

DISTRICT COURT, CITY AND
COUNTY OF
DENVER, COLORADO
City & County Building
1437 Bannock Street
Denver, Colorado 80202

**LESLIE HANKS, a registered
Colorado elector; and
GUALBERTO GARCIA JONES, a registered
Colorado elector;
Plaintiffs,**

v.

**STATE OF COLORADO;
MIKE MAUER, in his capacity as
Director, Colorado Legislative Council,
Colorado General Assembly;
Defendants.**

COURT USE ONLY

Case No:

**EXPEDITED RELIEF
RESPECTFULLY
REQUESTED**

**VERIFIED COMPLAINT AND APPLICATION
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Summary of this Complaint

1. This Complaint and Application arises out of Defendants' violations of the Colorado Constitution, Article V, § 1(7.5), requiring the non-partisan

research staff of the General Assembly's Legislative Council to provide a fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, Uniform Election Code § 1-1-113, C.R.S. providing a remedy for official neglect of duty and wrongful acts in conjunction with elections, C.R.C.P. 57(m), providing for speedy hearings of actions for declaratory judgments and that the court may advance such on the calendar, and C.R.C.P. 65, providing for temporary restraining orders and injunctive relief.

2. Plaintiffs request an order requiring the official analysis on Amendment 62 to be "fair and impartial" and to include "the major arguments both for and against the measure" as required by the Colorado Constitution.

Parties

3. Plaintiff Leslie Hanks is a registered elector who resides in the City of Watkins and County of Arapahoe. Leslie Hanks is a proponent of Amendment 62.

4. Plaintiff Gualberto Garcia Jones is a registered elector who resides in the City and County of Denver. Gualberto Garcia Jones is a proponent of Amendment 62.

5. Defendant State of Colorado is a state government with its capitol in the City and County of Denver.

6. Defendant Mike Mauer, sued in his capacity as Director, Colorado Legislative Council, is an employee of the Colorado General Assembly charged with the official responsibilities pursuant to Colorado Constitution Article V § 1 (7.5) and § 1-40-124.5 to distribute a fair and impartial analysis of initiatives to voters statewide. His business address is located in the City and County of Denver.

Standing

7. Pursuant to C.R.S. § 1-1-113(1), Plaintiffs, as eligible electors of Colorado, have standing to challenge wrongful acts of government election officials charged with a duty or function under this code who has committed or is about to commit a breach or neglect of duty or other wrongful act.

Jurisdiction and Venue

8. Pursuant to the Colorado Constitution, Art. VI, § 9, this Court has jurisdiction of this case. C.R.S. § 1-1-113 provides that a challenge to wrongful acts of government election officials may be brought in district court.

9. Pursuant to C.R.C.P. 98, venue is proper in this Court because all Defendants reside in the City and County of Denver.

Factual Background

10. On July 16, 2009, Petitioners file as Proponents of Proposed Initiative #25 with the Secretary of State's Office of Elections.

11. On August 5, 2009 the Ballot Title Setting Board approves the single subject, amends the staff draft, and finalizes the General Election Ballot Question.

12. On March 26, 2010, Bernie Buscher, the Secretary of State, issues the Statement of Sufficiency officially announcing the placement of Initiative 25, now referred to as Amendment 62, on the November, 2, 2010 ballot.

13. On May 20, 2010, the Office of the Legislative Council issues its First Draft of the "Ballot Analysis." Included in the "Summary and Analysis"

section, the Legislative Council Staff authoritatively but erroneously assert that the following language of the Amendment, the “beginning of the biological development,” is not considered a commonly accepted medical or scientific term. The proponents of the measure object to this erroneous and misleading characterization in writing, and provide ample evidence of peer reviewed medical and bioethics journals as well as medical textbooks in the field of embryology which use the term and concept of the beginning of the biological development. See Exhibits, attached hereto and incorporated herein by reference. The comments from Plaintiffs were submitted in a timely manner before the comments due date of May 28, 2010. Id.

