



## Colorado Automobile Dealers Association

### **Amendment 41 Under Heavy Fire...in the Courts By CAR lobbyist Jeremy Cottrell**

The organized litigation effort by the First Amendment Council to oppose Amendment 41 began hearings this week in a Denver county court. Judge Christina Habas presided over the trial and was familiar with the nuances of Amendment 41, as she was the same judge who previously presided over the Boettcher Foundation Scholarship fund case.

Throughout the three-day hearing, the First Amendment Council utilized a four-pronged attack to expose the glaring flaws of Amendment 41, using former Colorado Supreme Court Justice Jean Dubowski, as well as Doug Freidnash, Susan Fisher, and John Tanner of Fairfield and Woods. Each specialized in precise portions of the hearing relating to key constitutional violations.

The First Amendment Council concentrated their attack on constitutional grounds, citing violations of pure free speech, freedom of association, and of the single-subject rule regarding the ballot initiatives. The single-subject rule requires an amendment to be narrowly focused and contain a singular topic to be specifically addressed by the amendment. Amendment 41 implemented a gift ban, created an ethics commission and developed a revolving door provision that prohibits legislators from lobbying for two years following their exit from office.

Maurice Knaizer, the lawyer for the defending Attorney General, relied heavily on reading Amendment 41 in its entirety, rather than reading admittedly vague subsections. Further, support of Amendment 41 relied on an implied injection of the "spirit" of the intended nature of the provision. Lastly, supporters of 41 cited a technical manner in which it may be nearly impossible for some to adhere to the amendment and still carry out everyday job requirements. This raised eyebrows even with Judge Habas, who wondered about realistic implications to state employees and their families, as well as those considered independent contractors.

In all, 12 witnesses were called ranging from Anne McGihon, a current Colorado state representative, to David Getches, the University of Colorado College of Law dean, to Peggy Kearns, director of State Legislative Ethics in Government of the National Conference of State Legislators. Each witness had a unique negative experience as a direct result of Amendment 41. Many cited the utter confusion of the impact of 41 on them and their interaction, not just in the workplace but in their personal lives as well. Others were concerned with scholarship programs not addressed by the prior decisions of the Boettcher Scholarship Fund or The Daniels Fund, which immediately impacted their children's chances of attaining higher education. All witnesses mentioned the clear language that negatively impacted their pure free speech and freedom of association constitutional rights.

Relying on the past street-savvy title of Amendment 41, "Ethics in Government," which passed with a 62% margin in November 2006, the proponents of Amendment 41 called no witnesses. The Attorney General's office called no one to bolster support of Amendment 41, no one who voted for and was fully aware of the massive implications and pleased with the result. This was universally viewed as a very strange strategy.

A decision by Judge Christina Habas is expected by May 18 as to whether to grant an injunction to stay Amendment 41 thereby halting its enforcement and moving the issue up to the Colorado Supreme Court to determine its constitutional impact and its ultimate fate.