" harms do not have to arise in any clearly prescribed form or manner. *See Keim v. Douglas Cnty. Sch. Dist*., 2015 COA 61, ¶34 ("'Indirect' is defined as 'not proceeding straight from one point to another'").

As a reminder, #160 allows for litigation to address "any psychological, emotional, or physical harm suffered." Proposed Section 22-32-116.6(3)(b). Thus, persons who feel they have suffered an "indirect emotional" harm can sue for an alleged violation of this newly created protected status.

But the Colorado courts do not recognize "indirect emotional" harm as the basis for a compensable claim. "While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. Every injury has ramifying consequences, like the ripplings of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree." *James v. Harris*, 729 P.2d 986, 988 (Colo. App. 1986) (rejecting "indirect harm" as sufficient basis for action alleging negligent infliction of emotional distress), citing *Tobin v. Grossman*, 24 N.Y.2d 609, 619, 301 N.Y.S.2d 554, 561-62, 249 N.E.2d 419, 424 (1969).

Thus, this measure reverses long-standing doctrine for what is and what is not compensable injury when an emotional harm is alleged. In fact, "psychic harm" alone does not constitute injury-in-fact that would even confer standing to sue. *Hickenlooper v. Freedom from Religion Found., Inc*., 2014 CO 77, ¶20. Initiative #160's expansion of compensable injury is a change in law that is truly "coiled in the folds" and thus a violation of the single subject mandate. *In re Title, Ballot Title and Submission Clause for 2007-2008 #17*, 172 P.3d 871, 875 (Colo. 2007).

C. Intramural contests are a non-competitive, unrelated class of endeavors when grouped with competitions between schools

The measure applies to "any interscholastic, intramural, or club athletic team, sport, or athletic event." Proposed Section 22-32-116.6(1)(c). Intramurals are contests within, not between, schools. "Intramural sports are recreational sports organized within a particular institution, usually an educational institution." https://en.wikipedia.org/wiki/Intramural_sports (last viewed Jan. 8, 2024); *see also* Merriam-Webster Online Dictionary (defining "intramural" as "competed only within the student body"), https://www.merriam-webster.com/dictionary/intramural (last viewed Jan. 10, 2024). Intramural sports have an entirely different purpose from club and interscholastic athletics. "The implementation of high school intramurals is meant to be an additional extracurricular option for non-varsity players and/or 'non-athletes' (those that are not out for a school sport)." https://www.pheamerica.org/2022/the-value-of-an-intramural-program-for-high-school-students/ (last viewed Jan. 8, 2024).

In Colorado, for instance, one school offers "an intramural sports program for students who prefer a shorter time commitment and less competitive sports environment," while another "offers several intramural opportunities for students in grades 9-12 with the purpose of providing a safe, enjoyable environment for students of any skill level to participate in a variety of recreational activities." *See* https://mcauliffe.dpsk12.org/athletics/club-sports-intramurals/ and https://www.edenpr.org/eden-prairie-high-school/activitiesathletics/activities-office/intramurals (last viewed Jan. 8, 2024).

Thus, regulating participation in highly competitive athletic events (varsity and junior varsity levels or club sports) is entirely different in policy and politics than setting standards for in-school, non-competitive contests.

D. The measure applies to "athletics programs for minors" but its failure to define "minors" means the reach of the measure is so broad as to violate the single subject reqruiement and so confusing as to prevent knowledgeable voting.

#160 addresses "athletics programs for minors." Initiative #160 is silent on what "minors" means, but generally applicable Colorado law defines "minor" as "any person who has not attained the age of twenty-one years." C.R.S. § 2-4-401(6). Thus, any person under the age of 21 will trigger the measure's regulation – and the limits on participation in athletics and the attendant liability where there is any participation at odds with these standards. Thus, a program that was portrayed as applying to K-12 students really applies to all of those students and anyone engaged in any of the interscholastic, intramural, or club sports at a college level.

