06SA42.

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, FOR 2005-2006, #73

Petitioners:

BEVERLY AUSFAHL and NICOLE KEMP, objectors,

~~and~~ v.

Respondents:

JON CALDARA and DENNIS POLHILL, proponents

and

Title Board:

WILLIAM A. HOBBS, ALLISON EID, and DANIEL L. CARTIN.

2006

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No Fee

~~Feb.~~	~~07~~	~~Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2005-2006 #73 ("Issue Committee Contributions") filed.~~	Feb	27	Petitioners' Opening Brief. Filed.
				*	Answer Brief still due: 03/20/06
				*	Reply Brief still due: 03/31/06
			Mar	20	Answer Brief of Title Board. Filed
Feb.	07	ORDER – Petitioner file an Opening Brief on or before February 27, 2006, Respondents file any Answer Brief on or ~~Before March 20, 2006, Petitioner may file a Reply Brief on or before~~ March 31, 2006. FURTHER ORDERED – all briefs ~~shall be filed and served upon opposing parties by hand delivery, or through an overnight delivery service.~~		*	Reply Brief still due: 03/31/06
			Mar	31	Petitioner's Reply Brief filed.
			Mar	31	Circulated
			Apr	6	Submitted
			May	22	Action of the Ballot Title Setting Board affirmed, En Banc. Rice, J. Hobbs, J. dissents & Bender, J. joins in the dissent. Eid, J. does not participate.
	*	Opening Brief DUE: 2/27/06			
	*	~~Answer Brief DUE: 3/20/06~~			
	*	~~Reply Brief DUE: 3/31/06~~			
Feb.	15	Copy of 2/07/06 order mailed to Jon Caldara marked as UTF. Called Dennis Pollhill 2/16/06 for correct address. Re-mailed order to correct address. (returned to the office)			

ORIGINAL

SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203	
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), 1 C.R.S. (2005) Appeal from the Ballot Title Setting Board **Petitioners**: BEVERLY AUSFAHL and NICOLE KEMP, Objectors, v. **Respondents**: JON CALDARA and DENNIS POLHILL, Proponents, and **Title Board**: WILLIAM A. HOBBS, ALLISON EID, and DANIEL L. CARTIN	FILED IN THE SUPREME COURT FEB - 7 2005 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK RECEIVED FEB - 6 2006 CLERK COLORADO SUPREME COURT ▲ COURT USE ONLY ▲
Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303-292-5656 Fax Number: 303-292-3152 E-mail: eramey@ir-law.com	Case No.: 06SA42

PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #73 ("ISSUE COMMITTEE CONTRIBUTIONS")

02-07-06 3CL6143 CHECK 75.00

Beverly Ausfahl and Nicole Kemp ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), 1 C.R.S. (2005), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #73 ("Issue Committee Contributions").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #73 on January 18, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on January 25, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on February 1, 2006. At the rehearing, the Board denied Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #73 pursuant to § 1-40-107(2), C.R.S. (2005).

II. Issues Presented

1) Does proposed Initiative 2005-2006 #73 contain multiple subjects in violation of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2005), thereby depriving the Title Board of jurisdiction to set a title?

2) Does the title set by the Title Board for proposed Initiative 2005-2006 #73 fairly express the true meaning and intent of the proposed constitutional amendment?

III. Supporting Documentation

As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

IV. Relief Requested

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to decline to set a title and to return the proposed Initiative to the proponents.

Respectfully submitted this 6th day of February, 2006.

ISAACSON ROSENBAUM P.C.

By: _____
Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

Addresses of Petitioners:

Beverly Ausfahl
603 East 7th Avenue
Denver, CO 80203

Nicole Kemp
3332 West Moncrieff Place
Denver, CO 80211

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 # 73 ("ISSUE COMMITTEE CONTRIBUTIONS")** was placed in the United States mail, postage prepaid, to the following:

Jon Caldara
14142 Denver West Parkway
Golden, CO 80401

Dennis Polhill
49 South Lookout Mountain Road
Golden, CO 80401

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203

Jayne M. Wills

Jayne M. Wills

STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE

I, GINETTE DENNIS, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #73"...,

IN TESTIMONY WHEREOF I have unto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver this 6th day of February, 2006.

Ginette Dennis

SECRETARY OF STATE

#73 Final Cop

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

ARTICLE X, SECTION 20 (TAXPAYER'S BILL OF RIGHTS) OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW SUBSECTION TO READ:

(10) **SYSTEM TO END PAY-TO-PLAY.** (1) THIS SECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL REASONABLY DISCOURAGE THE PRACTICE KNOWN AS PAY-TO-PLAY, WHERE INDIVIDUALS AND ENTITIES CONTRIBUTE TO A TAX OR DEBT ELECTION CAMPAIGN WITH THE EXPECTATION OF OR PREREQUISITE OF RECEIVING~~,~~ A REWARD, EITHER FINANCIAL OR OTHERWISE.

(2)(A) ANY INDIVIDUAL OR ENTITY THAT CONTRIBUTES MORE THAN FIVE HUNDRED DOLLARS, WHETHER CASH OR THE EQUIVALENT, EITHER DIRECTLY OR INDIRECTLY, TO ANY ISSUE COMMITTEE AS DEFINED IN SECTION 2(10) (A) OF ARTICLE XXVIII, OR ANY COMBINATION OF ISSUE COMMITTEES, THAT ADVOCATES IN FAVOR OF A BALLOT ISSUE THAT RAISES A TAX RATE, CONTINUES A TAX THAT WOULD OTHERWISE EXPIRE, CREATES A NEW TAX, OR INCREASES PUBLIC INDEBTEDNESS, OR ANY OTHER BALLOT ISSUE THAT MUST ADHERE TO THIS SECTION, SHALL NOT PROFIT BY RECEIVING A GIFT, BY RECEIVING EMPLOYMENT, BY BEING AWARDED A CONTRACT, OR BY RECEIVING ANY TRANSFER OF TAXPAYER ASSETS OR FUNDS IN EXCHANGE FOR GOODS OR SERVICES FROM THAT DISTRICT FOR WHICH THIS SECTION APPLIES FOR THE PERIOD THE SUBJECT TAX OR PUBLIC INDEBTEDNESS IS IN PLACE.

(B) PASS-THROUGH CONTRIBUTIONS TO ISSUE COMMITTEES THROUGH OTHER INDIVIDUALS OR ENTITIES ARE EXPRESSLY PROHIBITED AND ARE INCLUDED IN THE LIMITATIONS OF (2) (A). THE ORIGINATOR OF THE CONTRIBUTION AS WELL AS ALL INDIVIDUALS OR ENTITIES THAT HANDLED A PASSED-THROUGH CONTRIBUTION ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(C) IF A CONTRIBUTION OF MORE THAN FIVE HUNDRED DOLLARS COMES FROM ANY INDIVIDUAL OR ENTITY THAT POOLS FUNDING FROM OTHER INDIVIDUALS OR ENTITIES, THEN ALL THE INDIVIDUALS AND ENTITIES THAT HAVE CONTRIBUTED MORE THAN FOUR HUNDRED DOLLARS INTO THAT ENTITY THAT POOLS SUCH FUNDING ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(D) ENFORCEMENT. WHEN A DISTRICT IS FOUND TO HAVE VIOLATED PAY-TO-PLAY STATED IN (2) (A), THE SUBJECT ELECTION IS CONSIDERED VOID. REVENUES COLLECTED PRIOR TO AN UPHELD PAY-TO-PLAY CHALLENGE, SHALL BE REFUNDED TO TAXPAYERS.

Jon Caldera
13952 Denver West Parkway Ste #400
Golden, CO
303-279-6536

David Chandler
7930 Kendall St
Arvada, CO
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RECEIVED
JAN 2 5 2006
ELECTIONS / LICENSING
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #73 ("ISSUE COMMITTEE CONTRIBUTIONS")

Beverly Ausfahl and Nicole Kemp ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the actions of the Title Board at the hearing on January 18, 2006, regarding Proposed Initiative 2005-2006 #73 ("Issue Committee Contributions"). Petitioners request a rehearing with regard to the following issues:

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple subjects in violation of Colo. Const. art. V, §1(5.5) and C.R.S. §1-40-106.5. Specifically, the Initiative (a) amends Colo. Const. art. X, §20 to prevent certain persons from receiving gifts, employment, contract awards, or transfers of taxpayer assets or funds from districts that have passed various forms of ballot issues; (b) effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to prohibit specified "pass-through" contributions to issue committees; (c) further effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to restrict a defined practice of "pooling" contributions to issue committees; (d) voids elections otherwise freely and fairly voted upon; and (e) mandates refunds to taxpayers of revenues collected in the event of an upheld challenge to covered contributions.

2. The title does not clearly and fairly apprise the voters that the restrictions upon contributions to issue committees set forth in section (2)(A) apply to all ballot issues within the

scope of Colo. Const. art. X, §20 – to include, *e.g.*, relief from spending limits – rather than just those concerning "a tax or debt increase."

3. The title does not clearly and fairly apprise the voters that the Initiative is effectively amending various provisions of Colo. Const. art. XXVIII.