14. On June 16, 2010, the Office of the Legislative Council issues its Second Draft of the “Ballot Analysis.” The Legislative Council Staff did not remove the erroneous assertion regarding the “beginning of the biological development”; instead, it moved this misleading assertion to the section reserved for “Arguments Against” Amendment 62. Additionally, Legislative Council Staff incorporated the highly prejudicial, highly misleading, and factually unsupported allegation that Amendment 62 will limit “treatment for miscarriages” by placing this misleading assertion into the “Arguments Against” section. A miscarriage is the natural and spontaneous loss of a child in the womb. Extending protections to children in the womb can simply have no conceivable effect upon “treatment”

of a woman who has had a miscarriage. By definition, the woman has lost the child. Although on the surface there is no logic to this assertion, the opponents hope that this lie will resonate with the additional lie which they often repeat. The No on 62 website's FAQ's state that "this amendment could trigger investigations anytime a woman has a miscarriage." See. Exhibits There is no precedent for such a preposterous assertion in the 200 years in which our laws treated the child in the womb as a person, and there is no logical connection between Amendment 62 and this prevarication. Again, it is undeniable that proponents will disagree as to the effects of the amendment, Plaintiffs do not attempt to dictate the opposition's arguments and beliefs, but "fairness and impartiality" require a certain degree of truthfulness, a mere scintilla of veracity in the arguments being presented, otherwise the arguments do not educate the voters, but instead mislead them.

15. Plaintiffs do not object to the undeniable accommodation and leniency with which the Staff of the Legislative Council has treated the opponents of Amendment 62 in the area reserved for their "Arguments Against," but we do strongly protest to the fact the above referenced patent falsehoods. The Fairness and impartiality that Article V § 1(7.5) of the Colorado Constitution demand should stretch to accommodate both the proponents arguments and

points of view, but it cannot stretch so far as to allow false and misleading information, no matter where in the ballot analysis these lies are placed.

16. In addition to permitting the introduction of false and misleading information, the second draft accommodates numerous beneficial changes in favor of the opponents of Amendment 62, so many, in fact, that almost none of the “Arguments Against” which the Staff of the Legislative Council initially wrote into the first draft remain in the second. The degree of evident collaboration between the Legislative Council Staff and the opponents of Amendment 62 is such, that the initial “Arguments Against” crafted by the Staff of the Legislative Council are replaced whole-cloth with talking points straight out of the opposition’s campaign literature. In the official campaign website for the No on 62 campaign, under the “Get the Facts” section and the FAQ subsection, opponents of Amendment 62 state that “Amendment 62 is a dangerous and deceptive measure that if passed, would change the state constitution and insert the government into the personal, private health care decisions that women and their families make every single day.” Compare this to the language in the “Arguments Against” section which states that “Amendment 62 allows government intrusion in the privacy of the doctor-patient relationship and could limit the exercise of independent medical judgment.” The similarity between the talking points of the opponents campaign and the arguments presented in the

“Arguments Against” section show that the Legislative Council Staff was adopting the suggestions of the opponents to Amendment 62 into the ballot information booklet. This in itself, is not a violation of Article V § 1(7.5) of the Colorado Constitution. The opponents and proponents may disagree in their arguments, and so long as both arguments are presented, and those arguments being presented are not patently false, it will be up to the voter to assess the arguments. However, when one contrasts the willingness to take guidance from the opponents in re-writing their “Arguments Against,” with the absolute intransigence with which the Legislative Council Staff treated the arguments presented by the proponents for the “Arguments For” section, it can only leave one with no doubt as to the lack of fairness and impartiality of the Legislative Council Staff, and of the clear violation of Article V § 1(7.5) of the Colorado Constitution. It is evident that the Legislative Council Staff was only impartial with the opponents, while taking an adversarial role against the proponents. This has the result that the ballot information booklet is, in effect, one big argument against Amendment 62.

17. Plaintiffs also strenuously object that while the entire “Arguments For” section was reworded after the Staff of the Legislative Council received the opposition’s comments to the First Draft, not a single suggestion was accepted on behalf of the proponents in the “Arguments For” section or in any other

section. See. Exhibits of First Drafts, Second Drafts, and third Drafts of the ballot information booklet.

18. For the second time, Plaintiffs objected in writing and submitted said comments in a timely manner before the comments due date of June 24, 2010.