Regulating what happens in elementary and secondary schools is a topic that is unrelated to what happens in colleges and universities. Perhaps the Title Board was aware of the measure's reach, and perhaps not. But voters would not appreciate the broad drafting and excessive reach of this measure. And they would certainly be surprised about it after a successful election. This is the essence of the concern about single subject non-compliance.

The Supreme Court rejects as unconstitutional those initiatives that are "umbrella proposals," *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶10, as well as those that can only be characterized by an "overly broad theme." *In re Title, Ballot Title and Submission Clause for Initiative 2021-2022 #1*, 2021 CO 55, ¶22. This Board should do the same as to Initiative #160.

E. The measure's applicability to all "hosting, organizing, or facilitating" organizations is reflection of its overly broad theme rather than a single subject.

Initiative #160 does not only mandates standards for public schools and districts. It also imposes liability for allowing participation in female athletic events for any activities association or organization hosting, organizing, or facilitating public school athletics." The reach of this provision would also surprise voters.

The fact that college students are included within this measure's ambit means that every "organization hosting, organizing, or facilitating public school athletics" are also drawn into lawsuits over compliance with #160. The NCAA, for instance, would not be able to establish a standard for participation in any sport at any level that is at odds with #160. If it did, it would be subject to the cause of action created by this measure.

Similarly, a college or university that "host[s]" a tournament that includes a Colorado school would face the same consequence. As a reminder, #160 does not require that an athletic event occur in Colorado in order to trigger the measure's provisions.

Moreover, athletic events are often "hosted" at private facilities. Would a private golf course that hosts a high school tournament but does not allow the line-drawing that is at the core of #160 subject itself to liability as a hosting organization? Would a rec center that hosts a swim meet but does not allow this line-drawing also be open to suit? The answer to these questions (and so many more analogous situations) is "yes."

This breadth of applicability is something that no one in this process has envisioned in the public discussion of #160 – to this point. But in light of the above discussion, it is clear that #160 violates the single subject requirement because it, too, has subjects that are part of an "overly broad theme." *Id.*

II. The titles set are incomplete and misleading.

A. The single subject statement in the titles does not make it clear that the measure both creates and prohibits restrictions based on the biological sex assigned at birth.

As discussed above, the single subject statement is inaccurate. The measure does not only "restrict[] participation." It allows for a double standard such that there are no restrictions in athletics that are assigned to males, men, boys, or coed or mixed. Thus, this single subject statement is confusing and incorrect.

If this measure is deemed to be a single subject, the single subject statement is accurate only if it is rephrased. One possible approach would be for the single subject statement to reflect that the measure deals with "*regulating* participation in athletic programs based on biological sex at birth" rather than "restricting" such participation.

B. The titles fail to state that the measure allows students and public athletics providers to be sued for any "indirect" harms.

As set out above, this measure creates a heretofore unknown breadth of harms to be used as the basis for legal actions – namely, "indirect emotional harm" as well as "indirect psychological harm." Voters should know that such actions allow for greater recovery for plaintiffs than any other set of emotional or psychological harms that are litigated. *See generally Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 777-78 (1983) (rejecting claim that psychological harm or other indirect effects could be litigated under federal law as flowing from environmental consequences of an energy generation plant siting decision); *cf. Dean v. Allstate Ins. Co.*, 878 F.Supp. 1397, 1400 (D. Colo. 1993) ("indirect harm" in the form of "second-hand distress is not what is contemplated under Colorado law" for claim of reckless infliction of emotional distress).

Specifically, the titles should relate that this proposed law will *not* "limit the legal consequences of wrongs to a controllable degree." *James, supra*, 729 P.2d at 988. Voters should know this is an open-ended invitation to litigation over whatever might qualify as indirect emotional harm – including an elementary school student's disappointment over losing an intramural contest or an adolescent's dismay over a poor showing in a particular pre-season game. In short, they should know that an undefined expanse of liability is part of what they are being asked to approve, especially where, as here, a measure is waiving sovereign immunity which means that, as taxpayers, those same voters stand to foot the bills for such lawsuits under #160.

