11-19-1976

City of Glendale v. Buchanan

IN THE SUPREME COURT

OF THE STATE OF COLORADO

No. 27243

THE CITY OF GLENDALE, a municipal corporation; GEORGE T. GARSON, individually and as Mayor of the City of Glendale; RALPH CHAMBERS, JOSEPH KAISER, TIM GREER, JOHN JOHNSON, ROBERT GILMOUR, individually and as City Councilmen of the City of Glendale; and FRANK P. MAC FADDEN,

Plaintiffs-Appellees,

vs.

MARY ESTILL BUCHANAN, Secretary of State, State of Colorado; JOHN P. MOORE, Attorney General, State of Colorado; IRVING MEHLER, Reporter to the Supreme Court of the State of Colorado; BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE,

Defendants-Appellees,

CITY AND COUNTY OF DENVER,

Defendant-Appellant.

CHERRY CREEK SCHOOL DISTRICT NO. 5,

Intervenor-Appellee.

CITY AND COUNTY OF DENVER,

Third-Party Plaintiff-Appellant,

vs.

MARY ESTILL BUCHANAN, Secretary of State, State of Colorado; JOHN P. MOORE, Attorney General, State of Colorado; IRVING MEHLER, Reporter to the Supreme Court of the State of Colorado; THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTIES OF ADAMS, JEFFERSON, ARAPAHOE, DOUGLAS, WELD, BOULDER, GILPIN, and CLEAR CREEK; ALL THE BOARDS OF COUNTY COMMISSIONERS OF ALL OTHER COLORADO COUNTIES, as a class; and the CITIES OF AURORA AND LAKEWOOD,

Third-Party Defendants-Appellees.

Error to the District Court of the City and County of Denver, State of Colorado

HONORABLE ZITA L. WEINSHIENK, JUDGE

BRIEF OF STATE DEFENDANT-APPELLEES AND STATE THIRD-PARTY DEFENDANT APPELLEES

J. D. MacFarlane #5419
Attorney General

Jean E. Dubofsky #0880
Deputy Attorney General

Attorneys for State Defendants-Appellees and State Third-Party Defendant-Appellees

1525 Sherman, 3rd Floor
State Services Building
Denver, Colorado 80203
Telephone: 892-3611

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STATEMENT OF ISSUES

1. Can an amendment to the Colorado Constitution which has been adopted by the electorate be challenged after the election on the basis of an allegedly misleading ballot title?

2. Does the court have jurisdiction after an election to determine the sufficiency of a ballot title if available pre-election remedies were not pursued?

3. Was the ballot title for Amendment 1 misleading?

4. Was the trial court correct in ruling that plaintiffs and appellants had not shown that electors were misled by the ballot title to Amendment 1?

5. Does the third party complaint request an advisory opinion which this court is without jurisdiction to render?

STATEMENT OF THE CASE

Amendments 1 and 5 to the Colorado Constitution were adopted by the voters on November 5, 1974. Amendment 1 limited annexation by the City and County of Denver to approval by a majority of the voters in the county from which the land was annexed, unless otherwise provided by law. Amendment 5 established a boundary control commission to approve annexations in Metropolitan Denver.

Several days later, on November 11, 1974, the City of Glendale, its Mayor and City Councilmen, and Frank MacFadden, a resident of Boulder County, filed in Denver District Court a Declaratory Judgment action to determine plaintiff City of

Glendale's status under Amendment 1 and to challenge the validity of the Amendment. Defendants were the Secretary of State, the Attorney General, the Reporter to the Colorado Supreme Court and the City and County of Denver. Denver admitted all of the allegations of the complaint and raised as an affirmative defense, unsupported by additional factual allegations, the potential conflict between Amendments 1 and 5. The Board of County Commissioners of the County of Arapahoe and Cherry Creek School District No. 5 intervened.

First, the plaintiffs contended that the failure of the state defendants to give the plaintiffs an opportunity to challenge the ballot title of Amendment 1 either invalidated Amendment 1 or gave them an opportunity to question the ballot title. The lower court ruled against the plaintiffs on the basis that they made no factual showing they lacked notice of the title and that they had the burden of inquiring of the Secretary of State as to the title.

