

AFFIDAVIT OF STEVE FOX

I, Steve Fox, hereby state as follows under penalty of perjury:

1. I am an attorney licensed to practice law in Massachusetts and am the Executive Director of the Safer Alternative for Enjoyable Recreation (SAFER) and an advisor to the Alcohol-Marijuana Equalization Initiative Committee, proponent of Amendment 44, which would repeal criminal penalties in Colorado state law for adults 21 years of age and older in possession of under an ounce of marijuana.

2. On August 30, 2006, the Legislative Counsel provided me a “Final Draft” of the proposed language for the official analysis of Amendment 44, attached hereto and incorporated herein by reference as Plaintiff’s Exhibit A.

3. 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.

4. 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.

5. The “1st Draft” of proposed language, attached hereto and incorporated herein by reference as Plaintiff’s Exhibit B, which Legislative

Council provided on or about July 13, 2006, did not contain the false statements regarding minors age 15 or older.

6. 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 these false statements.

7. A communication from federal government agent Tom Gorman, Director of the Rocky Mountain High Intensity Drug Trafficking Area and an Amendment 44 opponent, attached hereto and incorporated herein by reference as Plaintiff's Exhibit C, includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older.

8. A communication from Beverly Kinard, an Amendment 44 opponent, attached hereto and incorporated herein by reference as Plaintiff's Exhibit D, includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older.

9. A communication from Robert A. McGuire, an Amendment 44 opponent, attached hereto and incorporated herein by reference as Plaintiff's Exhibit E, includes the suggestion that Legislative Council include the false statements regarding minors age 15 and older.

10. A communication from Lori Strain, staff of the Rocky Mountain High Intensity Drug Trafficking Area and an Amendment 44 opponent, attached hereto and incorporated herein by reference as Plaintiff's Exhibit F, 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.”

11. Prior to my knowledge of the contributing to the delinquency of a minor statute, I timely provided my general objections to a paragraph containing one of the two false statements in an official filing with the Legislative Council, attached hereto and incorporated herein by reference as Plaintiff’s Exhibit G.

12. Legislative Council rejected my comments and left in the false statements regarding minors age 15 or older.

13. On September 8, 2006, attorney Robert Corry informed me 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.

14. In a subsequent telephone conversation on September 8, 2006 with Cathy Eslinger of Legislative Council, she admitted to me 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 the 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.

15. In another telephone conversation I had on September 10, 2006 with 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.

16. I 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.

17. From my four and a half years experience in lobbying for marijuana policy reform nationwide, I know that 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 may have otherwise approved of the measure.

18. In fact, the false statements regarding minors age 15 and older is especially harmful to voters’ understanding of Amendment 44 because the intent

of measure 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.

19. Further, I know from experience that 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.

Steve Fox

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

My commission expires: _____

Notary Public/Clerk