C. The titles fail to state that this initiative allows parties suing under its provisions to obtain "injunctive relief, monetary damages, and any other relief available under law" as well as attorney fees and costs.

Typically, the form of relief may not be as essential to be stated in a title as it is here. As outlined above, the sheer breadth of what is actionable under this measure makes the unlimited relief available a key feature to be brought to the attention of voters. *See, e.g., In re Title, Ballot Title and Submission Clause, and Summary for Proposed Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031, 1033-34 (Colo. 1992) (title accurate where it used "any and all damages" consistent with initiative text). Therefore, the title should inform voters that the measure will allow parties to seek an unlimited array of remedies to address even "indirect" harms alleged.

D. The title's reference to "waiving sovereign immunity" for a "failure to comply" will be virtually meaningless and confusing to voters.

The term sovereign immunity is legal jargon. Lawyers (many of them, anyway) could probably define it fairly accurately. But it is error to think that most lay people know what it means.

When a person's susceptibility to litigation is to be communicated in a ballot title, the Board has historically described what it means by stating that a specific party "shall not be immune from suit" for specific legal injuries. *See In re Title, Ballot Title and Submission Clause, and Summary for Unsafe Workplace Environment Amendment*, 830 P.2d 1031, 1033 (Colo. 1992). The Board should do so here as well, indicating that the array of parties identified in #160 can all be sued for relief.

Additionally, the "failure to comply" reference in terms of this susceptibility is vague and incomplete. The acts that would lead to such a lawsuit should be identified in the titles.

E. The title fails to state that the measure applies to "minors" – all persons who are students under the age of 21.

As discussed above, the measure applies to college students as well as elementary and secondary school students because it governs programs relating to "athletics programs for minors." The measure itself only states that it applies to a "student" or "students." Proposed Section 22-32-116.6(1)(a), (1)(b), (2)(a), (2)(b), (3)(a), (3)(c). "Student" is also undefined in #160. Given the meaning of "minors" generally, Initiative #160 would apply to college and university students under the age of 21. But voters would never know, even though they should. As currently worded, the title for #160 is incomplete and legally flawed.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #160 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading ballot title set.

Respectfully submitted this 28th day of February, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
Mark G. Grueskin
Nathan Bruggeman
David Beller
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com
nate@rklawpc.com
david@rklawpc.com

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2023-2024 #160 was sent this day, February 28, 2024, via first-class mail, postage paid to:

Linda White
22931 E. Del Norte Circle
Aurora, CO 80016

Rich Guggenheim
755 E. 19th Ave. Apt. 339
Denver, CO 80203

s/ Erin Mohr

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Lori Hvizda Ward,
Objectors,

v.

Linda White and Rich Guggenheim,
Designated Representatives of Initiative 2023-2024 #160.

NOTICE OF SUPPLEMENTAL AUTHORITY TO MOTION FOR REHEARING ON INITIATIVE 2023-2024 #160

Through legal counsel, Lori Hvizda Ward, registered elector of Larimer County and movant for a rehearing in this matter, hereby files this notice of supplemental authority to motion for rehearing on Initiative 2023-2024 #160.

Please take notice of the attached supplemental legal authority (*Casa Bonita Restaurant v. Colo. Indus. Comm'n*, 677 P.2d 344 (Colo. App. 1983).that highlights the binding nature of the definition of "minor" in C.R.S. § 2-4-401(6), absent express definitional language in a governing statute to the contrary.

Respectfully submitted this 4th day of March, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **NOTICE OF SUPPLEMENTAL AUTHORITY TO MOTION FOR REHEARING ON INITIATIVE 2023-2024 #160** was sent this day, March 4, 2024, via first-class mail, postage paid to:

Linda White
22931 E. Del Norte Circle
Aurora, CO 80016

Rich Guggenheim
755 E. 19th Ave. Apt. 339
Denver, CO 80203

s/ Erin Mohr

User Name: Mark Grueskin
Date and Time: Wednesday, February 28, 2024 4:23:00PM MST
Job Number: 218281306

Document (1)