Second, the plaintiffs requested a declaratory judgment that the City of Glendale was not automatically annexed by Denver as a result of Amendment 1. The city council plaintiffs raised the issue in the context of a misleading ballot title. All the parties stipulated that Amendment 1 did not have the effect of causing the annexation by Denver of Glendale or of any unincorporated enclave (as raised by the intervenors) within the present physical boundaries of Denver, and the lower court so ruled pursuant to Rule 57 (f. 545).

Finally, the plaintiffs contended that the ballot title was misleading on several grounds alleged in the

complaint and affidavits. No evidence as to how the voters were misled was presented at the trial. The individual plaintiffs were not present and did not testify. Defendants were given no opportunity to cross-examine or question any factual allegations of the complaint. And plaintiffs presented no evidence showing that the outcome of the election would have been different had the allegations of the complaint been proved.

The lower court ruled that the ballot title was misleading as a matter of law (f. 550). The court also required that the parties be realigned, resulting in Denver's filing a third-party complaint which raised the same issues earlier set forth in Denver's affirmative defenses. Denver subsequently withdrew its requests for a ruling on the conflict between Amendments 1 and 5 (f. 807). All counties were notified of the pendency of a class action. The court then ruled that the remaining issues were questions of law and requested briefs on whether Amendment 1 should be invalidated on the basis of a misleading ballot title and whether the portion of Amendment 1 not properly set forth in the title could be severed (ff. 811-812).

The final court order issued on April 26, 1976 found Amendment 1 valid in its entirety (f. 1048). The bases for the court's decision were (1) available pre-election remedies were not utilized; (2) the challenges did not prove the title so misleading as to render the amendment invalid; and (3) the amendment must be upheld because of the importance of the people's power of initiative. The court also ruled that Amendment 1 was not severable and that Amendments 1 and 5 are not in conflict (ff. 1024-1048).

The original plaintiffs did not appeal the lower court decision. Denver's Notice of Appeal (f. 1098) refers only to the judgment entered on April 26, 1976. Denver's brief before this court does not raise severability of a portion of Amendment 1 or conflict between Amendments 1 and 5. Therefore, state appellees do not raise and have not briefed the questions of severability of an amendment or conflict between amendments.

SUMMARY OF ARGUMENT

I. Once an amendment to the Colorado Constitution has been adopted by the voters, a challenge to the constitutional amendment based on an alleged defective ballot title must fail.

   A. The Constitution reserves the right of initiative to the people, and a ballot title is not a constitutional requirement.

   B. Available pre-election remedies, either statutory or equitable, were not pursued.

   C. The ballot title was not misleading.

II. The plaintiffs did not meet their burden of proof.

III. The third-party complaint failed to state a justiciable claim.

ARGUMENT

I. ONCE AN AMENDMENT TO THE COLORADO CONSTITUTION HAS BEEN ADOPTED BY THE VOTERS, A CHALLENGE TO THE CONSTITUTIONAL AMENDMENT BASED ON AN ALLEGED DEFECTIVE BALLOT TITLE MUST FAIL.

A. THE CONSTITUTION RESERVES THE RIGHT OF INITIATIVE TO THE PEOPLE, AND A BALLOT TITLE IS NOT A CONSTITUTIONAL REQUIREMENT.

Article II, Section 2 of the Colorado Constitution provides as follows:

> The people of this state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided, such change be not repugnant to the constitution of the United States.

In only three instances have provisions of the Colorado Constitution been invalidated by the courts. Twice the basis for the invalidation was repugnancy to the federal constitution. Lucas v. Colorado General Assembly, 377 U.S. 713, 12 L.Ed.2d 632 (1964) and People v. Western Union Co., 70 Colo. 90, 198 Pac. 146 (1921). The third case, In re Interrogatories Propounded By the Senate Concerning House Bill 1078, 536 P.2d 308 (1975), broke new constitutional ground in this state: if two constitutional amendments adopted the same day are irreconcilably in conflict, the amendment receiving the greater number of votes prevails.

