

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

**ALCOHOL MARIJUANA EQUALIZATION
INITIATIVE COMMITTEE, a registered issue
committee; and
MASON TVERT, a registered Colorado elector;
Plaintiffs,**

v.

**STATE OF COLORADO;
COLORADO GENERAL ASSEMBLY;
KIRK A. MLINEK, in his capacity as
Director, Colorado Legislative Council,
Colorado General Assembly;
Defendants.**

Attorneys for Plaintiffs:
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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 initiative, § 1-1-113, C.R.S. (2005) 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. Plaintiffs request an order requiring the official analysis on Amendment 44 to be “fair and impartial” as required by the Colorado Constitution.

Parties

2. Plaintiff Alcohol-Marijuana Equalization Initiative Committee (“AMEIC”) is a registered issue committee located in the City and County of Denver.

3. Plaintiff Mason Tvert is a registered elector who resides in the City and County of Denver.

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

5. Defendant Colorado General Assembly is the legislative branch of the state government located in the City and County of Denver.

6. Defendant Kirk A. Mlinek, 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.

Jurisdiction and Venue

7. 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.

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

General Allegations

9. On August 30, 2006, Legislative Counsel provided Amendment 44 proponent Steve Fox a “Final Draft” of the proposed language for the official analysis of Amendment 44. See Affidavit of Steve Fox and Exhibits, attached hereto and incorporated herein by reference.

10. The “Final Draft” contained false statements, in two places, that Amendment 44 would permit persons to provide up to an ounce of marijuana to minors aged 15 or older without penalty. Id.

11. In fact, § 18-6-701, C.R.S. (2005), “contributing to the delinquency of a minor,” criminalizes “induc[ing], aid[ing], or encourag[ing] a child [under the age of eighteen] to violate any federal or state law.” Thus, transferring any amount of marijuana to a minor [defined as an individual under the age of 18] would be illegal. Violation of this provision is a Class 4 Felony. Passage of Amendment 44 would not change § 18-6-701 C.R.S. See Fox Affidavit.

12. The “1st Draft” of proposed language, which Legislative Council provided on or about July 13, 2006, did not contain the false statements regarding minors age 15 or older. See Fox Affidavit and Exhibits.

13. On information and belief, opponents of Amendment 44, including federal government agents from the Rocky Mountain High Intensity Drug Trafficking Area, exerted political pressure on the Legislative Council to include the false statements. See Fox Affidavit and Exhibits.

14. A communication from federal government agent Tom Gorman, Director of the Rocky Mountain High Intensity Drug Trafficking Area and an Amendment 44 opponent includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older. See Fox Affidavit and Exhibits.

15. A communication from Beverly Kinard, an Amendment 44 opponent includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older. See Fox Affidavit and Exhibits.

16. A communication from Robert A. McGuire, an Amendment 44 opponent includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older. See Fox Affidavit and Exhibits.

17. A communication from Lori Strain, staff of the Rocky Mountain High Intensity Drug Trafficking Area and an Amendment 44 opponent, includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older. It even includes the ominous statement that “On line 13

through 16, please know that the wording used is very much appreciated.

PLEASE PLEASE leave it in.” See Fox Affidavit and Exhibits.

18. Prior to Amendment 44 proponents’ knowledge of the “contributing to the delinquency of a minor” statute, proponent Steve Fox timely provided general objections to a paragraph containing one of the false statements in an official filing with the Legislative Council. See Fox Affidavit and Exhibits.

19. Legislative Council rejected proponents’ comments and left in the false statements regarding minors age 15 or older. See Fox Affidavit and Exhibits.

20. On September 8, 2006, attorney Robert Corry informed Steve Fox by e-mail about the existence of the contributing to the delinquency of a minor statute. He shared the language of the statute, which demonstrated clearly that the transfer of any amount of marijuana to anyone under the age of 18 would be illegal after passage of our initiative. See Fox Affidavit.

21. In a subsequent telephone conversation on September 8, 2006 between Steve Fox and Cathy Eslinger of Legislative Council, she admitted that staff was aware during the drafting of the official analysis that the contributing to a delinquency of a minor statute, § 18-6-701 C.R.S., would make it illegal to transfer any amount of marijuana to any person under the age of 18 even after passage of Amendment 44, but left the false statements in anyway. She indicated that there was extensive internal discussion within Legislative Council regarding the fact that § 18-6-701 made it a felony to transfer any amount of marijuana to a

minor. She sounded extremely nervous and uncomfortable during this phone conversation. See Fox Affidavit.

22. In another telephone conversation Steve Fox had on September 10, 2006 with Defendant Kirk Mlinek, Director of Legislative Council, he seemed to appreciate the falsity of the phrases regarding the transfer of marijuana to minors age 15 and older, but said that he would have to consult with his staff the next day. He also indicated during this conversation that the voter information booklets were scheduled for printing on September 14, 2006. See Fox Affidavit.