4. The title wholly fails to apprise the voters that the Initiative prohibits "pass-through" contributions to issue committees.

5. It is not clear from the text of the Initiative what a "pass-through" contribution is – *e.g.*, whether or not it must be intended or earmarked by the initial contributor to be directed to the subject issue committee – and it is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

6. It is not clear from the text of the Initiative whether the prohibition upon "pass-through" contributions applies to all issue committees as defined in Colo. Const. art. XXVIII or solely to issue committees supporting ballot issues within the ambit of Colo. Const. art. X, §20. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

7. It is not clear from the text of the Initiative what individuals or entities will be deemed to have "handled" a "pass-through" contribution. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

8. The text of the Initiative is internally inconsistent in both prohibiting "pass-through" contributions and simultaneously including them within the limitations established by

paragraph (2)(A). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

9. The title wholly fails to apprise the voters regarding the "pooling" restrictions of paragraph (2)(C).

10. It is not clear from the text of the Initiative what it means to "pool[] funding." It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

11. The title fails to disclose that revenues collected prior to an "upheld pay-to-play challenge" must be refunded to the taxpayers.

12. It is not clear from the text of the Initiative how a district can be found to have violated "pay-to-play" restrictions upon contributors to issue committees, and particularly in the context of "pass-through" or "pooling" violations incorporated into paragraph (2)(A) by paragraphs (2)(B) and (2)(C). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

13. It is not clear from the text of the Initiative what or who may find or uphold a "pay-to-play challenge" or before whom, by whom, or against whom such a challenge may be brought. It is therefore not possible to set a clear and fair title with regard to the "enforcement" provision of the Initiative so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

Respectfully submitted this 25th day of January, 2006.

ISAACSON ROSENBAUM P.C.

By: _____

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Denver, CO 80211

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mr. Jon Caldara
14142 Denver West Parkway
Golden, CO 80401

Mr. Dennis Polhill
49 South Lookout Mountain Road
Golden, CO 80401

Jayne M. Wills

Jayne M. Wills

Ballot Title Setting Board

Proposed Initiative 2005-2006 #73[1]

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition?

Hearing January 18, 2006:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 2:24 p.m.

Hearing February 1, 2006:
Motion for Rehearing denied.
Hearing adjourned 2:51 p.m.

[1] Unofficially captioned **"Issue Committee Contributions"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

ORIGINAL

Certification of Word Count: 1,993

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, Colorado 80203 ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board	FILED IN THE SUPREME COURT FEB 27 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG ▲ COURT USE ONLY ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #73 **Petitioners**: BEVERLY AUSFAHL and NICOLE KEMP, Objectors, v. **Respondents**: JON CALDARA and DENNIS POLHILL, Proponents, and **Title Board**: WILLIAM A. HOBBS, ALLISON EID, and DANIEL L. CARTIN	Case No. 06SA42
Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303/292-5656 Fax Number: 303/292-3152 E-mail: eramey@ir-law.com	
PETITIONERS' OPENING BRIEF	

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Attachments:

Colorado Secretary of State Certificate, text, motion for rehearing, titles, and the rulings thereon of the Title Board on proposed Initiative 2005-2006 #73

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Beverly Ausfahl and Nicole Kemp ("Petitioners"), through their undersigned counsel, respectfully submit the following Opening Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2005-2006 #73 ("Issue Committee Contributions").

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Proposed Initiative for 2005-2006 #73 contains multiple subjects in violation of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2005), thereby depriving the Title Board of jurisdiction to set a title.

2. The title, ballot title, and submission clause set for proposed Initiative for 2005-2006 #73 do not fairly express the true meaning and intent of the proposed constitutional amendment.

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Before the Title Board.

This Original Proceeding is brought pursuant to § 1-40-107(2), C.R.S. (2005), seeking review of the actions of the Ballot Title Setting Board regarding proposed Initiative for 2005-2006 #73. The Petitioners are registered electors who timely submitted a Motion for Rehearing before the Title Board raising the objections presented herein pursuant to § 1-40-107(1), C.R.S. (2005).

The Title Board conducted its initial public meeting and set a title, ballot title, and submission clause for proposed Initiative for 2005-2006 #73 on January 18, 2006. The Petitioners filed a Motion for Rehearing on January 25, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on February 1, 2006. At the rehearing, the Title Board overruled Petitioners' objections. Petitioners filed their Petition for Review with this Court on February 6, 2006.

B. Statement of Facts.

Proposed Initiative for 2005-2006 #73 seeks to amend Colo. Const. art. X, § 20 (popularly known as "TABOR"), by adding a new subsection primarily directed at eliminating what the proponents describe as "pay-to-play" – contributions to issue committees supporting TABOR ballot measures by persons who might stand to gain any form of direct or indirect benefit from the passage of the measure. A copy of the initiative, as well as a copy of the title, ballot title, and submission clause, are attached hereto. Notwithstanding its principal focus, the proposed initiative stretches well beyond its primary subject. And, the title omits several critical components and effects.

III. SUMMARY OF THE ARGUMENT

1. Proposed Initiative for 2005-2006 #73 contains at least three distinct subjects: (a) a restriction upon the ability of governmental districts to provide any form of economic or business benefit to persons who have contributed more than $500 to an issue committee that supported a TABOR ballot measure for that district; (b) an apparent prohibition of "pass-through" contributions to Colo. Const. art. XXVIII issue committees generally; and (c) a retroactive invalidation of otherwise valid TABOR elections and a mandatory refund of all collected revenues.

2. The title, ballot title, and submission clause for proposed Initiative for 2005-2006 #73 do not fairly express the true meaning and intent of the proposed constitutional amendment by: (a) affirmatively stating that the restrictions apply only to "tax or debt campaign[s]" when they also apply to all other TABOR measures including campaigns for relief from spending and revenue limits; (b) failing to disclose the mandated refund of revenues resulting from invalidated TABOR elections; (c) failing to disclose the apparent amendment to Colo. Const. art. XXVIII regarding pass-through contributions to issue committees; and (d) failing to disclose the restrictions upon "pooling" of contributions.

IV. ARGUMENT

A. Single Subject.

Colo. Const. art. V, § 1(5.5) provides that "[i]f a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." "To violate the single subject requirement, an initiative must: 1) 'relate to more than one subject' and 2) have 'at least two distinct and separate purposes which are not dependent upon or connected with each other.'" In re Proposed Initiatives for 2003-2004 #32 and #33 and 2003-2004 #21 and #22, 76 P.3d 460, 461 (Colo. 2003), quoting In re Public Rights in Waters II, 898 P.2d 1076, 1078-79 (Colo. 1995). This Court has recognized the single-subject requirement to be "intended to prevent voters from being confused or misled and to ensure that each proposal for change is considered on its own merits." In re Proposed Initiative for 1997-1998 #74, 962 P.2d 927, 928 (Colo. 1998).

The primary subject of proposed Initiative for 2005-2006 #73 is clearly the enactment of a constitutional restriction upon the ability of governmental districts to provide any form of economic or business benefit (contracts, employment, gifts, purchases, and sales) to individuals or entities who have contributed more than

$500 to an issue committee that supported a TABOR ballot measure for that district. Most of the remainder of the measure flows from that. However, two distinct subjects also appear.

First, the initiative provides in paragraph (2)(B) that "pass-through contributions to issue committees through other individuals or entities *are expressly prohibited and* are included in the limitations of (2)(A)" (emphasis added). While the incorporation of pass-through contributions into the "limitations of (2)(A)" pertains to the primary subject, the additional complete prohibition of pass-through contributions to issue committees generally does not. Rather, the explicit general prohibition adds a restriction properly within the scope of Colo. Const. art. XXVIII – where, incidentally, a somewhat similar restriction already exists with regard to candidate committees though notably *not* with regard to issue committees. *See* Colo. Const. art. XXVIII, § 2(4), §3(7).

The third subject of the initiative is paragraph (2)(D)'s retroactive invalidation of otherwise valid TABOR elections, *and mandatory refund of all collected revenues*, should a district be determined at some point "to have violated" the restrictions of paragraph (2)(A), *i.e.*, to have provided some form of business or economic benefit or employment to a person who had contributed more than $500 to an issue committee supporting a successful TABOR measure. While paragraph

(2)(D) is labeled simply "Enforcement," this provision goes a long way beyond the reasonable ambit of that term.

This Court has held on a number of occasions that "implementation details" that are directly tied to the primary focus of an initiative do not constitute separate subjects. *See, e.g.*, In re Proposed Initiative for 1999-2000 #200A, 992 P.2d 27, 30-31 (Colo. 2000); In re Proposed Initiative for 1997-1998 #74, *supra*, at 929. In the present context, requiring the return of a benefit or invalidation of a contract with a person who had contributed more than $500 to a relevant issue committee would constitute an "implementation detail."

