

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, #74

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 SHARON
L. EUBANKS.

Edward T. Ramey, #6748
Isaacson Rosenbaum, P.C.
633 17th Street, Suite 2200
Denver, CO 80202
(303) 292-5656
Paid \$75.00

For Title Board:
John W. Suthers, Attorney General.
Maurice G. Knaizer, Deputy AG, #05264*
Public Official
State Services Section
No Fee
303-866-5380

2006

Feb.	07	Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2005-2006 #74 ("Expiration of Voter Approved Tabo Issues") filed.	(cont'd)	Called Dennis Pollhill on 2/16/06 for correct address. Re-mailed order to correct address.	
			Feb	27	Petitioners' Opening Brief. Filed. ✓
				*	Answer Brief still DUE: 03/20/06
				*	Reply Brief still Due: 03/31/06
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.	Mar	20	Answer Brief of Title Board. Filed. ✓
				*	Reply Brief DUE: 03/31/06
		FURTHER ORDERED – all briefs shall be filed and served upon opposing parties by hand delivery, or through an overnight delivery service.	Mar	31	Petitioners' Reply Brief filed.
			Mar	31	Circulated
			Apr	6	Submitted
	*	Opening Brief DUE: 2/27/06			
	*	Answer Brief DUE: 3/20/06			
	*	Reply Brief DUE: 3/31/06	May	30	Action of the Ballot Title Setting Board Reversed
Feb.	15	Copy of 2/07/06 order mailed to Jon Caldara marked as UTF. returned by post office. (cont'd)			EN BANC. Rice, J. Coats, J. dissents. Eid, J. does not participate.

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)

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BEVERLY AUSFAHL and NICOLE KEMP,
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Respondents:

JON CALDARA and DENNIS POLHILL,
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Title Board:

WILLIAM A. HOBBS, ALLISON EID, and
SHARON L. EUBANKS

Attorneys for Petitioners:

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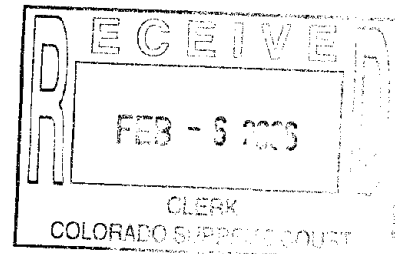
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FILED IN THE
SUPREME COURT

FEB - 7 2006

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK



▲ COURT USE ONLY ▲

Case No.:

06 SA 41

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD
CONCERNING PROPOSED INITIATIVE 2005-2006 #74
("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")**

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 #74 ("Expiration of Voter-Approved TABOR Issues").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #74 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 #74 pursuant to § 1-40-107(2), C.R.S. (2005).

II. Issue Presented

Does proposed Initiative 2005-2006 #74 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?

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:

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Nicole Kemp
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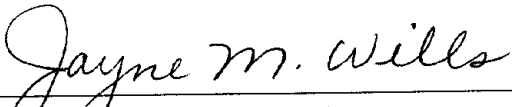
CERTIFICATE OF SERVICE

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 #74 ("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")** 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



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 #74"...

.....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

74. Final
Copy

Be it Enacted by the People of the State of Colorado:

Section 20 of article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

(10) **TERM LIMITS FOR TAXES.** (A) THIS SUBSECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL PREVENT ONE GENERATION'S DECISION TO INCREASE TAX OR DEBT FROM BURDENING FUTURE GENERATIONS WITHOUT FUTURE GENERATIONS' DIRECT VOTING CONSENT.

(B) ANY 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 PASSED AFTER DECEMBER 31 2006 MUST SUNSET, EXPIRE, AND END WITHIN TEN YEARS OF ITS PASSAGE. SUCH BALLOT ISSUE MAY BE RENEWED BY A SUBSEQUENT VOTE OF THE PEOPLE, BUT NOT FOR LONGER THAN 10 YEARS.