1. *Casa Bonita Restaurant v. Industrial Com. of Colorado, 677 P.2d 344*
   Client/Matter: -None-

Casa Bonita Restaurant v. Industrial Com. of Colorado

Court of Appeals of Colorado, Division Three

March 31, 1983

No. 82CA0890

Reporter
677 P.2d 344 *; 1983 Colo. App. LEXIS 1123 **

CASA BONITA RESTAURANT, and Liberty Mutual Insurance Company, Petitioners, v. INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, Director, Department of Labor and Employment, Division of Labor, State of Colorado, and Deborah D. Penn, Respondents

Subsequent History: [1]** Rehearing Denied April 28, 1983.

Prior History: Review of Order from the Industrial Commission of the State of Colorado.

Disposition: Order Affirmed.

Core Terms

claimant, express language, date of injury, final order, benefits, courts, adult

Counsel: Zarlengo, Mott and Zarlengo, Tama L. Levine, Denver, Colorado, Attorneys for Petitioners.

J. D. MacFarlane, Attorney General, Charles B. Howe, Deputy Attorney General, Joel W. Cantrick, Special Assistant Attorney General, Patricia Blizzard, Assistant Attorney General, Denver, Colorado, Attorneys for Respondent Industrial Commission of Colorado.

Marlin W. Burke, Wheatridge, Colorado, Attorney for Respondent Deborah D. Penn.

Judges: Judge Silverstein. * Van Cise and Kelly, JJ., concur.

Opinion by: SILVERSTEIN

Opinion

[*345] Petitioners seek review of an Industrial Commission order which determined that claimant, Deborah Penn, was a minor on the date she sustained the injury which resulted in her permanent total disability. We affirm.

It is undisputed that on the date of the injury claimant was twenty years, six weeks old; that the date of the injury is the **[**2]** determinative date; and that if

* Retired Court of Appeals Judge sitting by assignment of the Chief Justice under provisions of the Colo. Const. Art. VI, Sec. 5(3), and § 24-51-607(5), C.R.S. 1973 (1982 Cum. Supp.).

claimant, under the law, was a minor on that date, she is entitled to maximum benefits. *See § 8-47-101(5), C.R.S. 1973*.

I.

The basic statute, *§ 2-4-401, C.R.S. 1973* (now in 1980 Repl. Vol. 1B), provides:

> "The following definitions apply to every statute, unless the context otherwise requires:
>
> . . . .
>
> "(2) 'Court' means court of record.
>
> . . . .
>
> "(6) 'Minor' means any person who has not attained the age of twenty-one years. No construction of this subsection (6) shall supersede the express language of any statute."

Petitioners contend that *§ 13-22-101(1), C.R.S. 1973*, contains express language which renders the above-section inapposite here. That section provides:

> "Notwithstanding any other provision of law enacted or any judicial decision made prior to July 1, 1973, every person, otherwise competent shall be deemed to be of full age at the age of eighteen years or older for the following specific purposes:
>
> . . . .
>
> "(c) To sue and be sued in any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem or someone acting in **[**3]** his behalf."

[*346] Petitioners contend that the filing of a claim for workmen's compensation before the Industrial Commission constitutes suing in a court of this state and that, therefore, claimant must, under the terms of the last-quoted statute, be regarded as an adult in determining her benefits. Rejecting this argument, the Commission ruled that it was a tribunal of the executive branch of government and that, although it performed quasi-judicial duties, it was not a court as defined by *§ 2-4-401(2), C.R.S. 1973*. It therefore held that *§ 2-4-401(6), C.R.S. 1973*, controlled. We agree with the Commission.

The Commission's order is in accord with the ruling of our Supreme Court set forth as Appendix A to *Matthews v. Industrial Commission, 627 P.2d 1123 (Colo. App. 1980)*. There, the court emphasized the distinction between a court and the Industrial Commission by pointing out that the exception to the jurisdiction of the Court of Appeals in cases concerning the constitutionality of a statute applies only to review of final judgments of district and other courts, but does not apply to petitions for review of final orders of the Industrial Commission.

II.