Here, however, the complete retroactive invalidation of an entire district election and mandate that all revenues collected (presumably, though not clearly, limited to those obtained as a result of the measure passed at the election) be refunded to taxpayers – though these revenues may well already have been spent or irrevocably committed – is a whole lot more than an "implementation detail." It would constitute a major and broad-sweeping undoing of the public will to punish a peripheral, likely minor, and quite probably unintentional lapse by a public official in a hiring or contracting decision. It would uniformly undermine the finality of all TABOR ballot elections for an indeterminate period of time. And, particularly if revenues or borrowings have been spent or committed by the time a

"pay-to-play challenge" is brought, it could easily obligate a district to curtail wholly independent programs to obtain the funds necessary for the mandated refund. The effect could easily be draconian, and the connection with the offending contribution less than tenuous.

In 1998, this Court confronted an initiative that proposed to lower various state and local taxes, require the state to replace resulting local revenue loss, and hold the state's revenue replacement obligation within its own tax and spending limits. In re Proposed Initiatives for 1997-1998 #84 and #85, 961 P.2d 456 (Colo. 1998). The Court noted that the latter component of the initiative would necessarily result in mandated reductions in state spending on other state programs to enable it to meet its local revenue replacement obligations. Id. at 460. This, the Court held, was a separate subject. Id. "Voters would be surprised to learn that by voting for local tax cuts, they also had required the reduction, and possible eventual elimination, of state programs." Id. at 460-61. The effect was "dual constitutional changes" – Id. at 460 – "precisely the types of mischief which the single subject requirement was intended to prevent." Id.

The present case is conceptually similar – voters would be asked to: (1) prevent their governmental districts from conferring economic or business benefits upon certain contributors to issue committees that had supported TABOR ballot

measures, while concurrently; (2) rendering all TABOR elections retroactively voidable and their districts potentially obligated to refund revenues already committed or spent – with the resulting almost inevitable reduction, or possible collapse, of other wholly independent district programs. Again, these are "dual constitutional changes" with significant hidden implications. And, the present measure is potentially massively more pernicious than the 1998 measure.

B. Ballot Title Disclosure.

The title, ballot title, and submission clause set by the Title Board for proposed Initiative for 2005-2006 #73 do not "fairly express the true meaning and intent of the proposed . . . constitutional amendment" as required by §1-40-107(1), C.R.S. (2005). Particularly, they fall short in the following respects of "enabling informed voter choice," as this Court has mandated. In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845, 846 (Colo. 1999), quoting In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 266 (Colo. 1999).

First, the title affirmatively states – and misrepresents – that the restrictions imposed by the initiative apply only to "tax or debt campaign[s]." Paragraph 2(A) of the initiative expressly includes "any other ballot issue that must adhere" to Colo. Const. art. X, § 20. This would include ballot issues containing mill levy and property valuation adjustments and tax policy changes – *see* Colo. Const. art.

X, § 20(4)(a) – as well as measures intended to provide relief from spending and revenue limits per Colo. Const. art. X, § 20(7). These – particularly the latter – are generically different issues from "tax or debt campaign(s)." *Cf*, In re Proposed Initiative for 1997-1998 #30, 959 P.2d 822, 826 (Colo. 1998). As illustrated by "Referendum C" in the state's 2005 general election, this is not an incidental omission.

Second, there is no mention in the title of paragraph (2)(B)'s restrictions upon "pass-through" contributions. This may be viewed as an incidental omission of detail were it not for that paragraph's broad prohibition of "pass-through" contributions to issue committees generally – as discussed above a significant amendment to Colo. Const. art. XXVIII and a separate subject. The voters are entitled to be apprised of this.

Third, there is no mention in the title of the "pooling" restrictions contained in paragraph (2)(C) of the initiative. Again, this could be viewed at first blush as an incidental omission of detail, though its importance becomes apparent when one considers that a secondary contributor to someone who "pools" contributions becomes subject to the initiative's economic, business, and employment restrictions based upon a lower ($400) contribution than disclosed in the title.

Finally, there is no mention in the title of the hugely important potential refund obligation that the initiative places upon governmental districts. As discussed above, this involves more than simply "voiding the subject election" as the title suggests. It has the very real potential to curtail wholly unrelated district programs if not financially ruin the district. This is a potential impact that should be made very, very clear to voters being asked to approve what the title suggests is simply a prohibition upon persons benefiting from campaign contributions.

V. CONCLUSION

For the reasons set forth above, the Petitioners request the Court to reverse the actions of the Title Board and to direct the Board to strike the title, ballot title, and submission clause and return proposed Initiative for 2005-2006 #73 to its proponents.

Respectfully submitted this 27th day of February, 2006.

ISAACSON ROSENBAUM P.C.

By: _____
Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2006, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was forwarded, as listed, to the following addressees:

Via Federal Express
Jon Caldara
14142 Denver West Parkway
Golden, CO 80401

Via Federal Express
Dennis Polhill
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STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE

I, GINETTE DENNIS, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #73"...

IN TESTIMONY WHEREOF I have unto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver this 6th day of February, 2006.

Ginette Dennis

SECRETARY OF STATE

#13 hard copy

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

ARTICLE X, SECTION 20 (TAXPAYER'S BILL OF RIGHTS) OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW SUBSECTION TO READ:

(10) **SYSTEM TO END PAY-TO-PLAY**. (1) THIS SECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL REASONABLY DISCOURAGE THE PRACTICE KNOWN AS PAY-TO-PLAY, WHERE INDIVIDUALS AND ENTITIES CONTRIBUTE TO A TAX OR DEBT ELECTION CAMPAIGN WITH THE EXPECTATION OF OR PREREQUISITE OF RECEIVING, A REWARD, EITHER FINANCIAL OR OTHERWISE.

(2)(A) ANY INDIVIDUAL OR ENTITY THAT CONTRIBUTES MORE THAN FIVE HUNDRED DOLLARS, WHETHER CASH OR THE EQUIVALENT, EITHER DIRECTLY OR INDIRECTLY, TO ANY ISSUE COMMITTEE AS DEFINED IN SECTION 2(10) (A) OF ARTICLE XXVIII, OR ANY COMBINATION OF ISSUE COMMITTEES, THAT ADVOCATES IN FAVOR OF A BALLOT ISSUE THAT RAISES A TAX RATE, CONTINUES A TAX THAT WOULD OTHERWISE EXPIRE, CREATES A NEW TAX, OR INCREASES PUBLIC INDEBTEDNESS, OR ANY OTHER BALLOT ISSUE THAT MUST ADHERE TO THIS SECTION, SHALL NOT PROFIT BY RECEIVING A GIFT, BY RECEIVING EMPLOYMENT, BY BEING AWARDED A CONTRACT, OR BY RECEIVING ANY TRANSFER OF TAXPAYER ASSETS OR FUNDS IN EXCHANGE FOR GOODS OR SERVICES FROM THAT DISTRICT FOR WHICH THIS SECTION APPLIES FOR THE PERIOD THE SUBJECT TAX OR PUBLIC INDEBTEDNESS IS IN PLACE.

(B) PASS-THROUGH CONTRIBUTIONS TO ISSUE COMMITTEES THROUGH OTHER INDIVIDUALS OR ENTITIES ARE EXPRESSLY PROHIBITED AND ARE INCLUDED IN THE LIMITATIONS OF (2) (A). THE ORIGINATOR OF THE CONTRIBUTION AS WELL AS ALL INDIVIDUALS OR ENTITIES THAT HANDLED A PASSED-THROUGH CONTRIBUTION ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(C) IF A CONTRIBUTION OF MORE THAN FIVE HUNDRED DOLLARS COMES FROM ANY INDIVIDUAL OR ENTITY THAT POOLS FUNDING FROM OTHER INDIVIDUALS OR ENTITIES, THEN ALL THE INDIVIDUALS AND ENTITIES THAT HAVE CONTRIBUTED MORE THAN FOUR HUNDRED DOLLARS INTO THAT ENTITY THAT POOLS SUCH FUNDING ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(D) ENFORCEMENT. WHEN A DISTRICT IS FOUND TO HAVE VIOLATED PAY-TO-PLAY STATED IN (2) (A), THE SUBJECT ELECTION IS CONSIDERED VOID. REVENUES COLLECTED PRIOR TO AN UPHELD PAY-TO-PLAY CHALLENGE, SHALL BE REFUNDED TO TAXPAYERS.

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BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #73 ("ISSUE COMMITTEE CONTRIBUTIONS")

Beverly Ausfahl and Nicole Kemp ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the actions of the Title Board at the hearing on January 18, 2006, regarding Proposed Initiative 2005-2006 #73 ("Issue Committee Contributions"). Petitioners request a rehearing with regard to the following issues:

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple subjects in violation of Colo. Const. art. V, §1(5.5) and C.R.S. §1-40-106.5. Specifically, the Initiative (a) amends Colo. Const. art. X, §20 to prevent certain persons from receiving gifts, employment, contract awards, or transfers of taxpayer assets or funds from districts that have passed various forms of ballot issues; (b) effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to prohibit specified "pass-through" contributions to issue committees; (c) further effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to restrict a defined practice of "pooling" contributions to issue committees; (d) voids elections otherwise freely and fairly voted upon; and (e) mandates refunds to taxpayers of revenues collected in the event of an upheld challenge to covered contributions.