RECEIVED

JAN 06 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

Ch.
6:31 a.m.
via email
WCC

**Dennis Polhill
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Golden, CO**

**Jon Caldera
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RECEIVED

JAN 25 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #74 ("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")

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 #74 ("Expiration of Voter-Approved TABOR Issues"). 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 purports to create an expiration date for "any ballot issue" that "raises a tax rate," "continues a tax that would otherwise expire," "creates a new tax," "increases public indebtedness," or that must otherwise "adhere to this section" (Colo. Const. art. X, §20). At a minimum, this would encompass new and extended taxes, mill levy increases, valuation for assessment ratio increases, tax policy changes, creation or increase of public debt or other financial obligations, and increases of or relief from otherwise applicable spending limits. The Supreme Court has held that, while Colo. Const art. X, §20 is itself a multi-subject provision adopted by initiative prior to adoption of Colo. Const. art. V, §1(5.5), it may not now be repealed or amended by virtue of a multi-subject initiative. In re Proposed Initiative 1996-4, 916 P.2d 528

(Colo. 1996); In re Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X, 900 P.2d 121 (Colo. 1995).

2. The text of the Initiative is inherently unclear as to its reach and purpose, such that the Board is precluded from setting a ballot title. 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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ATTORNEYS FOR PETITIONERS

Petitioners' Addresses:

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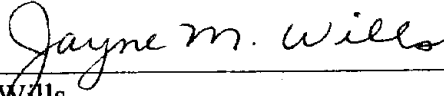
Nicole Kemp
3332 West Moncrieff Place
Denver, CO 80211

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

Ballot Title Setting Board

Proposed Initiative 2005-2006 #74¹

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

An amendment to the Colorado constitution concerning a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people.

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 a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people?

Hearing January 18, 2006:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:20 p.m.

Hearing February 1, 2006:

Motion for Rehearing denied.

Hearing adjourned 2:28 p.m.

¹ Unofficially captioned "Expiration of Voter-Approved TABOR Issues" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

ORIGINAL

Certification of Word Count: 1,739

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board</p>	<p>FILED IN THE SUPREME COURT</p> <p>FEB 27 2006</p> <p>OF THE STATE OF COLORADO SUSAN L. FESTAG, CLERK ▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #74</p> <p>Petitioners: BEVERLY AUSFAHL and NICOLE KEMP, Objectors,</p> <p>v.</p> <p>Respondents: JON CALDARA and DENNIS POLHILL, Proponents, and</p> <p>Title Board: WILLIAM A. HOBBS, ALLISON EID, and SHARON L. EUBANKS</p>	<p>Case No. 06SA41</p>
<p>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</p>	
<p>PETITIONERS' OPENING BRIEF</p>	

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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 #74

TABLE OF AUTHORITIES

Cases

<u>In re "Amend TABOR #25,"</u>	
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Constitutional Provisions

Colorado Constitution, Article V, § 1(5.5)	1, 2, 3
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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 #74 ("Expiration of Voter-Approved TABOR Issues").

I. STATEMENT OF ISSUE PRESENTED FOR REVIEW

Proposed Initiative for 2005-2006 #74 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.

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 #74. Petitioners are registered electors who timely submitted a Motion for Rehearing before the Title Board raising the objection 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 #74 on January 18, 2006. Petitioners filed a Motion for Rehearing on January 25, 2006, objecting

that the proposed initiative contained multiple subjects. 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' objection. Petitioners filed their Petition for Review with this Court on February 6, 2006.

B. Statement of Facts.

Proposed Initiative for 2005-2006 #74 seeks to amend Colo. Const. art. X, § 20 – popularly known as the "Taxpayer's Bill of Rights" or "TABOR" – by the addition of a new subsection that reads as follows:

(10) **Term Limits for Taxes.** (A) This subsection takes effect December 31, 2006. The preferred interpretation shall prevent one generation's decision to increase tax or debt from burdening future generations without future generations' direct voting consent.

(B) Any 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 passed after December 31, 2006 must sunset, expire, and end within ten years of its passage. Such ballot issue may be renewed by a subsequent vote of the people, but not for longer than 10 years.

Colo. Const. art. X, § 20 was itself adopted by initiative in 1992, two years prior to the adoption by referendum of the single-subject requirement now contained within Colo. Const. art. V, § 1(5.5). Subsequent efforts to repeal or amend all or parts of Colo. Const. art. X, § 20 have been required to comply with this constitutional single-subject limitation.