Contrary **[**4]** to petitioner's contention, *§ 8-47-101(5), C.R.S. 1973*, which sets forth the compensation payable to minors, contains no language which would supersede *§ 2-4-401(6)*. Thus, the compensation awarded by the Commission's final order is correct.

III.

Claimant's motion for attorney's fees and costs is denied. As to her motion for an award of interest, the payment of interest on an award is governed by § 8-52-109(2),

C.R.S. 1973.

The order of the Industrial Commission is affirmed.

JUDGE VAN CISE and JUDGE KELLY, concur.

End of Document

My name is Lori Hvizda Ward and I would like to emphasize several reasons why this initiative violates single subject and highlight the parts that are confusing and misleading to voters.

1. The inclusion of intramural sports and organizations that host or sponsor athletics activities violates single subject because it goes further than regulating activities in public schools. Organizations such as the Special Olympics are private organizations that may or may not serve public school students, but would be forced to adhere to this initiative's regulations if they use public school facilities. Clearly high school varsity athletics and intramural, extracurricular, and recreational sports, such as the Special Olympics, are separate activities with distinctly different purposes. As the parent of a transgender child, I saw firsthand how important the sense of belonging nurtured through non-varsity sports is to kids who struggle to fit in. Including intramural and recreational athletics is overly broad and denies healthful opportunities to the most vulnerable children.
2. By not defining "minors," the initiative is so broad that it fails to comply with single subject. 'Minors" commonly refers to people under the age of 21 which includes many college students. This initiative would then apply to athletics programs governed by a variety of different entities, including some students who earn scholarships or income via college athletics. Again, these are obviously separate activities from high school sports. In addition, it is not obvious to voters that the reach of this initiative goes far beyond K-12 public school students in the title or in the ballot language, and is therefore misleading.
3. The initiative addresses only children who are assigned female at birth, with no mention of male students or students who have transitioned (trans males.) This creates confusion among voters, and further confusion among organizations who sponsor athletics programs. As a school board member, I was responsible for policies around issues like this. It would be impossible to create policies that both follow the intent of Initiative #160 and are not discriminatory based on gender or sex. This is not clear in the initiative as written.
4. Finally, I am concerned that the initiative addresses "direct or indirect harm" suffered by a minor due to violation of its provisions but says nothing about the deprivation of athletic opportunities or harms suffered by children due to **enforcement** of these provisions. Children assigned female at birth are not currently being denied athletic opportunities merely due to their gender. This initiative will deny these same opportunities to a very small and very specific subset of transgender children, causing *them* direct harm.

Initiative #160 both violates single subject and is unclear, confusing, and misleading to voters. Thank you for rehearing this motion.

Lori Hvizda Ward
Larimer County registered elector

Initiative 160

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: February 12, 2024 **Fiscal Analyst:** Anna Gerstle (303-866-4375)

LCS TITLE: PUBLIC ATHLETICS PROGRAMS FOR MINORS

Fiscal Summary of Initiative 160

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at **leg.colorado.gov/bluebook**. This fiscal summary identifies the following impact.

State expenditures. The measure specifies that only female students, based on their biological sex at birth, may participate in elementary and secondary public athletics programs designated for women, females, or girls. It also specifies that the state must assume financial responsibility for any costs incurred by a public athletics program related to a lawsuit or complaint as a result of compliance with the measure.

The measure creates a private cause of action for individuals to bring suit when alleging harm has occurred, thus increasing activity in the trial courts of the Judicial Department. Because the state is financially responsible for expenses related to lawsuits or complaints, the measure has an indeterminate and potentially significant impact on state expenditures. Additionally, the Colorado School for the Deaf and the Blind, a state-run public school, is subject to the measure and may also have additional costs to implement the measure.

Local government impact. The measure may increase expenditures for school districts, charter schools, and any local governments that offer public athletics programs for minors. Costs for public schools and local governments are expected to be minimal, and any legal cost associated with compliance are the financial responsibility of the state.

Economic impacts. The measure is not expected to have a significant or direct impact on the state's economy.