2. The title does not clearly and fairly apprise the voters that the restrictions upon contributions to issue committees set forth in section (2)(A) apply to all ballot issues within the

scope of Colo. Const. art. X, §20 – to include, *e.g.*, relief from spending limits – rather than just those concerning "a tax or debt increase."

3. The title does not clearly and fairly apprise the voters that the Initiative is effectively amending various provisions of Colo. Const. art. XXVIII.

4. The title wholly fails to apprise the voters that the Initiative prohibits "pass-through" contributions to issue committees.

5. It is not clear from the text of the Initiative what a "pass-through" contribution is – *e.g.*, whether or not it must be intended or earmarked by the initial contributor to be directed to the subject issue committee – and it is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

6. It is not clear from the text of the Initiative whether the prohibition upon "pass-through" contributions applies to all issue committees as defined in Colo. Const. art. XXVIII or solely to issue committees supporting ballot issues within the ambit of Colo. Const. art. X, §20. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

7. It is not clear from the text of the Initiative what individuals or entities will be deemed to have "handled" a "pass-through" contribution. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

8. The text of the Initiative is internally inconsistent in both prohibiting "pass-through" contributions and simultaneously including them within the limitations established by

paragraph (2)(A). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

9. The title wholly fails to apprise the voters regarding the "pooling" restrictions of paragraph (2)(C).

10. It is not clear from the text of the Initiative what it means to "pool[] funding." It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

11. The title fails to disclose that revenues collected prior to an "upheld pay-to-play challenge" must be refunded to the taxpayers.

12. It is not clear from the text of the Initiative how a district can be found to have violated "pay-to-play" restrictions upon contributors to issue committees, and particularly in the context of "pass-through" or "pooling" violations incorporated into paragraph (2)(A) by paragraphs (2)(B) and (2)(C). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

13. It is not clear from the text of the Initiative what or who may find or uphold a "pay-to-play challenge" or before whom, by whom, or against whom such a challenge may be brought. It is therefore not possible to set a clear and fair title with regard to the "enforcement" provision of the Initiative so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

Respectfully submitted this 25th day of January, 2006.

ISAACSON ROSENBAUM P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mr. Jon Caldara
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Golden, CO 80401

Mr. Dennis Polhill
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Golden, CO 80401

Jayne M. Wills

Jayne M. Wills

ORIGINAL

Certification of Word Count: 3,132

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	FILED IN THE SUPREME COURT MAR 2 0 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK ▲ COURT USE ONLY ▲
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from Ballot Title Setting Board	
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006 #73 BEVERLY AUSFAHL AND NICOLE KEMP, Petitioners, v. JOHN CALDARA AND DENNIS POLHILL, PROPONENTS AND WILLIAM A. HOBBS, ALLISON EID AND DANIEL L. CARTIN, TITLE BOARD, Respondents.	Case No.: 06SA42
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	

ANSWER BRIEF OF TITLE BOARD

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STATUTES

William A. Hobbs, Allison Eid and Daniel C. Cartin, as members of the Title Board (hereinafter "Board"), hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

1. Does proposed initiative 2005-2006 #73 (#73) contain a single subject?

2. Do the title, ballot title and submission clause fairly express the true meaning and intent of #73?

STATEMENT OF THE CASE

Beverly Ausfahl and Nicole Kemp (hereinafter "Objectors") accurately set forth the nature of the case, the course of proceedings and the disposition of #73 by the Board. (Opening brief, pp. 1-2). The Objectors' statement of the facts is also accurate, except for the allegations that "the proposed initiative stretches well beyond its primary subject" and "the title omits several critical components and effects." These statements constitute arguments.

In addition, it is important to note that #73 is an amendment to Colo. Const. art. X, § 20.

SUMMARY OF THE ARGUMENT

1. #73 contains only one subject: contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity.

All facets of the initiative relate to contributions made by individuals or entities to issue committees that support exceptions to tax and revenue limitations in Colo. Const. art. X, § 20.

2. The titles and submission clause accurately and succinctly summarize the measure.

ARGUMENT

I. THE MEASURE INCLUDES ONLY ONE SUBJECT: CONTRIBUTIONS MADE TO A TAX OR DEBT CAMPAIGN WITH THE EXPECTATION OF RECEIVING A REWARD FROM A GOVERNMENTAL ENTITY

The Objectors contend that the Board should not have set titles because #73 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

> No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it "relate[s] to more than one subject and ...[has] at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002)(quoting *In re Proposed Initiative "Public Rights in Water II"*, 898 P.2d 1076, 1078-79 (Colo. 1995) (*#21*). A proposed initiative that "tends to effect or to carry out one general objective or purpose presents only one subject." *In re Ballot Title 1999-2000 #25,* 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (*#43*).

The Court will not address the merits of a proposed initiative, interpret it or construe its future legal effects. *#21*, 44 P.3d at 215-16, *#43*, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *#21*, 44 P.3d at 216. The single subject requirement must be liberally construed to avoid the imposition of undue restrictions on initiative proponents. *In*

re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74, 962 P. 2d 927, 929 (Colo. 1998).

The Objectors contend that #73 contains three unrelated subjects: (1) restrictions on the power of governmental districts to provide any economic or business benefit to individuals or entities who have contributed more than $500 to an issue committee that supported a ballot measure under article X, § 20 with the intent or expectation of receiving a benefit from the governmental entity; (2) a prohibition on pass-through contributions to issue committees generally, thereby amending the Campaign and Political Finance Amendment, Colo. Const. art. XXVIII; and (3) retroactive invalidation of otherwise valid elections, including refund of all collected revenues, under article X, § 20 if a district signs a contract with a person or entity who contributed with the expectation that the person or entity would receive some economic benefit.

The Objectors argue that the prohibition on pass-through contributions to issue committees creates a second subject because it amends the "issue committee" provisions within Colo. Const. art. XXVIII. (Objectors' Brief, p. 5.) The Court must reject this argument. Article XXVIII applies to all ballot issues and ballot questions. Colo. Const. art. XXVIII, § 10(a). Section 10(b) of #73 is much more

limited. Its reach is to limited to preventing persons who make contributions in excess of five hundred dollars to a ballot issue under article X, § 20 with the expectation of a benefit from receiving a benefit from the district that receives the additional taxes or is allowed to benefit from increased debt. As noted in section (10)(1) of the measure, "The preferred interpretation shall be reasonably discourage the practice known as pay-to-play, where individuals and entities contribute to a tax or debt election campaign with the expectation of or prerequisite of receiving, a reward, either financial or otherwise." It does not extend beyond the limited universe of ballot issue elections authorized by Colo. Const. art. X, § 20.

Any indirect effect on a provision within article XXVIII does not alter the single subject analysis. "[T]he mere fact that a constitutional amendment may affect the powers exercised by government under pre-existing constitutional provisions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respects if adopted by the voters." *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). (*#258(A)*) Any

incidental impact on another constitutional provision does not create an additional subject.

The Objectors next contend that #73's enforcement provision, section (10) (2) (D), is a separate subject because it invalidates elections and requires a refund of revenues collected if a district provides some form of remuneration "in exchange for goods or services from that district for which this section applies for the period the subject tax or public indebtedness is in place", as provided in (10) (2) (A). Under the Objectors' reading, this provision is not connected to the measure and is surreptitious. The Court must reject this argument.

Subsection (10) (D) states:

> Enforcement. When a district is found to have violated pay-to-play stated in (2) (A), the subject election is considered void. Revenues collected prior to an upheld pay-to-play challenge, shall be refunded to taxpayers.

This subsection does nothing more than allow citizens to enforce the prohibition by filing a lawsuit. If the citizen's lawsuit is successful, then the election is void. This provision is similar to the Colo. Const. art. X, § 20(1), which states:

> Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution....Revenue collected, kept, or spent illegally

> since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct.

The Court has denominated this part of section 20(1) "an enforcement clause." *Bickel v. City of Boulder*, 885 P.2d 215, 227 (Colo. 1994). Section 10(B) is, in all substantial respects, like section 20(1). Because the provision prescribes an enforcement mechanism directly related to the measure, it is an integral part of the measure. *#258(A)*, 4 P.3d at 1099.

The Objectors argue that the measure "would constitute a major and broad-sweeping undoing of the public will" to punish a minor violation by a governmental entity. (Objectors' Brief, p. 6) The Objectors' claim is based upon a misapprehension of the measure. It does not place restrictions upon any person or entity that contributes more than $500. Instead, it prohibits public entities from contracting with contributors that make a contribution "with the expectation of or perquisite of receiving, a reward, either financial or otherwise." A violation of a measure that is intended to limit the practice of making *quid pro quo* contributions is not "minor".

Moreover, the Objectors' argument misapprehends initiative rights. While the right of the voters to decide matters is crucial to democratic values, it is not

sacrosanct. The right is subject to constitutional principles and limitations. *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996) (overturning citizen initiative prohibiting all governmental action designed to protect gays from discrimination); *City of Denver v. Hayes,* 28 Colo. 110, 63 P. 311 (1900) (overturning bond measure approved by voters on ground that measure violated single subject limitation).