III. SUMMARY OF THE ARGUMENT

Proposed Initiative for 2005-2006 #74 imposes expiration dates upon the full panoply of governmental actions for which voter approval is required under the multiple-subject Colo. Const. art. X, § 20 – from tax measures, to authorization and refinancing of public debt, to expenditure of revenues in excess of formulaic spending limits. By imposing restrictions in multiple subject areas, the proposed initiative violates the single-subject requirement of Colo. Const. art. V, § 1(5.5).

IV. ARGUMENT

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." 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 "TABOR" initiative that created Colo. Const. art. X, § 20 preceded the single-subject requirement by two years, and this Court early noted that TABOR "contains multiple subjects." In re "Amend TABOR #25", 900 P.2d 121, 126 (Colo. 1995). This Court has held that there is no exemption from the single-

subject requirement for initiatives that happen to be directed at previously adopted multi-subject enactments. In re Proposed Initiative for 1996-4, 916 P.2d 528, 532-33 (Colo. 1996).¹ Subsequent efforts to amend or repeal all or parts of Colo. Const. art. X, § 20 have thus been required to comply with the single-subject requirement.

Over the years, the Court has provided guidance regarding the applicability of the single-subject requirement to TABOR-related ballot issues. In 1995, the Court applied the single-subject test to an initiative establishing a \$60 credit applicable to a variety of state and local taxes and requiring the state to replace local revenues lost as a result of the credit. Noting that the "single purpose" of the initiative was to implement a single tax credit, albeit to multiple taxes, and that the replacement of lost local revenues was "dependent upon and closely connected" to implementation of the tax credit, the Court found the initiative to contain a single subject. In re "Amend TABOR #32," 908 P.2d 125, 129 (Colo. 1995).

The following year, however, the Court addressed an initiative that would have repealed TABOR in its entirety and reenacted selected subjects in modified

¹ While three Justices would have concluded that an initiative "seeking to repeal a constitutional provision in its entirety" should not abrogate the single-subject requirement, they concurred that an effort to "repeal and reenact selected portions" of Colo. Const. art. X, § 20 would be "a clear violation of the single-subject requirement." In re Proposed Initiative for 1996-4 at 538 (Mullarkey, C.J., Kourlis, J., Hobbs, J., concurring).

form – *e.g.*, adopting a revised voter approval requirement for tax measures while deleting TABOR's district spending limits. In re Proposed Initiative for 1996-4, *supra*, at 533, 534-35 (App. A). The Court held that this initiative "contains multiple subjects disconnected from any encompassing principle." *Id.* at 533. The Court further noted that simply characterizing the topic of the initiative as "limiting government spending" was "too broad and general a concept to satisfy the single subject requirement." *Id.* *Cf. In re Proposed Initiative for "Public Rights in Waters II,"* 898 P.2d 1076, 1079-80 (Colo. 1995).

Two years later, the Court addressed an initiative that sought to enact prospective annually increasing tax reductions (with resulting local revenue shortfalls to be funded by revenue transfers from the state) while concurrently applying a reduction formula to previously enacted revenue and spending increases approved at elections in which specified ballot title language had not been used. In re Proposed Initiative for 1997-1998 #30, 959 P.2d 822, 826-27 (Colo. 1998). The Court held the initiative to contain multiple subjects, noting that "voters could be enticed to vote for the measure in order to enact a substantial tax cut while not realizing that passage of the measure would simultaneously achieve a purpose not necessarily related to a tax cut" – *i.e.*, apparently impacting the outcome of past elections regarding, among other things, spending limits. *Id.* at 827. Instructively,

the Court noted that Colo. Const. art. X, § 20 contains both "revenue limitations" and "spending limitations" and that "[t]hese provisions operate separately and independently. The first is a limitation on receipt of revenue by governmental entities . . . while the second is a limitation on district spending of lawfully derived revenues." Id. at 826 (emphasis added).