23. Amendment 44 proponent Steve Fox spoke with Kirk Mlinek again on September 11, 2006. He said that *his staff* “stands by the [false] language.” He gave no indication why he did not have the authority as the director of the staff to make his own determination about the appropriateness of the false language. See Fox Affidavit.

24. A supposedly unbiased governmental source providing Colorado voters with false statements regarding Amendment 44 legalizing the transfer of marijuana to minors age 15 or older will have a significant and material effect on this election, and could sway the election unfairly against Amendment 44 when voters would have otherwise approved of the measure. See Fox Affidavit.

25. In fact, the false comments regarding minors age 15 and older are especially harmful to voters’ understanding of Amendment 44 because proponents’ intent in drafting Amendment 44 was to legalize possession of small

amounts of marijuana only for adults age 21 and older, and to keep existing penalties in place for those under 21. See Fox Affidavit.

26. If these false statements are not removed, opponents of the initiative will cite them directly in debates and possibly commercials as a reason to vote against the initiative. This has already occurred. In the first televised debate on Amendment 44 (On the *Independent Thinking* program on KBDI, Channel 12), taped on Thursday, August 24, 2006, at 1:30 p.m, and aired on Friday, September 8, 2006, at 8:30 p.m., and on Sunday, September 10, at 11:30 a.m., Weld County Undersheriff Margie Martinez, serving as Advisor to “Guarding Our Children Against Marijuana” [an issue committee registered with the Colorado Secretary of State to oppose Amendment 44], used the false statements as a reason to oppose Amendment 44. See Fox Affidavit.

27. Plaintiffs will suffer irreparable harm if the false information is permitted to go to voters. Voters will suffer irreparable harm because they will receive false information from a putative unbiased source that will materially affect their decision on Amendment 44.

28. The public interest and the Colorado Constitution Article V §1(7.5) favor initiative election campaigns conducted in a truthful manner, rather than with lies and falsehoods propagated by the very governmental entity charged with providing a fair and impartial analysis to voters.

Claim for Relief

(Colorado Constitution Article V § 1(7.5); § 1-1-113, C.R.S. (2005))

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

30. The Colorado Constitution Article V § 1(7.5) requires Defendants to provide a “fair and impartial analysis” of Amendment 44, “which may include other information that would assist understanding the purpose and effect of the measure.”

31. The final draft of the Legislative Council analysis falsely states “Amendment 44 allows adults 21 years of age or older to ... [transfer] up to one ounce of marijuana to another individual 15 years of age or older as long as there is no compensation,” and “The following marijuana offenses will continue to be illegal under state law if Amendment 44 passes: ... for individuals 18 years of age and older, transferring any amount of marijuana to a person under 15 years of age.” The false information regarding providing minors age 15 or older with marijuana violates the duty to provide a “fair and impartial analysis” of Amendment 44. This is not “fair” in any sense of the word because it is false, and does not “assist understanding the purpose and effect of the measure” but instead does the opposite; it obscures understanding by providing false information to voters.

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' plan to provide voters with false statements regarding the effect of Amendment 44 is a breach of Defendants' duty and a wrongful act.

33. This false statement will cause irreparable harm and damages in that once voters receive the Legislative Council analyses, they will be deceived and the results of the election will be materially tainted.

34. If voters are advised of the true effects of Amendment 44, the voters are more likely to approve the measure than if they wrongly believe that the felony penalties for contributing to the delinquency of a minor are somehow being repealed by Amendment 44.

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 "It also would include transferring up to one ounce of marijuana to another individual 15 years of age or older as long as there is no compensation," and "The following marijuana offenses will continue to be illegal under state law if Amendment 44 passes: ... for individuals 18 years of age and older, transferring any amount of marijuana to a person under 15 years of age," are false and misleading, and violate the Colorado Constitution Article V § 1(7.5) requiring the ballot analysis to be "fair and impartial."

c) Enter a preliminary and permanent injunction ordering the Defendants, and all those acting in concert with them, to change the numeral "15"

in the above sentences to the numeral “18,” and prohibiting the Defendants from printing or providing the false statements to voters in the official analyses or through any other means;

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

DATED: September __, 2006

Respectfully submitted,

Robert J. Corry, Jr.

VERIFICATION

I, Mason Tvert, 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.

Mason Tvert

Subscribed and affirmed, or sworn to before me by Mason Tvert in the County of _____, State of Colorado, this _____ day of September, 2006.

My commission expires: _____

Notary Public/Clerk

CERTIFICATE OF SERVICE

Undersigned certifies that on September __, 2006, a copy of the foregoing VERIFIED COMPLAINT AND APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF, the AFFIDAVIT OF STEVE FOX and Exhibits thereto, along with an advisement that Plaintiffs intended to seek expedited and injunctive relief, were served on the following via facsimile:

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