The enforcement provision is not a subterfuge. It does not alter existing rights. It does nothing more than incorporate existing common law. Colorado courts have long recognized the inherent right of taxpayers to challenge tax, spending or bond measures when they have standing to do so. *Dodge v. Department of Social Services*, 198 Colo. 379, 600 P.2d 70 (1979); *City of Denver v. Hayes, supra.* The enforcement provision merely makes explicit that citizens have standing to compel government agencies to comply with this particular constitutional provision and to have the court enforce the authorized sanction.

The Objectors also complain that the measure could lead to a delay in the implementation of projects or the outright demise of projects. This impact has been acknowledged as the logical and natural result of a breach of certain laws governing enactment of tax, spending or bond measures. In *City of Denver v.*

Hayes, this Court overturned an election in which Denver voters had approved a bond for eleven different construction projects. As a result, the projects were cancelled, and the Court affirmed an order mandating that Denver return money to a contractor. More recently, the Court held an election invalid because it raised an ad valorem tax in violation of Colo. Const. art. X, § 20. *Bickel v. City of Boulder*, 885 P.2d at 237.

The Objectors cite *In re Proposed Initiatives for 1997-1998 #84 and #85,* 961 P.2d 456 (Colo. 1998) (*#85*) for the proposition that #73 surreptitiously makes ballot issues elections under article X, § 20 voidable. This case is inapposite. The Court found a single subject violation because the measure simultaneously decreased state and local taxes and reduced existing state programs. #73 is not similarly flawed. Unlike *#85*, it does not affect existing tax or bond measures, and it is not hidden in a complex and dense measure. Moreover, any invalidation of a future election depends upon the occurrence of a future contingent event. An election will be declared void only if a district violates the provision.

Contrary to the Objectors' argument, the enforcement provision is not unusually "draconian" or a radical change. (Objectors' brief, p. 7.) In fact, it less harsh than the general enforcement provision in article X, § 20(1). Under

subsection 1, revenue collected kept or spent in violation of tax and spending limits must be refunded with ten percent annual simple interest from the initial violation. Under subsection 10, the districts would not pay interest on any amounts collected. Moreover, the measure does not target any person or entity that makes a contribution to an issue committee in support of a ballot issue election. Instead, it concerns only persons or entities that contribute to a ballot issue election "with the expectation of or prerequisite of receiving, a reward, either financial or otherwise." Before an election can be declared void, a court must find some *quid pro quo*.

At their core, the arguments focus on the Objectors' opposition to the policy underlying the measure. The policy underlying the measure and the measure's impact are immaterial as long as the measure includes only one subject. The penalty of voiding an election for action taken after the election does not raise single subject concerns. It is relevant to the policy debate but not to the single subject issue.

For the above-stated reasons, the Court must conclude that #73 comprises a single subject.

II. THE TITLES FAIRLY EXPRESS THE TRUE MEANING AND INTENT OF THE MEASURE.

Section § 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles. It provides:

> In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board....Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #256,* 12 P.3d 246, 256 (Colo. 2000) (*#256*). However, the Board is not required to set out every detail. *#21,* 44 P.3d at 222. In setting titles, the Board may not ascertain the future effects, either practical or legal, of a measure. *#256*, 12 P.3d at 257, or its efficacy.

In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e), 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. *#256* at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

The Objectors state that the title misrepresents the scope of the measure because it refers to "a tax and debt campaign." Paragraph (10)(1) of the measure states, "The preferred interpretation shall reasonably discourage the practice known as pay-to-play, where individuals and entities contribute to a tax or debt election campaign...." Paragraph (10)(2) places limits on persons or entities contributions above five hundred dollars to any issue committee "that advocates in favor of a ballot issue that raises a tax rate, continues a tax that would otherwise expire, creates a new tax, or increases public indebtedness, or any other ballot issue that must adhere to this section." The objectors argue that the measure covers contributions to issue committees that advocate for issues other than "tax and debt", including (a) mill levies, (b) property valuation adjustments, (c) tax policy

changes, and (d) revenue and spending limits. (Objectors' Brief, pp. 8-9) The Court must reject this argument.

First, it is important to note that the Objectors have not accurately characterize the first three items. These items are listed in article X, § 20(6). Section 20(6) requires elections only when an increase in these items is requested. An election must be held not for the imposition of any mill levy but for "any mill levy above that for the prior year." Likewise, an election must be held only for "valuation for assessment ratio increase for a property class." Finally, an election must be held for "a tax policy change directly resulting in a net revenue gain to any district."

These items are indisputably taxes or are integral to the computation of a tax. A mill levy is an ad valorem tax. *People v. Letford*, 102 Colo. 284, 303, 79 P.2d 274, 284 (1938). The term "tax levy" includes a property tax mill levy. *Brooks v. Zabka*, 168 Colo. 265, 269, 450 P.2d 653, 655 (1969). A valuation for assessment ration is the ratio between the valuation for assessment and the actual value of the property. *Bd. of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 148 (Colo. 1988). An increase in valuation for assessment without a corresponding decrease in the mill levy will increase taxes. *Beaty v. Bd. Of*

Com'rs of Otero County, 101 Colo. 346, 354, 73 P.2d 982, 986 (1937). Similarly, a tax policy change that results in an increase in revenue is a tax increase.

The Objectors next argue that the phrase "tax and debt campaign" is not broad enough to include elections to provide relief from spending or revenue limits under Colo. Const. art. X, § 20. The argument presumes that the phrase "tax and debt campaign" encompasses only elections that will increase taxes or debt. The plain language of the term is not so narrow. A tax campaign includes not only campaigns to increase taxes but also any campaign under article X, § 20 that *affects* taxes.

Referendum C, passed at the November 2005, election offers an example. In prior years, refunds of excess revenues, as calculated under Colo. Const. art. X, § 20(7), were refunded through sales taxes and certain tax credits. Referendum C allowed the State to retain excess revenues, thereby eliminating refunds through sales taxes and certain tax credits. If voters enact #73 and a measure similar to Referendum C is presented to the voters, sales taxes and credits would be affected.

The Objectors next contend that the titles are flawed because it fails to mention the lower threshold contribution limit placed upon persons or entities that

pool their contributions. This provision is not a central feature of the measure. It is intended to block circumvention of the primary provision of the measure.

Finally, the Objectors argue that the titles fail to mention that a district must refund moneys collected in violation of this subsection. The titles do state that an election is void. It is commonly understood that a void election is treated as if it did not occur. If an election is void, then the district does not have the authority to retain the money. It logically follows that if the district does not have power to ask for the money, then it cannot retain the money. This result is not new. The courts have recognized that a void election on a referred measure voids the results of the election. *Fish v. Kugel*, 63 Colo. 101, 165 P. 249 (1917)

For the above-stated reasons, the Court must conclude that the titles are fair and accurate.

CONCLUSION

For the above-stated reasons, the Court must approve the Board's action.

JOHN W. SUTHERS
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State Services Section
Attorneys for Title Board
*Counsel of Record

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER BRIEF OF TITLE BOARD upon all parties herein by depositing copies of same in the United States mail, Express Mail postage prepaid, at Denver, Colorado, this 20th day of March 2006 addressed as follows:

Mark G. Grueskin
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Mr. Dennis Polhill
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Certification of Word Count: 1,091

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, Colorado 80203 ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board	FILED IN THE SUPREME COURT MAR 31 2006 ▲ COURT USE ONLY ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #73 **Petitioners**: BEVERLY AUSFAHL and NICOLE KEMP, Objectors, v. **Respondents**: JON CALDARA and DENNIS POLHILL, Proponents, and **Title Board**: WILLIAM A. HOBBS, ALLISON EID, and DANIEL L. CARTIN	Case No. 06SA42
Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303/292-5656 Fax Number: 303/292-3152 E-mail: eramey@ir-law.com	

PETITIONERS' REPLY BRIEF

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TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Beverly Ausfahl and Nicole Kemp ("Petitioners"), through their undersigned counsel, respectfully submit the following Reply Brief:

I. ARGUMENT

A. Single Subject.

There is no dispute that the primary subject of Proposed Initiative for 2005-2006 #73 is the enactment of a constitutional restriction upon the ability of state and local districts to provide any form of economic or business benefit to individuals or entities who contributed more than $500 to an issue committee that supported a successful district ballot issue subject to Colo. Const. art. X, § 20.

However, section (2)(B) of the initiative then states: "Pass-through contributions to issue committees through other individuals or entities are expressly prohibited and are included in the limitations of (2)(A)." The Title Board offers a narrowing interpretation of this provision as "not extend[ing] beyond the limited universe of ballot issue elections authorized by Colo. Const. art. X, § 20" – and indeed as limited within that universe to persons contributing more than $500 with an expectation of receiving a benefit from the district. Ans. Br. at 5. The effect of the Title Board's narrowing interpretation is to erase a second subject by constructively erasing the textual words "are expressly prohibited and."

But that is not what the text of the initiative says. And it has not been the practice of this Court to adopt interpretations that selectively disregard statutory (in this case constitutional) language or render it completely superfluous. *Cf.*, Spahmer v. Gullette, 113 P.3d 158, 162 (Colo. 2005); Colorado Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist., 109 P.3d 585, 597 (Colo. 2005). *With* the language, under any interpretation, there is a separate and distinct subject. And the impact is direct, not incidental.