This was immediately followed by an initiative proposing a similar formula for prospective reductions in tax revenues, again with local shortfalls to be funded by revenue transfers from the state, though requiring the state's revenue replacement obligation to be constrained within its own tax and spending limits. In re Proposed Initiatives for 1997-1998 #84 and #85, 961 P.2d 456, 457 (Colo. 1998). Since the state could not increase its own spending to maintain current levels while meeting these increased mandated transfer obligations, the result would have been mandatory reductions in spending on other state programs. Id. at 460. The Court held that "[w]hile requiring the state to replace affected local revenue in itself sufficiently relates to a tax cut, requiring the state separately to reduce its spending on state programs is not 'dependent upon and clearly related' to the tax cut." Id., quoting In re "Amend TABOR #32," supra, at 129. The Court noted that these initiatives were "precisely the types of mischief which the single subject requirement was intended to prevent." Id. The same result was reached

upon similar language in In re Proposed Initiatives for 1997-1998 #86 and #87, 962 P.2d 245, 248 (Colo. 1998), and upon similar though increasingly confusing initiative language in In re Proposed Initiative for 1999-2000 #25, 974 P.2d 458, 466-69 (Colo. 1999), and In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845, 846 (Colo. 1999).

As this Court has noted, Colo. Const. art. X, § 20 contains at least two general substantive topics – limitations on revenues and limitations on spending. There is at least a third – limitations upon public indebtedness. It is not necessary to draw finer distinctions for purposes of dealing with the present case.

Proposed Initiative for 2005-2006 #74 imposes a ten-year expiration, or "sunset," date upon "every ballot issue that must adhere" to the voter approval requirements of Colo. Const. art. X, § 20. The initiative explicitly refers to both *tax* and *debt* measures and necessarily incorporates voter approved relief from *spending* limits. At a minimum, the initiative contains three subjects.

The pernicious effect of what may appear at first blush to be a simple and uniform sunset provision is readily illustrated. While voters may well be receptive to a broadly applicable ten-year limitation upon the duration of tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligations to fund public projects. While either

or both tax or debt limitations may be attractive, the voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from TABOR's wholly independent spending caps. Any or all of these results may be desirable – or not – though they are certainly very different subjects. And, the voters are certainly entitled to have each of these disparate subjects considered upon its own merits.

V. CONCLUSION

For the reasons set forth above, 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 #74 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

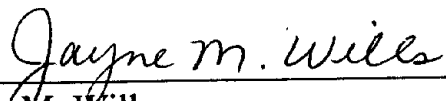
Jon Caldara
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Via Federal Express

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Via Hand Delivery

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
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Denver, CO 80203



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
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.....IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
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GINETTE DENNIS

SECRETARY OF STATE

17 Final
Copy

Be it Enacted by the People of the State of Colorado:

Section 20 of article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

(10) **TERM LIMITS FOR TAXES.** (A) THIS SUBSECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL PREVENT ONE GENERATION'S DECISION TO INCREASE TAX OR DEBT FROM BURDENING FUTURE GENERATIONS WITHOUT FUTURE GENERATIONS' DIRECT VOTING CONSENT.

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RECEIVED

JAN 06 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

Ch.
5.21 a.m.
via Email
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**Dennis Polhill
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RECEIVED

JAN 25 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #74 ("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")

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 #74 ("Expiration of Voter-Approved TABOR Issues"). 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 purports to create an expiration date for "any ballot issue" that "raises a tax rate," "continues a tax that would otherwise expire," "creates a new tax," "increases public indebtedness," or that must otherwise "adhere to this section" (Colo. Const. art. X, §20). At a minimum, this would encompass new and extended taxes, mill levy increases, valuation for assessment ratio increases, tax policy changes, creation or increase of public debt or other financial obligations, and increases of or relief from otherwise applicable spending limits. The Supreme Court has held that, while Colo. Const art. X, §20 is itself a multi-subject provision adopted by initiative prior to adoption of Colo. Const. art. V, §1(5.5), it may not now be repealed or amended by virtue of a multi-subject initiative. In re Proposed Initiative 1996-4, 916 P.2d 528

(Colo. 1996); In re Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X, 900 P.2d 121 (Colo. 1995).