Where there is no irreconcilable conflict, as the court below observed in dicta, the principle enunciated by the Colorado Supreme Court shortly after the turn of the century prevails:

> It appears to be universal rule that unless the court is satisfied beyond a reasonable doubt that the constitution has been violated in the submission of a constitutional amendment, the amendment must be upheld. This is not a flexible rule, to be applied to suite emergencies, but is a rule adopted to secure to the people the right they have to change the organic law whenever necessary for their safety and happiness. It means that whenever the will of the people has been ascertained in a manner conforming substantially to the provisions of the constitution, that the court shall brush aside all merely technical obstructions without regard to the result.
>
> People v. Sours, 31 Colo. 369 at 390 (1903) (emphasis added).

Appellants have not claimed that the allegedly misleading ballot title deprived them of any state or federal constitutional rights.

The power of initiative is reserved to the people in Article V, Section 1 of the Constitution of Colorado. Some of the details of the initiative process are specified in the constitution, but there is no constitutional reference to a ballot title. When the people have initiated and adopted a constitutional amendment, the ballot title does not become a part of the constitution. The only statutory reference to a ballot title, which is defined as "providing the designation" by which the voters shall express their choice for or against a proposed constitutional amendment, is at C.R.S. 1973, 1-40-101 and 1-40-102.

The most recent Colorado Supreme Court interpretation of the initiative provisions of Article V, Section 1 is the following from Billings v. Buchanan, No. 27407 (Oct. 1976):

This constitutional provision, as well as the statutes which implement it, must be liberally construed so as not to unduly limit or curtail the exercise of the initiative and referendum rights constitutionally reserved to the people. This is well expressed in Colorado Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972), where this court commented:

> "[W]e point out again that the initiative provisions of the constitution must not be narrowly construed, but rather that they must be liberally construed to effectuate their purpose and to facilitate the exercise by electors of this most important right reserved to them by the constitution. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311; Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416; see Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692."

No challenge after an election to a constitutional amendment, either referred or initiated, on the basis of a defective ballot title has succeeded in Colorado. Therefore, appellants looked to out-of-state cases and local charter amendment cases for precedent. Out-of-state court results are varied. Some cases which have upheld constitutional amendments dispute allegations of misleading ballot titles include State v. Osbourne, 153 Ore. 484, 57 P.2d 1083 (1936); State ex rel. Rhodes v. Brown, 296 N.E. 2d 538 (Ohio 1973), Lowery v. Shirley, 107 S.E. 2d 769 (S.C. 1959); Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854. Local charter amendment cases, Hoper v. City and County of Denver, 173 Colo. 390, 472 P.2d 967 (1971) and Howard v. City of Boulder, 132 Colo. 401, 290 P.2d 237 (1955), are not controlling. The ballot title requirements for the charter amendments in both cases were imposed not by local ordinance but by each city's charter which under Article XX, Section 6 of the Colorado

Constitution is the organic law extending to all local and municipal matters. On the other hand, ballot title requirements for state constitutional amendments are imposed by legislative enactment and not by the constitution itself.

A ballot title required by statute must not be allowed to interfere with a constitutional amendment which has been duly enacted. To rule otherwise would interfere with the people's reserved power of initiative, Article 5, Section 1, and with the people's right to govern themselves, Article II, Section 2 of the Colorado Constitution.

B. AVAILABLE PRE-ELECTION REMEDIES, EITHER STATUTORY OR EQUITABLE, WERE NOT PURSUED.

C.R.S. 1973, 1-40-101(1) was the procedure for setting a ballot title followed in this case (ff. 473-474). (The statute was amended in 1974.) C.R.S. 1973, 1-40-101(2) established a procedure for persons presenting an initiative petition to request a rehearing and Supreme Court review on the title so set, and C.R.S. 1973, 1-40-102(3) establishes title rehearing and Supreme Court review procedures for use by any qualified elector.[1/] The procedure is well known and has been used frequently. Johnson v. Buchanan, No. 27186 (May 14, 1976); Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972); Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960); Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958). No one challenged the ballot title prior to November 5, 1974 (f. 452 and ff. 1126-1137, 1504) when Amendment 1 was adopted.

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1. In Colorado Project - Common Cause v. Anderson, 177 Colo. 402, 495 P.2d 218 (1972), C.R.S. 1973, 1-40-102(1) and (2) requiring proponents of an initiative to pay for publication of the ballot title were declared unconstitutional. Since then, the Supreme Court has ruled that an initiated constitutional amendment is not invalidated because "its ballot title and submission clause were not published in advance of the time that a qualified elector must file a motion for a change of wording and a hearing thereon." In re Interrogatories, supra, at 313.