As discussed at pp. 5-8 of Petitioners' Opening Brief, the third subject of Proposed Initiative for 2005-2006 #73 is the retroactive invalidation of elections and accompanying mandatory refunds of all collected revenues – *not* due to a defect or violation of any sort whatsoever in the conduct of the election, but *solely* as a result of a *subsequent* and perhaps wholly unrelated contracting or hiring decision involving a person or entity who happened to have made a completely legal and proper contribution to an issue committee during the election.

Petitioners do not argue that invalidating an election – and even mandating the refund of revenues – would constitute a separate subject if the invalidation and refund resulted from a defect or impropriety in the conduct of the election itself. That would raise issues analogous to the cases cited by the Title Board, *e.g.*, Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994); City of Denver v. Hayes, 63 P. 311

(Colo. 1900). Ans. Br. at 6-9. Nor would Petitioners argue that denying a contractual or employment benefit to (or recovering such benefit from) a person or entity who had made a contribution in excess of a specified level in connection with a district election would constitute a separate subject in the context of discouraging the making or acceptance of such contributions. Either of these scenarios would, as the Title Board notes, constitute enforcement mechanisms related to a principal subject – perhaps unwise or invalid on other grounds, but not a separate subject within the meaning of Colo. Const. art. V, § 1(5.5).

But that is not what this initiative does. Proposed Initiative for 2005-2006 #73 invalidates properly conducted and concluded public *elections* – perhaps many years hence – in order to constrain *subsequent district contracting or employment actions* that may have nothing whatsoever to do with anything remotely connected with or funded as a result of the election. It deprives *all* Colo. Const. art. X, § 20 elections of finality for reasons wholly unrelated to the conduct of the election. It seeks to restrict administrative contracting and hiring decisions made by *government officials* by voiding legislative actions taken by *voters* prior to, unrelated to, and with no conceivable way of knowing or predicting, those future administrative decisions. These are separate subjects far more than those posed by the indirect impact of local revenue replacement obligations upon independent

state programs discussed in In re Proposed Initiatives for 1997-1998 # 84 and #85, 961 P.2d 456, 460-61 (Colo. 1998). The effect, by design or otherwise, is to undercut the validity of Colo. Const. art. X, § 20 elections for reasons having nothing to do with the legality, propriety, or conduct of the elections.

B. Ballot Title Disclosure.

The Title Board submits that the phrase "tax or debt campaign" is sufficient to apprise the voters that it includes all ballot issues subject to Colo. Const. art. X, § 20. Scooping mill levy and valuation adjustments and tax policy changes into this assumption may be a matter of degree, but scooping in elections dealing with relief from spending limits is not. Determining how much of its available resources a district has the authority to spend would not be viewed by most voters as incorporated within the phrase "tax or debt campaign."

The Title Board argues that the omission from the title of the pooling and, presumably, pass-through restrictions are non-critical because non-central to the measure. The former may again be a matter of degree, though implicating a disguised lower contribution threshold. The latter depends very much upon whether one accepts the reconstruction of the meaning of the pass-through restriction offered by the Title Board in its "single-subject" defense of this provision. If we take the language of the initiative as it is written, and refrain from

crafting narrowing constructions at odds with the language used, the pass-through restriction is not only a separate subject, it is a wholly non-disclosed separate subject.

Finally, the Title Board argues that the massively important potential refund obligation can be presumed to be implicit from the phrase "voiding the subject election" in the title. This is not necessarily the case. *Cf.*, Butler v. Bd. of Supervisors, 46 Iowa 326, 1877 Iowa Sup. LEXIS 92 (Iowa 1877), in which the Iowa Supreme Court: (a) invalidated an election, but (b) declined to order the refund of revenues already spent. Id. at 327. Even were an invalidation necessarily to imply a refund, the potential magnitude and duration of the refund exposure to every district conducting an election under Colo. Const. art. X, § 20 is a consequence that should be made patently clear and explicit to the voters.

II. CONCLUSION

Petitioners renew their request that the Court reverse the actions of the Title Board and direct the Board to strike the title, ballot title, and submission clause and return Proposed Initiative for 2005-2006 #73 to its proponents.

Respectfully submitted this 31st day of March, 2006.

ISAACSON ROSENBAUM P.C.

By: _____
Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2006, a true and correct copy of the foregoing **PETITIONERS' REPLY BRIEF** was forwarded, as listed, to the following addressees:

Via Federal Express
Jon Caldara
14142 Denver West Parkway
Golden, CO 80401

Via Federal Express
Dennis Polhill
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Jayne M. Wills
Jayne M. Wills

Ballot Title Setting Board

Proposed Initiative 2005-2006 #73[1]

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition?

Hearing January 18, 2006:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 2:24 p.m.

Hearing February 1, 2006:
Motion for Rehearing denied.
Hearing adjourned 2:51 p.m.

[1] Unofficially captioned **"Issue Committee Contributions"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Original Proceeding Pursuant to § 1-40-107(2), 1 C.R.S. (2005) Appeal from the Ballot Title Setting Board	Case No. 06SA42

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006 #73,

Petitioners:

BEVERLY AUSFAHL and NICOLE KEMP, objectors,

and

Respondents:

JON CALDARA and DENNIS POLHILL, proponents,

and

Title Board:

WILLIAM A. HOBBS, ALLISON EID, and DANIEL L. CARTIN.

ACTION OF THE BALLOT TITLE SETTING BOARD AFFIRMED
EN BANC
MAY 22, 2006

Isaacson Rosenbaum, P.C.
Edward T. Ramey
Denver, CO 80202

Attorneys for Petitioners

No appearance on behalf of Jon Caldara and Dennis Polhill, Proponents

John W. Suthers, Attorney General
Maurice G. Knaizer, Deputy Attorney General
State Services Section
Public Officials Unit
Denver, Colorado

Attorneys for Title Board

JUSTICE RICE delivered the Opinion of the Court.
JUSTICE HOBBS dissents and JUSTICE BENDER joins in the dissent.
JUSTICE EID does not participate.

Petitioners Beverly Ausfahl and Nicole Kemp (Petitioners) brought this original proceeding under section 1-40-107(2), C.R.S. (2005), to review the action of the Title Board (Board) in fixing a title, ballot title and submission clause, and summary (titles and summary) for a ballot initiative (Initiative #73) for the 2006 general election. The Petitioners contend that Initiative #73 addresses multiple subjects in violation of article V, section 1(5.5) of the Colorado Constitution. We affirm the action of the Title Board.

I. Facts

Initiative #73 seeks to amend article X, section 20 of the Colorado Constitution (Amendment 1) by adding a new subsection primarily directed at eliminating what the Proponents describe as "pay-to-play" contributions - that is, contributions made to issue committees supporting Amendment 1 ballot measures by persons who might stand to gain any form of direct or indirect benefit from the passage of the measure.

The Title Board conducted its initial public meeting and set a title, ballot title, and submission for the proposed Initiative. Petitioners filed a Motion for Rehearing, objecting that the proposed initiative contained multiple subjects. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board. At the rehearing, the Title Board

overruled Petitioners' objection. Petitioners then sought review in this court.

II. Law

A. The "Single-Subject" Provision

This case involves the application of the single-subject limitation to initiatives.[1] Despite our limited role,[2] we have been asked on numerous occasions to determine whether or not a proposed initiative contains a single subject. To this end, we have developed principles by which we review the decisions of

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[1] The General Assembly sought to extend the single-subject/clear title limitation applicable to bills to proposed initiatives by way of a referred constitutional amendment. The language of the proposed amendment mirrored the language of article V, section 21 of the Colorado Constitution insofar as it sought to prohibit initiatives from containing more than a single subject, which must be expressed clearly. The General Assembly referred this constitutional amendment to the voters as "Referendum A" on the 1994 general election ballot. It was approved and became effective upon proclamation by the Governor on January 19, 1995. In re "Public Rights in Waters II", 898 P.2d 1076, 1078 (Colo. 1995).

[2] We may not address the merits of a proposed initiative or suggest how an initiative might be applied if enacted; however, we must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated. In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 260 (Colo. 1999).

the Title Board,[3] with whom the responsibility resides to initially review all proposed initiatives.[4] Primary among these principles is the axiomatic concept that, in order to pass constitutional muster, a proposed initiative must concern only one subject - that is to say it must effect or carry out only one general object or purpose.[5]

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[3] In reviewing the Board's actions setting the title, ballot title and submission clause, and summary, "we will engage in all legitimate presumptions in favor of the propriety of the Board's actions." In re Petition Procedures, 900 P.2d 104, 108 (Colo. 1995). At the same time, "we must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated." In re 1997-98 #84, 961 P.2d 456, 458 (Colo. 1998); In re 1997-98 #30, 959 P.2d 822, 825 (Colo. 1998).