2. The text of the Initiative is inherently unclear as to its reach and purpose, such that the Board is precluded from setting a ballot title. 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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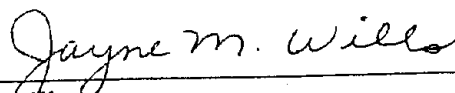
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CERTIFICATE OF SERVICE

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
14142 Denver West Parkway
Golden, CO 80401

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



Jayne M. Wills

Ballot Title Setting Board

Proposed Initiative 2005-2006 #74¹

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

An amendment to the Colorado constitution concerning a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people.

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 a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people?

Hearing January 18, 2006:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:20 p.m.

Hearing February 1, 2006:

Motion for Rehearing denied.

Hearing adjourned 2:28 p.m.

¹ Unofficially captioned "Expiration of Voter-Approved TABOR Issues" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

ORIGINAL

Certification of Word Count: 1,210

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

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 #74

BEVERLY AUSFAHL AND NICOLE KEMP ,

Petitioners,

v.

JOHN CALDARA AND DENNIS POLHILL,
PROPOSERS

AND

WILLIAM A. HOBBS, ALLISON EID AND
SHARON EUBANKS,
TITLE BOARD,

Respondents.

JOHN W. SUTHERS, Attorney General
MAURICE G. KNAIZER, Deputy Attorney
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FILED IN THE
SUPREME COURT

MAR 20 2006

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case No.: 06SA41

ANSWER BRIEF OF TITLE BOARD

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

STATEMENT OF THE ISSUES

1. Does proposed initiative #74 (#74) contain a single subject?

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 #74 by the Board. (Opening brief, pp. 1-2). The Objectors' statement of the facts is also accurate.

SUMMARY OF THE ARGUMENT

#74 contains only one subject: setting a time limit of ten years for ballot issues passed by the voters under Colo. Const. article X, § 20 .

ARGUMENT

**THE MEASURE INCLUDES ONLY ONE SUBJECT:
LIMITING THE NUMBER OF YEARS THAT A
BALLOT ISSUE APPROVED BY THE VOTERS CAN
REMAIN IN EFFECT.**

The Objectors contend that the Board should not have set titles because #74 contains at least three subjects, 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 the measure contains at least three subjects: tax, debt and spending. (Objectors' brief, p. 7.) This characterization is incorrect. The measure has only one subject: time limits for ballot issues authorized by article X, § 20. The fact that the proposed measure will apply to all ballot issues does not mean that it includes more than one subject. The unifying purpose is the sunset of all measures ten years after approval by the voters. Its application to different types of measures does not alter the unity of the subject.

The Court's decision in *In re Title, Ballot Title and Submission Clause and Summary With Regard To A Proposed Petition For An Amendment To The Constitution of the State Of Colorado Adding Section 2 To Article VII (Petitions)*,

907 P.2d 586 (Colo. 1996) is instructive. The *Petitions* measure covered procedures for all petitions, irrespective of content. The Court concluded that the broad nature of the measure did not violate the single subject rule. "The constitutional provisions establishing initiative and referendum procedures are commonly associated with each other and reflect a common interest in providing measures by which electors of Colorado may directly amend the constitution." *Id.* at 591, n.3.

Similarly, a bill affecting two different state entities does not necessarily violate single subject. The Court of Appeals recently rejected a single subject challenge to a bill authorizing the State to enter into lease-purchase agreements to finance construction projects in two different departments. *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288 (Colo. App. 2005). The bill had the subject of giving the state power to enter into lease-purchase agreements. The bill authorized the Department of Corrections to enter into a lease purchase agreement for a high-custody correctional facility. It simultaneously authorized the University of Colorado to enter into a lease purchase agreement for the Health Sciences Center. Even though the legislation covered two lease-purchase agreements by two different agencies, the Court of Appeals concluded that it

contained only one subject: use of lease-purchase agreements to fund capital construction projects of certain state facilities. *Id.* at 291.

Term limits imposed upon on a broad range of offices does not violate the single subject requirement. *Advisory Opinion To The Attorney General-Limited Political Terms In Certain Elective Offices*, 592 So.2d 225 (Fla. 1991). The fact that the proposal affects officeholders in three different branches of government is not, by itself, sufficient to conclude that the measure contains multiple subjects. “The sole subject of the proposed subject [was] limiting the number of consecutive terms that certain elected officers may serve.” *Id.* at 227.