Between the expiration of the statutory time for a ballot title challenge and the election, no one sought equitable injunctive relief to restrain the placement on the ballot of an allegedly defective title. Elkins v. Milliken, 80 Colo. 135, 249 P.2d 655 (1926), recognized the availability of such review to safeguard against fraud in initiative procedures, and the appropriateness of such proceedings in a proper case is implied in Billings v. Buchanan, supra at 7.[2/] No one has alleged fraud in the setting of the ballot title, and again, no one challenged the title prior to the election.

An old case, Allen v. Glynn, 17 Colo. 338, 29 Pac. 670 (1892), involved ballot printing errors in candidate party designations. The court said:

> [T]he legislature has made ample provision for the correction of ballots prior to the election.... [I]t would not be in the interests of a fair expression of the will of the people to allow a candidate to lie by and not point out such objections as he may have to the form of the ballot until after the election has been held. Ibid. at 346-347.

One would think that to raise an issue of misleading ballot title after an election plaintiffs and appellants would have to first plead and prove why they failed to follow available statutory or equitable proceedings to challenge a ballot title. In fact, most persons involved in county annexations had notice of the implication of legislative involvement in annexation were Amendment 1 to be adopted (f. 982). Instead of going to court prior to the election and alleging why they had failed to follow earlier statutory remedies, plaintiffs waited until six days after the election to file suit. Appellants

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2. It should be noted that the City and County of Denver, the appellant, is not a "qualified voter" with standing to sue under C.R.S. 1973, 1-40-102(3).

then picked up plaintiffs' argument that the ballot title was misleading. Their litigation over the ballot title after the election has been their chosen device to attempt to overturn Amendment 1 because they did not like the outcome of the election. This case demonstrates why the legislature and the courts have provided pre-election remedies and refused to overturn election results when challenged on the basis of a misleading title.

C. THE BALLOT TITLE WAS NOT MISLEADING.

The appropriate first issue for consideration by a court is whether it has jurisdiction to invalidate a constitutional amendment on the basis of an allegedly misleading ballot title. Should the court determine it can so rule, the deceptiveness of the ballot title becomes an issue.

C.R.S. 1973, 1-40-101 requires that a ballot title, providing the designation by which the voters express their choice for or against a proposed constitutional amendment, "shall correctly and fairly express the true intent and meaning" of the constitutional amendment, "shall be brief," and "shall not conflict with those selected for any petition previously filed for the same election." The mandatory nature of brevity in ballot titles was emphasized in Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950). A ballot title must identify the measure to be voted on with sufficient clarity that it will not be confused with other measures on the same ballot. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960). Even though there was another amendment on the ballot concerning annexation, no one has alleged that the title for Amendment 1 was confusing in that it did not sufficiently designate the proper amendment.

Instead, plaintiffs and appellants have contended that Amendment 1 contained a hidden surprise in that the grant of power to the legislature to adjust county lines was not expressly mentioned in the ballot title. Amendment 1 added the words "except as otherwise provided by statute" to Article XIV, Section 3 of the Colorado Constitution requiring voter approval of county annexations. Amendment 1 also applied the voter approval provisions of Article XIV, Section 3 to the city and county of Denver as established by Article XX.

The ballot title for Amendment 1 was as follows:

> AN AMENDMENT TO ARTICLES XIV AND XX OF THE CONSTITUTION OF THE STATE OF COLORADO CONCERNING THE ANNEXATION OF PROPERTY BY A COUNTY OR CITY AND COUNTY, AND PROHIBITING THE STRIKING OFF OF ANY TERRITORY FROM A COUNTY WITHOUT FIRST SUBMITTING THE QUESTION TO A VOTE OF THE QUALIFIED ELECTORS OF THE COUNTY AND WITHOUT AN AFFIRMATIVE VOTE OF THE MAJORITY OF THOSE ELECTORS. [Emphasis added.]

