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IN THE SUPREME COURT
OF THE STATE OF COLORADO

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

OCT 19 1976

Richard D. Lelli

THE CITY OF GLENDALE, a municipal corpor-)
ation; 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,)

Plaintiff-Appellees,)

v.)

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.)

No. 27243

CITY AND COUNTY OF DENVER,)

Third-party Plaintiff-)
Appellant,)

v.)

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.)

BRIEF OF
THIRD-PARTY DEFENDANT-APPELLEE,
BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, COLORADO

APPEAL
FROM THE DISTRICT COURT,
CITY AND COUNTY OF DENVER

HONORABLE ZITA L. WEINSHIENK, JUDGE

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October 18, 1976

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STATEMENT OF THE CASE

This Third-party Defendant-Appellee has no dispute with the statement of the case set forth by the City and County of Denver. However, we disagree with the conclusion set forth on page 34 of Denver's Brief to the effect that Amendments No. 1 and 5 establish alternative methods of annexation or that the two amendments are in conflict.

ARGUMENT

AMENDMENT NO. 5 IS VALID WITHOUT REGARD TO THE VALIDITY, IN WHOLE OR IN PART, OF AMENDMENT NO. 1.

Adams County respectfully contends that the intention of the legislature was to offer Amendment No. 5 without regard to the passage or failure of Amendment No. 1. Senate Concurrent Resolution No. 7 (which later became Amendment No. 5 on the ballot) states:

"Section 1 of Article XX of the Constitution of the State of Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPH to read: * * *"
(Session Laws of 1974, page 457).

The above language makes it clear that the legislature passed, and the people voted upon, a constitutional amendment which added paragraphs to an existing provision without regard to whether the existing provisions were changed or not. There is nothing in the wording of Senate Concurrent Resolution No. 7 which indicated that either the General Assembly or the voters of this state were voting for Amendment No. 5 upon a condition that Amendment No. 1 should fail.

There is no conflict between the provisions of Amendment No. 1 and Amendment No. 5 as approved by the voters. Although Amendment No. 1 changed a condition for future annexation to the City and County of Denver, Amendment No. 5 added a condition which was to be in effect whether Amendment No. 1 passed or failed.

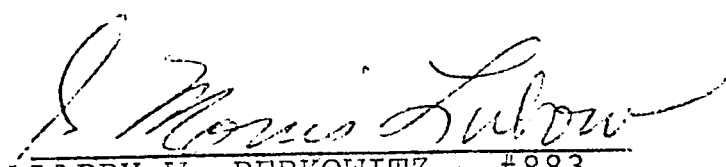
"Where the words and phrases of a constitutional amendment are plain and unambiguous, courts may not resort to forced or strained interpretations but must enforce such language as written," according to the Colorado Court of Appeals in Mulbey v. Civil Service Commission, _____ Colo. _____, 509 P.2d 808 (1973), citing Colorado State Civil Service Employees Association v. Love, 167 Colo. 446, 364 P.2d 202 (1961) and Lidke v. Industrial Commission, 159 Colo. 480, 413 P.2d 200 (1966).

In Colorado, the test for the existence of a conflict between constitutional provisions is: Does one authorize what the other forbids or forbid what the other authorizes? In Re Interrogatories Propounded by the Senate Concerning House Bill 1978, _____ Colo. _____, 536 P.2d 308 (1975), citing Ray v. City and County of Denver, 109 Colo. 74, 121 P.2d 886 (1942). No such conflict exists between Amendments No. 1 and 5 and both should be adjudged part of the Constitution of the State of Colorado.

CONCLUSION

Without regard to the validity or partial validity of Amendment No. 1, Adams County respectfully urges this Court to affirm the ruling of the Trial Court that Amendment No. 5 as adopted by the voters is a valid part of the constitution of this state.

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CERTIFICATE OF MAILING

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