The Objectors’ argument is premised in part on the assumption that tax, debt and spending measures are inherently exclusive. This assumption is incorrect. These matters can be placed in the same measure if they are sufficiently related. For example, both an increase in debt and a tax increase to pay the debt can be included in the same measure. *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994).

In the case at bar, the unifying theme is placing time limits on ballot issues approved by the voters under article X, § 20. The proposal is more limited in its application than the *Petitions* measure. It imposes only one limitation or


requirement on approved measures. It sunsets measures just as the Florida terms limits measure limited tenure office throughout state government.

The cases cited by the objectors are inapposite. In each of the cases, the proponents attempted to amend different parts of article X, § 20 without stating a unifying theme. Thus, proponents of initiative “1996-4” revised much of article X, § 20 under the subject of “limiting government spending”. *In re Proposed Initiative for 1996-4*, 916 P.2d 528, 534-35 (Colo. 1996). In “1997-1998 #30”, the proponents proposed tax reductions and a formula designed to reverse tax and spending increases previously enacted by voters of various districts. The Court could not find a significant connection between these subjects. *In re Proposed Initiative for 1997-1998 #30*, 959 P.2d 822, 826-27 (Colo. 1998). In contrast, #74 does present a unitary subject—prospectively imposing a sunset on all voter-enacted measures.

CONCLUSION

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

JOHN W. SUTHERS
Attorney General


MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

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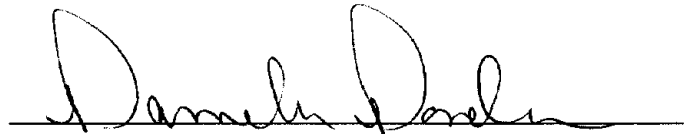
CERTIFICATE OF SERVICE

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:

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

A handwritten signature in cursive script, appearing to read "Daniel J. Doherty", is written over a horizontal line.

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board</p>	<p>FILED IN THE SUPREME COURT</p> <p>MAR 31 2006</p> <p>OF THE STATE OF COLORADO ▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #74</p> <p>Petitioners: BEVERLY AUSFAHL and NICOLE KEMP, Objectors,</p> <p>v.</p> <p>Respondents: JON CALDARA and DENNIS POLHILL, Proponents, and</p> <p>Title Board: WILLIAM A. HOBBS, ALLISON EID, and SHARON L. EUBANKS</p>	<p>Case No. 06SA41</p>
<p>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</p>	
<p>PETITIONERS' REPLY BRIEF</p>	

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

I. ARGUMENT

The Answer Brief of the Title Board succinctly poses the issue in this proceeding by defining the single subject of Proposed Initiative for 2005-2006 #74 as "term limits for ballot issues authorized by article X, § 20." Ans. Br. at 3. What this means, however, is: (1) term limits for tax measures; (2) term limits for public debt authorizations; and (3) term limits for voter-authorized relief from spending limits. The only thing that these three generically different types of ballot issues have in common is that they are all subject to the multiple-subject Colo. Const. art. X, § 20.

If "term limits" can be imposed by a single initiative upon the full array of ballot issues within the sweep of Colo. Const. art. X, § 20 consistent with the single subject requirement of Colo. Const. art. V, § 1(5.5), the entirety of art. X, § 20 could as readily be repealed by a single initiative. The impacted "subjects" would be the same. This Court has rejected that proposition. *See, e.g., In re Proposed Initiative for 1996-4*, 916 P.2d 528, 532-33 (Colo. 1996).

Referring to the authorities cited by the Title Board:

1) Petitioners do not dispute the proposition that a "single subject" may be "comprehensive" as long as its purposes are connected (*e.g.*, "reforming petition rights and procedures"). *Cf.*, In re Title, Ballot Title and Submission Clause, and Summary With Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Section 2 to Article VII (Petitions), 907 P.2d 586, 591 (Colo. 1995). Limiting the duration of unrelated: (a) tax measures; (b) public debt authorizations; and (c) relief from mandatory refunds of available revenues are not connected purposes, however. They have literally nothing in common except the impact upon all of them of the strictures of the multiple-subject Colo. Const. art. X, § 20.