19. On July 14, 2010, the Office of the Legislative Council issues its Third Draft of the "Ballot Analysis." Although Plaintiffs have now strenuously objected twice to the misleading language and have made numerous requests to have the "Arguments For" section actually reflect Plaintiff's arguments, the Legislative Council Staff continues to ignore Plaintiffs comments, while continuing to accommodate the opponents' arguments and favorably reword and incorporate them into the section reserved for the "Arguments Against." The misleading and false assertion regarding commonly accepted medical or scientific terminology remains in the draft, as does the unfounded and prejudicial assertion about the treatment of miscarriages. A third, completely unfounded, highly prejudicial, assertion is introduced in the third draft, namely, that "the measure may subject doctors and nurses to legal action for providing medical care to a woman of child-bearing age if that care could affect a "person" other than the identified patient." There is not a single recorded case in the history of Colorado, the United States, or the United Kingdom where a doctor was

prosecuted for performing a legitimate (i.e. not an abortion) medical procedure on a woman that resulted in the unintentional death of child. Because this assertion is so highly prejudicial, has no precedent to support it, and has never been the intent of the proponents its inclusion in the ballot information booklet is unwarranted.

20. Unbelievably, from the second to the third draft the Legislative Council Staff actually eliminated a favorable argument from the “Arguments For” section. That statement is that “the measure ensures uniform application of the term ‘person’ under the law.” When one contrasts the elimination of this “Argument For” with the inclusion of the following under “Argument Against: “The effect of Amendment 62’s change to the constitution are unclear,”¹⁰¹⁰ the patently unfair treatment of the entire process rises to the level of absurdity. One cannot help but think, that not only are the opponents being allowed to lie and mislead people with their arguments, but they are also being allowed to neuter the arguments which the proponents are trying to put forward.

21. On September 1, 2010, the Office of the Legislative Council held its public comment hearing on Amendment 62 and the other initiatives. Plaintiffs presented evidence, which is included in the information submitted to the legislators sitting on the Joint Committee on the Legislative Council, pleading for

a fair and equitable analysis from the Legislative Council. Plaintiffs also asked for the Legislative Council to allow and incorporate the use of the terminology of the actual amendment in the “Arguments For” section. Amendment 62 uses the word human being, as opposed to human life. “Human being” denotes a complete human organism and excludes the allegation that Amendment 62 is trying to grant legal rights to skin cells. A vote is taken as to whether the proponents of Amendment 62 should be allowed the use of the word “human being”, as opposed to human life. The Joint Committee on the Legislative Council holds votes against allowing the proponents to use their own words in the “Arguments For” section and does not consider the clear evidence of unfairness before them.

22. Absent this Court’s intervention, having exhausted all the possible legal processes for introducing a modicum of fairness and impartiality, Plaintiffs will suffer great prejudice not only in their capacity as proponents of Amendment 62, but also as representatives of registered electors whose constitutional rights are being violated. Furthermore, the people of Colorado will suffer great harm in being misled and being presented with false statements in the “Arguments For” and “Arguments Against” sections.

23. On September 20, 2010, Plaintiffs learn of the finalized ballot information booklet. None of the comments, suggestions, or evidence presented by Plaintiffs is reflected in the language of the ballot information handbook. The only change made to the language of the “Arguments For” section is not a result of the petition of Plaintiffs, but an unsolicited change unfavorable to Plaintiffs cause. The following sentence, “The measure ensures uniform application of the term "person" under the law,” is removed and the reader is left with only the preceding assertion that the “interpretation of the word is subjective, which may lead to the rights granted by the constitution being inconsistently applied.” Clearly, this new ending to the paragraph gives the current subjective and inconsistent state of the law, but not the solution that the proponents propose. Omitting the intended result of Amendment 62 has the effect of neutering the very purpose of having an “Arguments For” section.

24. If this ballot information booklet is allowed to be distributed the opposition will be able to use the immense financial resources of the state and the authority inherent in the ballot information booklet’s fair and impartial facade to unfairly and severely prejudice the rights of Plaintiffs rights under the Colorado Constitution.

25. Plaintiffs will suffer irreparable harm if this ballot information booklet is sent out to the voters.

26. If Article V §1(7.5) of the Colorado Constitution has any meaning whatsoever, then the current ballot information booklet must be found to be a prejudicial, misleading, and unfair document, composed with clearly discernible partisan motives. One need nothing more than the three drafts, and its accompanying comments from both proponents and opponents to understand that the process was as patently unfair as the result.

Claim for Relief

(Colorado Constitution Article V § 1(7.5); § 1-1-113, C.R.S.)

27. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

28. The Colorado Constitution Article V § 1(7.5) requires Defendants to provide a “fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure” of Amendment 62, “which may include other information that would assist understanding the purpose and effect of the measure.”

29. The final draft of the ballot information booklet includes the false allegation that the language of Amendment 62 regarding the beginning of the biological development is not a “commonly accepted medical or scientific term.”