[4] In order to facilitate the initiative process, the General Assembly assigned duties to the Title Board which include: (1) "designat[ing] and fix[ing] a proper fair title for each proposed law or constitutional amendment, together with a submission clause," § 1-40-106(1), C.R.S. (2005); (2) "consider[ing] the public confusion that might be caused by misleading titles and . . . whenever practicable, avoid[ing] titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear," § 1-40-106(3)(b); (3) not permitting "the treatment of incongruous subjects in the same measure," § 1-40-106.5(1)(e)(I); and (4) acting to "prevent surreptitious measures and appris[ing] the people of the subject of each measure by the title" in order to "prevent surprise and fraud from being practiced upon voters," § 1-40-106.5(1)(e)(II). Section 1-40-106.5(3) provides that "the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills." See In re Proposed Initiative 1996-4, 916 P.2d 528, 532 (Colo. 1996).

[5] See In re Amend Tabor 25, 900 P.2d 121, 125 (Colo. 1995); In re Petition Procedures, 900 P.2d 104, 109 (Colo. 1995); In re "Public Rights in Waters II", 898 P.2d 1076, 1079 (Colo. 1995).

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, we look to the text of the proposed initiative. The single subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous." In re Amend Tabor 25, 900 P.2d 121, 125 (Colo. 1995); see In re "Public Rights in Waters II", 898 P.2d 1076, 1078-79 (Colo. 1995). Said another way, the single subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other." In re Petition Procedures, 900 P.2d 104, 109 (Colo. 1995); see People v. Sours, 31 Colo. 369, 405, 74 P. 167, 178 (1903).

Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the

single-subject test, the subject of the initiative should be capable of being clearly expressed in the initiative's title.[6]

B. The Enforcement Provision is Not a Separate Subject

The proponents of this initiative assert, and the Title Board agrees, that the text of this initiative contains only one general subject - contributions made to Amendment 1 issue committee campaigns with the expectation of receiving a reward from a governmental entity. Petitioners claim, however, that instead of containing one unified, general subject, this initiative contains at least three distinct, unconnected topics, namely: (a) a restriction upon the ability of governmental districts to provide any form of economic or business benefit to persons who have contributed more than $500 to an issue committee that supported an Amendment 1 ballot measure for that district; (b) a prohibition of "pass-through" contributions to Amendment 1 committees generally; and (c) a retroactive invalidation of otherwise valid Amendment 1 elections and a mandatory refund of all collected revenues should the terms of the initiative be violated.

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[6] See Colo. Const. art. V, § 1(5.5); see also § 1-40-106.5, C.R.S. (2005) ("No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title. . . . If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.").

We must decide consistently with our prior case law whether Initiative #73 contains multiple subjects. Here, Petitioners' primary claim concerns the retroactive invalidation of Amendment 1 elections along with the refund of revenues collected pursuant to the election should the terms of the provision be violated. Petitioners claim that, rather than being a mere enforcement or implementation mechanism, this provision is instead "a major and broad-sweeping undoing of the public will . . . which would uniformly undermine the finality of all TABOR ballot elections for an indeterminate period of time."

Based upon our review of prior case law, we determine that Initiative #73 does not violate the single-subject prohibition.

As noted above, we have generally held that mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. See In re Initiative for 1997-98 # 113, 962 P.2d 970, 971-72 (Colo. 1998) (per curiam) (upholding the titles and summary for a proposed initiative to limit pollution from hog farms, including its implementation measures and provisions for reporting waste disposal information to the Health Department); In re Proposed Initiative "Petitions", 907 P.2d 586, 591 (Colo. 1995) (determining that a proposed initiative establishing comprehensive rules governing petitions did not violate the single-subject requirement in its inclusion

of detailed procedures and its authorization for citizen lawsuits to ensure compliance).

Here, subsection (10)(D) of the proposed initiative states:

> Enforcement. When a district is found to have violated pay-to-play stated in (2)(A), the subject election is considered void. Revenues collected prior to an upheld pay-to-play challenge, shall be refunded to taxpayers.

Thus, if a lawsuit challenging a district for violating the pay-to-play provisions is found to have merit, the election will be declared void and the revenues collected pursuant to that election will be refunded. This enforcement provision is directly tied to the initiative's purpose of eliminating pay-to-play contributions and therefore is not a separate subject.

In addition, the remedy is not unlike other remedies contained within the Colorado Constitution. For example, in Bickel v. City of Boulder, 885 P.2d 215, 227 (Colo. 1994), we analyzed article X, section 20 (1) of the Colorado Constitution, which states:

> Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. . . . Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct.

We referred to this part of Amendment 1 as "an enforcement clause." Bickel, 885 P.2d at 228. This clause is substantially

similar to that proposed in Initiative #73, and therefore Bickel lends support to the proponents' argument that the clause in question should be interpreted as nothing more than an enforcement or implementation clause, consistent with our holdings in In re Initiative for 1997-98 # 113 and In re Proposed Initiative "Petitions".

Moreover, enforcement clauses such as that discussed in Bickel and in the instant case do nothing more than incorporate the inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Dodge v. Dep't Human Services, 198 Colo. 379, 600 P.2d 70 (Colo. 1979); City of Denver v. Hayes, 28 Colo. 110, 63 P. 311 (1900). Although such lawsuits have rarely been successful, in City of Denver v. Hayes, we overturned an election in which Denver voters had approved a bond for eleven different construction projects. Hayes, 28 Colo. at 113-15, 63 P. at 312-13. As a result of the decision, the projects were cancelled, and the Court affirmed an order mandating that Denver return money to a contractor. Hayes, 28 Colo. at 119, 63 P. at 314. Likewise, in the Bickel case, we invalidated an election because it raised an ad valorem tax in violation of Amendment 1. Bickel, 885 P.2d at 237. Accordingly, the enforcement provision in this initiative, consistent with our prior law, is not a separate subject but rather is directly tied to the initiative's single subject.

Petitioners also argue that the prohibition on pass-through contributions creates a second subject because it amends the "issue committee" provisions within article XXVIII of the Colorado Constitution. However, the language of the proposed initiative does not extend beyond ballot issue elections authorized by article X, section 20 of the Colorado Constitution, and therefore any effect on a provision within article XXVIII would be indirect. We have already determined:

> The mere fact that a constitutional amendment may affect the powers exercised by the government under pre-existing constitutional provisions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respects if adopted by the voters.

In re Ballot Title 1999-2000 #258(A), 4 P.3d 1094, 1098 (Colo. 2000).

C. The Titles Fairly Express the True Meaning and Intent of the Measure

Petitioners also contend that the title, ballot title, and submission clause set by the Title Board do not "fairly express the true meaning and intent of the proposed . . . constitutional amendment" as required by section 1-40-107(1), C.R.S. (2005). They assert that the titles fall short in four ways: first, the titles incorrectly state that the initiative applies only to tax and debt campaigns; second, the restrictions on "pass-through"

contributions are not mentioned; third, the titles do not mention the "pooling" restrictions contained within the proposed initiative; and, fourth, the titles do not mention the potential refund obligation that the initiative places on government districts.

We have recently reviewed our case law with respect to fair, clear and accurate titles. In re Ballot Title for 2005-06 #75, No. 06SA63, slip op. at 13-16 (Colo. May 22, 2006). In short, the titles must be fair, clear, accurate, and complete, but they need not set out every detail of the initiative. Id. In addition, we review the titles set by the Title Board with great deference, and will only reverse the Board's decision if the titles are insufficient, unfair, or misleading. In re Ballot Title for 1999-2000 #256, 12 P.3d 246, 254 (Colo. 2000).

Petitioner's primary argument is that the Titles misstate the scope of the initiative. The Titles suggest that the initiative is limited to "tax or debt campaigns," while Petitioners claim that the initiative actually covers contributions to issue committees that advocate for issues other than "tax and debt," such as mill levies, property valuation adjustment, tax policy changes, and revenue and spending limits. This argument has no merit. The Titles track the language of the proposed initiative, which refers in section (10)(1) to "tax or debt election campaign(s)." By using this general language,

the titles fairly put the public on notice that this provision applies to any election which affects taxes or the creation of public debt. As such, the Titles are fair, sufficient, and clear.

Second, while it is correct that the Titles do not mention the "pass-through" or "pooling" provisions of the proposed initiative, these provisions are not central features of the measure but rather are intended to block circumvention of the primary provision of the measure. Finally, although the Titles do not disclose that a district must refund moneys collected in violation of the initiative, the Titles do state that any election which violates the provisions of the initiative is void. As such, the Titles are not confusing and voters would not be misled.

III. Conclusion

Accordingly, we affirm the action by the Title Board.

JUSTICE HOBBS dissents and JUSTICE BENDER joins in the dissent.
JUSTICE EID does not participate.

Ballot Title Setting Board
Proposed Initiative 2005-2006 #73[1]

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition?

Hearing January 18, 2006:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 2:24 p.m.

Hearing February 1, 2006:
Motion for Rehearing denied
Hearing adjourned 2:51 p.m.

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[1] Unofficially captioned **"Issue Committee Contributions"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

ARTICLE X, SECTION 20 (TAXPAYER'S BILL OF RIGHTS) OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW SUBSECTION TO READ:

(10) **SYSTEM TO END PAY-TO-PLAY.** (1) THIS SECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL REASONABLY DISCOURAGE THE PRACTICE KNOWN AS PAY-TO-PLAY, WHERE INDIVIDUALS AND ENTITIES CONTRIBUTE TO A TAX OR DEBT ELECTION CAMPAIGN WITH THE EXPECTATION OF OR PREREQUISITE OF RECEIVING; A REWARD, EITHER FINANCIAL OR OTHERWISE.