2) Petitioners do not contest the ability of the General Assembly to authorize a single method of financing (lease purchase agreements), albeit for two separate state agencies, in a single bill. *See Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288, 291-92 (Colo. App. 2005). This bill at least involved a single method of financing rather than three wholly disparate governmental activities (taxing, borrowing, and spending), and the potential for voter confusion was absent.

3) Similarly, Petitioners do not quibble with the Florida Supreme Court's conclusion that the imposition of term limits upon elected officials may be a single

subject notwithstanding application to three separate branches of government. Advisory Opinion to the Attorney General, 592 So.2d 225, 227 (Fla. 1991). The single theme was term limits – here the subjects are: (1) taxes; (2) public debt authorization; and (3) authority to spend rather than refund available revenues.

4) This Court's opinion in Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), is particularly germane. There, the Court held that "the incurrence of a debt and the adoption of taxes *as the means with which to repay that debt* are properly viewed as a single subject when presented together in one ballot issue." Id. at 231 (emphasis added). The tax was exclusively a dedicated mechanism for repayment of the specified debt. In the present proceeding, wholly unrelated taxes and debt authorizations are "sunset" by the same initiative.

This Court has very recently emphasized the importance of avoiding voter confusion in the context of differentiating a "tax increase" from a "tax extension." Bruce v. City of Colorado Springs, ___ P.3d ___, Slip Opinion at 22 (Colo. Feb. 27, 2006). Respectfully, the distinction between taxes, debt, and spending-vs-refund authorization is much greater. While a voter may be quite enamored with the idea of constitutionally "term-limiting" a tax increase – indeed *all* tax increases – the same voter may be more reticent to impose an automatic constitutional limitation upon the ability of state and local government to incur public debt

obligations of various durations. And the voter may have a wholly different preference with regard to authorizing relief from spending limits. The concepts are meshed and confused in the present initiative, and indeed lumped under a single misleading textual headnote "Term limits for taxes."

The lumping of at least three distinct and unrelated subjects into this single initiative will have the inevitable effect of both confusing the voter and "logrolling" unrelated and unconnected results from the necessity of a single indivisible vote. This is precisely what the single subject requirement was intended to prevent.

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 #74 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:

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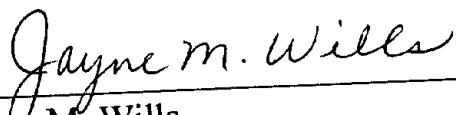
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Jayne M. Wills

SUPREME COURT, STATE OF COLORADO
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Denver, Colorado 80203

Case No. 06SA41

FILED IN THE
SUPREME COURT

MAY 30 2006

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

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 #74,

Petitioners:

BEVERLY AUSFAHL and NICOLE KEMP, objectors,

v.

Respondents:

JON CALDARA and DENNIS POLHILL, proponents,

and

Title Board:

WILLIAM A. HOBBS, ALLISON EID, and SHARON L. EUBANKS.

ACTION OF THE BALLOT TITLE SETTING BOARD REVERSED
EN BANC
MAY 30, 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 COATS dissents.
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 and a ballot title and submission clause for a ballot initiative (Initiative #74) for the 2006 general election. Petitioners contend that Initiative #74 addresses multiple subjects in violation of article V, section 1(5.5) of the Colorado Constitution. We hold that the proposed initiative contains more than one subject in violation of the Colorado Constitution, and therefore the Title Board should have refused to fix the titles. Accordingly, we reverse the Title Board's action.

I. Facts

Initiative #74 imposes expiration dates upon all of the governmental actions for which voter approval is required under article X, section 20 of the Colorado Constitution (Amendment 1)¹. Specifically, any ballot issue that must adhere to Amendment 1 must sunset, expire, and end within ten years of its passage. In addition, any such ballot issue may be renewed only once by a vote of the people, but not for longer than a period of ten years. As noted in the Initiative, the "preferred interpretation shall prevent one generation's decision to

increase tax or debt from burdening future generations without future generations direct voting consent."