30. The final draft of the ballot information booklet includes the highly prejudicial, misleading, and false allegation that Amendment 62 will prevent women who suffer a miscarriage from receiving medical help.

31. The final draft of the ballot information booklet does not include a single point that can be said to have originated from the Proponents, and yet is replete with talking points that are directly culled and only slightly modified from the opponent’s campaign. See. Exhibits of Drafts of the ballot information booklet and the talking points from the opponents website.

32. Colorado Revised Statutes § 1-1-113 requires government officials charged with a duty or function not to commit breach of duty or other wrongful act. Defendants’ knowing collaboration with the opponents of Amendment 62 to provide the voters with false statements regarding the effect of Amendment 62 is a breach of Defendants’ duty and a wrongful act.

33. The acceptance of these false statements under the mantle of the state will cause irreparable harm and damages because it will cause the Legislative Council's ballot information booklet to be a free, highly valuable, campaign tool for the opposition. The consequences of this manifest unfairness will weaken the legitimacy of any election result, and will create a dangerous precedent whereby the Legislative Council's ballot information booklet will merely become a partisan and unfair tool in direct contravention to Article V § 1(7.5) of the Colorado Constitution.

34. The harm to Plaintiffs can be avoided if voters are not subject to the lies that the opposition is trying to pass as fact. More importantly, a fair and impartial presentation of the arguments for and against can and should be presented so that people can objectively make up their own minds. The unfairness in the ballot information booklet clearly skewed the entire process, and will rob the people of Colorado as much as it will harm the prospects of passing Amendment 62.

Prayer for Relief

WHEREFORE, plaintiffs pray for the following relief:

- a) Enter judgment in their favor against Defendants;

b) Enter a declaration that the inclusion of the statements in the official analysis for voters that “The measure applies certain rights from ‘the beginning of biological development,’ a term which is not defined within the measure, has no established legal meaning, and is not an accepted medical or scientific term;” and “Amendment 62 may also limit ... treatment for miscarriages;” and “the measure may subject doctors and nurses to legal action for providing medical care to a woman of child-bearing age if that care could affect a "person" other than the identified patient,” are unfair and misleading, and therefore violate the Colorado Constitution Article V § 1(7.5) requiring the ballot analysis to be “fair and impartial.”

c) Enter a declaration that the exclusion of each and every proposed comment proposed by the Plaintiffs amounts to procedural unfairness, and likewise violates the Colorado Constitution, Article V, § 1(7.5), requirement of a non-partisan research staff of the General Assembly’s Legislative Council, and of the overarching Constitutional right to provide a fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure.

d) Enter an affirmative order requiring Defendants to prepare a truly fair and impartial analysis as is their duty under the Colorado Constitution, Article V, § 1 (7.5)

e) Enjoin Defendants from printing and or sending any of the ballot information booklets until this court's ruling has been announced.

f) Grant them any and all other relief the Court deems proper.

DATED: September 21, 2010

Respectfully submitted,

Leslie Hanks

Gualberto Garcia Jones

VERIFICATION

I, Gualberto Garcia Jones, hereby declare under oath, subject to penalty of perjury, that the facts set forth in the foregoing Verified Complaint are true to the best of my knowledge.

Gualberto Garcia Jones

Subscribed and affirmed, or sworn to before me by Gualberto Garcia Jones in the County of _____, State of Colorado, this _____ day of September, 2010.

My commission expires: _____

Notary Public/Clerk

VERIFICATION

I, Leslie Hanks, hereby declare under oath, subject to penalty of perjury, that the facts set forth in the foregoing Verified Complaint are true to the best of my knowledge.

Leslie Hanks

Subscribed and affirmed, or sworn to before me by Leslie Hanks in the County of _____, State of Colorado, this _____ day of September, 2010.

My commission expires: _____

Notary Public/Clerk

CERTIFICATE OF SERVICE

Undersigned certifies that on September 21, 2010, a copy of the foregoing VERIFIED COMPLAINT AND APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF, and Exhibits thereto, were served on the following in person:

John Suthers
Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, CO 80203
303-866-5240 telephone
303-866-5691 facsimile

Mike Mauer, Director
Colorado Legislative Council
Colorado State Capitol
Denver, CO 80203
303-866-3521 telephone
303-866-3855 facsimile

Gualberto Garcia Jones

Leslie Hanks