(2)(A) ANY INDIVIDUAL OR ENTITY THAT CONTRIBUTES MORE THAN FIVE HUNDRED DOLLARS, WHETHER CASH OR TEE EQUIVALENT, EITHER DIRECTLY OR INDIRECTLY, TO ANY ISSUE COMMITTEE AS DEFINED IN SECTION 2(10) (A) OF ARTICLE XXVIII, OR ANY COMBINATION OF ISSUE COMM1 THAT ADVOCATES IN FAVOR OF A BALLOT ISSUE THAT RAISES A TAX RATE, CONTINUES A TAX THAT WOULD OTHERWISE EXPIRE, CREATES A NEW TAX, OR INCREASES PUBLIC INDEBTEDNESS, OR ANY OTHER BALLOT ISSUE THAT MUST ADHERE TO THIS SECTION, SHALL NOT PROFIT BY RECEIVING A GIFT, BY RECEIVING EMPLOYMENT, BY BEING AWARDED A CONTRACT, OR BY RECEIVING ANY TRANSFER OF TAXPAYER ASSETS OR FUNDS IN EXCHANGE FOR GOODS OR SERVICES FROM THAT DISTRICT FOR WHICH THIS SECTION APPLIES FOR THE PERIOD THE SUBJECT TAX OR PUBLIC INDEBTEDNESS IS IN PLACE.

(B) PASS-THROUGH CONTRIBUTIONS TO ISSUE COMMITTEES THROUGH OTHER INDIVIDUALS OR ENTITIES ARE EXPRESSLY PROHIBITED AND ARE INCLUDED IN THE LIMITATIONS OF (2) (A). THE ORIGINATOR OF THE CONTRIBUTION AS WELL AS ALL INDIVIDUALS OR ENTITIES THAT HANDLED A PASSED-THROUGH CONTRIBUTION ARE SUBJECT TO THE LIMITATIONS STATED IN (2). (A).

(C) IF A CONTRIBUTION OF MORE THAN FIVE HUNDRED DOLLARS COMES FROM ANY INDIVIDUAL OR ENTITY THAT POOLS FUNDING FROM OTHER INDIVIDUALS OR ENTITIES, THEN ALL THE INDIVIDUALS AND ENTITIES THAT HAVE CONTRIBUTED MORE THAN FOUR HUNDRED DOLLARS INTO THAT ENTITY THAT POOLS SUCH FUNDING ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(D) ENFORCEMENT. WHEN A DISTRICT IS FOUND TO HAVE VIOLATED PAY-TO-PLAY STATED IN (2) (A), THE SUBJECT ELECTION IS CONSIDERED
VOID. REVENUES COLLECTED PRIOR TO AN UPHELD PAY-TO-PLAY. CHALLENGE, SHALL BE REFUNDED TO TAXPAYERS.

JUSTICE HOBBS, dissenting

I respectfully dissent. I would hold that Initiative 2005-2006 #73 contains two subject matters: (1) a ban against districts paying funds to individuals or entities, when the funds are derived from taxes or bond proceeds from indebtedness approved by vote of the electorate and the individual or entity has contributed more than five hundred dollars, whether cash or the equivalent, to an issue committee that favored the ballot initiative, and (2) voiding the outcome of the election in which the voters approved the tax or bonded indebtedness if the district pays such funds to such an individual or entity.

In my view, the proposed initiative would (1) amend the current laws applicable to issue committees, Colo. Const. art. XXVIII, sec. 2(4) and sec. 3(7); (2) would amend laws requiring districts to solicit bids and award contracts for the construction, operation, and maintenance of public works by prohibiting the award of contracts to otherwise qualified bidders based on the merits of the bid; and (3) would amend that provision of article X, section 20 (3), which allows voters to consider and approve district tax increases and bonded indebtedness.

A fundamental provision of Amendment 1 placed before the voters and approved by them in 1992 was to allow voters to approve increased taxes and/or bonded indebtedness required to

provide public works for the benefit of the citizens within the district. See Havens v. Board of County Commissioners, 924 P.2d 517, 523 (Colo. 1996). While Initiative #73 purports to address regulation of issue committee contributions, which voters at the 2006 general election could favor as a worthwhile campaign reform innovation, its other major purpose is to void elections at which the voters have approved tax increases or bonded indebtedness as serving the public good within the district. A third purpose is to prevent districts from awarding a public contract to the lowest bidder because that individual or entity has contributed more than five hundred dollars to an issue committee.

Article V, section 1(5.5) of the Colorado Constitution (1) prohibits an initiative that contains more than one subject, and (2) requires that this one subject shall be clearly expressed in its title:

> No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

Colo. Const. art. V, § 1(5.5) (emphasis added).

A principal concern that led to voter enactment in 1994 of the multiple subject ban is that proponents would secure the enactment of subjects that could not be enacted on their merits alone. In re Title, Ballot Title 1997-98 No. 30, 959 P.2d 822, 825 (Colo. 1998). An initiative impermissibly contains more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. Id.

The first purpose of Initiative #73, to discourage the contribution of more than $500.00 to an issue committee that favors a district ballot proposal, is not dependent upon or connected with voiding a vote of the district's electorate that approved a tax increase, extension of a tax, and/or bonded indebtedness to build a needed public works project through funds the voters approve, such as a water facility or a water or wastewater treatment facility.

While I recognize that enforcement measures attached to a single subject do not typically constitute a second subject under this rubric, the voiding of an electorate's prior vote is hardly a logically connected enforcement measure within the context of this intiative.

In my view, a logically connected measure to implement the first purpose of Initiative #73 would be to enjoin or penalize

the issue committee or the individual or entity that contributes to the issue committee. It is an entirely separate purpose, not a logically connected enforcement mechanism, to void the outcome of a citizen vote because a contributor to an issue committee successfully competed, by reason of the merits of its bid, against others who bid on a district project.

In my view, the enforcement cases the majority cites do not stand for the proposition that voiding the results of an election is an enforcement matter, not a separate subject. The enforcement measures we held not to be a separate subject in In re Ballot Title 1997-98 No. 113, 962 P.2d 970, 971-72 (Colo. 1998), were permitting and reporting requirements for hog farm pollution directly implementing the one subject of the initiative.

The enforcement measures we considered and held not to be a separate subject in In re Title, Ballot Title, and Submission Clause, 907 P.2d 586, 591 (Colo. 1995), were procedures such as guidelines for formatting and filing petitions, procedures for challenging ballot titles, rules applicable to petitions, and standing for lawsuits including recovery of costs and attorneys fees for violation of the measure's provisions. Again, these were directly related to the one subject of the initiative.

Likewise, in Bickel v. City of Boulder, 885 P.2d 215, 228 (Colo. 1994), we referred to the standing of a citizen to bring

a lawsuit to enforce Amendment 1 as an "enforcement" provision. In that case, we did rule that a portion of the city's proposal to raise an ad valorem property tax in an unspecified amount was invalid as a violation of Amendment 1's requirement to make a good faith estimate of the dollar increase in ad valorem taxes. Id. at 236. The single subject of Amendment 1 was involved in that case.[1] Enforcement was for a violation of the provisions of Amendment 1 pertaining to a tax increase proposal.

In contrast, there are two subjects in the measure before us in this case: issue committee contribution reform and voiding an election that properly complied with Amendment 1 at the time it occurred.

The Majority reasons that the connecting link between the issue committee reform and voiding a properly held Amendment 1 election is that only Amendment 1 elections are affected by the measure before us. Maj. Op. at 10-11. However, in reviewing the Title Board's action, we must ascertain whether multiple subjects are combined in a manner that could result in voter surprise or fraud. In re Title, Ballot Title 1997-98 No. 30,

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[1] The bond election in City of Denver v. Hayes, 28 Colo. 110, 113-15, 63 P. 311, 312-13 (Colo. 1900) was voided because of a multiple subject violation. In my view the Majority does not cite this case appropriately for its enforcement provision conclusion.

959 P.2d 822, 827 (Colo. 1998). I would conclude that this measure's voiding of properly held prior district tax or bonded indebtedness elections is buried within the issue committee reform proposal, similar to the way the change in criteria for elections under Amendment 1, a separate subject matter, was buried in the tax cut proposal of Initiative 1997-98 No. 30, for which we held that multiple subjects existed in violation of the Colorado Constitution.[2]

Thus, I would hold that Initiative 2005-2006 #73 violates the single subject matter constitutional provision, and the Title Board was prohibited from setting a title and ballot title and submission clause for this proposed initiative.

Accordingly, I respectfully dissent.

I am authorized to say that JUSTICE BENDER joins in this dissent.

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[2] I also observe that the initiative's use of the words "system to end pay to play" is a slogan or catch phrase calculated to attract attention to the issue committee reform provision of the initiative and to obscure the second provision that would void prior properly held Amendment 1 elections.