The ballot title is not misleading if the words "CONCERNING... AND PROHIBITING" are read as modifying "ARTICLES XIV AND XX" rather than as modifying "AMENDMENT."[3/] That the modification of "ARTICLES XIV AND XX" is the proper reading is supported by Strunk & White, The Elements of Style, p. 24:

> A proposal to amend the Sherman Act, which has been variously judged
>
> leaves the reader wondering whether it is the proposal or the Act that has been variously judged. The relative clause must be moved forward, to read: "A proposal, which has been variously judged, to amend the Sherman Act...."

Read in the proper manner, the title notifies the voter that Amendment 1 modifies the existing constitutional provision concerning annexation by Denver and the existing constitutional

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3. The comma after "COUNTY" in the fourth line appears to be meaningless under any reading.

provision requiring voter approval for annexation.

Language from California and Oregon cases in Say v. Baker, supra, is on point:

> [I]f reasonable minds may differ as to the sufficiency of the title, the title should be held to be sufficient.... Epperson v. Jordan, 12 Cal.2d 61, 82 P.2d 445.
>
> The mere fact that after an appeal has been taken and we have had the benefit of the additional labor bestowed upon the ballot title by counsel we may be able to write a better ballot title than the one prepared by the Attorney General constitutes no reason for discarding his title .... Wieder v. Hoss, 143 Or. 122, 21 P.2d 780.

More recently, the standards for judging a ballot title (before an election) have been set out in Bauch v. Anderson, supra:

> ...(1) we must not in any way concern ourselves with the merit or lack of merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid.

Finally, if the ballot title is read as state-appellees urge, its referral to an amendment to Article XIV, Section 3 is sufficient without mentioning the language "except as otherwise provided by statute." Article XIV, section 3 has previously been held not to restrict the legislature in certain county matters and, therefore, inclusion of an express grant is not the hidden surprise which plaintiffs and appellants claim. Frost v. Pfeiffer, 26 Colo. 338, 58 Pac. 147 (1899). See also, C.R.S. 1973, 30-6-101, et seq.

The court below, over objections of the state appellees, considered first whether the ballot title was misleading; the court concluded as a matter of law that the ballot title was misleading but not so misleading that in light of constitutional considerations the amendment should be thrown out. The difficulty in establishing a degree of misleadingness illustrates why the constitutional arguments must be considered first. State appellees do not believe it necessary for the court to reach the question of whether the ballot title was misleading; should it reach the issue, the record has not been established to support a finding that the title was misleading.

II. THE PLAINTIFFS DID NOT MEET THEIR BURDEN OF PROOF.

In order to invalidate a ballot title, plaintiffs[4] and appellants must show, beyond a reasonable doubt, that the ballot title was so misleading as to have caused a sufficient number of voters to have changed their vote. Amendment 1 passed 409,174 to 292,040 (f. 977); hence, in order to show prejudice, the plaintiffs and appellants must show that 58,567 voters were misled by the ballot title.

In rejecting the plaintiffs' contention of a misleading ballot title in Sours, supra at 388, the court said: "There is no proof that any elector was deceived by the title under which the amendment was submitted." Neither plaintiffs nor appellants offered any proof in the instant case that any voter was misled by Amendment 1's ballot title (f. 1311). In contrast, 62,339 qualified voters signed the petition to put Amendment 1 on the ballot (f. 977). The petition contained the ballot title, and each of the signators swore they had read the proposed initiative in its entirety and understood its meaning (f. 977).

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4. The plaintiffs did not appeal.

The petitions with sufficient signatures to place Amendment 1 on the ballot were filed with the Secretary of State about ten months prior to the 1974 general election. What followed was similar to a Kansas court description quoted in Sours, ibid. at 381:

> We may not ignore public history. Nearly two years elapsed between the time the proposition passed the legislature and the day of the popular vote. During this time this question was not forgotten.... The state was thoroughly canvassed; its merits and demerits were presented and supported by all possible arguments .... It was assumed on all sides that the question was before the People for decision. There was not even a suggestion of any such defect in the form of submission as would defeat the popular decision.... Prohibitory Amendment Cases, 24 Kan. 700.

As was the issue described in Sours, Amendment 1 was the subject of much public debate. The complete text of the amendment, along with the title, was published according to C.R.S. 1973, 1-40-114, throughout the state between October 1 and October 15, 1974 (f. 978). The amendment was discussed on television, radio and in newspapers. The public, as a whole, was thoroughly informed on the issue, yet not one person ever suggested that the proposed title was defective. It was assumed on all sides, as in the case described in Sours, that the question was before the public for a decision. Given this public history, it is extremely unlikely that 58,000 voters were affected by the alledgedly misleading ballot title. Certainly the plaintiffs and appellants have not offered to prove that such is the case.

III. THE THIRD-PARTY COMPLAINT FAILED TO STATE A JUSTICIABLE CLAIM.

The third-party complaint contains no allegations against any of the third-party defendants, and no adversity is claimed in any manner. State-appellees were defendants in the original action because of their roles in approving

ballot titles for initiated constitutional amendments. The claims in the third-party complaint are couched in terms of a request for an advisory opinion, but none of the claims is placed in a factual context. The closest the third-party complaint comes to a factual allegation is the first sentence in paragraph 5: "Denver has received numerous requests to annex land since the 20th day of December, 1974...." That sentence alone is not sufficient to link the third-party complaint to the subject matter of the original complaint. The only common ground between the two complaints is that both of them are directed toward Amendment 1.

The Declaratory Judgment statute, Rule 57 of the Colorado Rules of Civil Procedure and C.R.S. 1973, 13-51-101, et seq., does not create additional grounds of jurisdiction. Jurisdiction is determined by the statute creating the jurisdiction of the court and the allegations of the complaint. 26 C.J.S. Declaratory Judgments § 112. Constitutional questions may be determined in an action for a declaratory judgment only if an actual controversy is involved. Ibid. § 44. If no question is properly presented which is cognizable under Rule 57, the action must be dismissed. Farrell v. Fisher, 104 Colo. 553, 92 P.2d 748 (1939).

Without a justiciable controversy, a court cannot entertain an action for declaratory relief. Farmers Elevator Co. v. First National Bank, 176 Colo. 168, 489 P.2d 318 (1971). Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961). In Heron v. Denver, 159 Colo. 314, 411 P.2d 314 (1966), the court affirmed the dismissal of declaratory judgment proceedings.

> ...[A] declaratory judgment is appropriate when it will terminate the controversy. Here, no controversy exists; at most there is only a mere probability of such. The applicable principle is succintly stated in Taylor v. Tinsley, 138 Colo. 182, 330 P.2d 954:

> ...Declaratory judgment proceedings may not be invoked to resolve a question which is nonexistent, even though it can be assumed that at some future time such question may arise....
>
> In Edmundson v. Allen, 117 Colo. 103, 183 P.2d 984, the principle is differently expressed as follows:
>
> ...The jurisdiction of the court to enter declaratory judgments does not properly extend to entering advisory judgments as to hypothetical issues which may never arise,....
>
> One cannot invoke, in order to defeat a law, an apprehension of what might be done under it and which, if done, might not receive judicial approval; to complain of a ruling one must be the victim of it.... [11 Am. Jur. Constitutional Law §111.]

Recently the Supreme Court twice has refused to render advisory opinions on the constitutionality of initiated laws or constitutional amendments on the basis of Article IV, Section 3 of the Colorado Constitution which restricts advisory opinions to interrogatories submitted by the general assembly or by the governor. C. F. & I. Steel Corporation v. Buchanan, Supreme Court Nos. C-1071 and 27392 (consolidated) (Sept. 30, 1976), and Billings v. Buchanan, supra at 9. Those cases involved proposed amendments not at the time approved by the electorate. Amendment 1 has been approved by the electorate, but until it becomes an issue in a proposed annexation, the court is faced only with a request for an advisory opinion.

Without an allegation of facts or an indication of the adversity between the parties, the third-party complaint fails to state a justiciable claim.

CONCLUSION

Given the strong presumption in favor of a constitutional amendment and the failure of plaintiffs or appellants to seek pre-election remedies for an allegedly misleading

ballot title, state appellees respectfully request this Court to affirm the lower court decision of April 26, 1976.

FOR THE ATTORNEY GENERAL:

JEAN E. DUBOFSKY #0880
Deputy Attorney General

MARY J. MULLARKEY #5430
First Assistant Attorney General
Appellate Section

Attorneys for State Defendant-Appellants

1525 Sherman, 3rd Floor
State Services Building
Denver, Colorado 80203
Telephone: 892-3611