The Title Board conducted its initial public meeting and set a title, ballot title, and submission clause 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.²

¹ Section 20 of article X of the Colorado Constitution, titled the Taxpayers's Bill of Rights, is also commonly known as Amendment 1.

² 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).

Despite our limited role,³ 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 the Title Board,⁴ with whom the responsibility resides to initially review all

³ 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).

⁴ In reviewing the Board's actions setting the title and ballot title and submission clause, "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).

proposed initiatives.⁵ 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.⁶

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, we look first 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

⁵ 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).

⁶See 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).

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.⁷ Finally, in order to pass the

⁷ 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 by its inclusion of detailed procedures and its authorization for citizen lawsuits to ensure compliance).

Single-subject test, the subject of the initiative should be capable of being clearly expressed in the initiative's title.⁸

B. Review of Prior "Amendment 1" Initiatives

We must decide whether Initiative #74 contains multiple subjects consistently with our prior case law. To this end, we first review our cases concerning Amendment 1.

We start our analysis with In re Amend Tabor 25, 900 P.2d 121 (Colo. 1995). In this case, the proponents of the initiative sought to add a new subsection to Amendment 1. In re Amend Tabor 25, 900 P.2d at 121-23. The Initiative proposed to establish a tax credit and set forth several procedural requirements for future ballot titles. Id. The proponents of the Initiative claimed that the proposed measure comprised a single subject, "government revenue changes." Id. at 125. We held that, "because the proposed \$40 tax credit is not 'dependent upon or connected' to procedures for adopting future initiatives, we find the very evils that the electorate determined must be avoided by adoption of article V, section 1(5.5) are present here." Id.

⁸ 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.").

Shortly thereafter, we again considered an attempt to amend Amendment 1 by petition. In re Amend Tabor #32, 908 P.2d 125 (Colo. 1995). This proposed initiative sought to establish a tax credit that would apply to six state or local taxes and would require the state to replace local revenues that were lost because of the tax credit provision. Id. at 129. The petitioners contended that the initiative violated the constitutional single-subject requirement because it applied the tax credit to more than one tax and also required the state to replace monthly local government revenues. Id. at 128-29. We disagreed and held:

Although the Initiative applies the tax credit to more than one tax, the single purpose of the Initiative is the implementation of a tax credit. All six taxes are connected to the same tax credit and are bound by the same limitations. The provision of the Initiative requiring mandatory replacement of lost local government revenues is dependent upon and closely connected to the \$60 tax credit. The Initiative relates to a single definite object or purpose and does not impermissibly encompass multiple unrelated subjects.

Id. at 129.

We next considered In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996). This initiative sought to repeal certain portions of Amendment 1 related to spending and revenue limits, elections, local responsibility for state mandated programs, and emergency reserves, and to reenact certain portions of the

Amendment. In re Proposed Initiative 1996-4, 916 P.2d at 533. The proponents contended that each repealed subsection addressed the single subject of "limiting government spending." Id. We held, however, that the initiative contained multiple subjects disconnected from any encompassing principle because the initiative covered subjects ranging from the property valuation administrative process to elections to emergency taxes. Id. "'Limiting government spending' is too broad and general a concept to satisfy the single subject requirement, just as 'water' was not a single subject in In re Public Rights in Waters II." Id. (citing In re Public Rights in Waters II, 898 P.2d at 1080).

During the next election cycle, we were again asked to consider proposed changes to Amendment 1. In re 1997-98 #30, 959 P.2d 822 (Colo. 1998). Initiative #30 sought to change Amendment 1 by creating an annually increasing reduction in tax revenue upon which municipalities, school districts, and various special districts depend to fund local programs. Id. at 823. Revenues affected would have included those from utility customer and franchise charges, vehicle ownership taxes, and property taxes that fund human and health services, district attorney and assessors offices, libraries, courts, schools, economic development, enterprises, and authorities. Id. The shortfall in local programs caused by the tax cuts would have

been funded by the transfer of state revenues to local governments. Id.

In addition, Initiative #30 proposed to add new criteria to Amendment 1 by providing that voter-approved revenue and spending increases enacted since 1992 were to specify a maximum tax rate with a fixed maximum number of dollars in the ballot title of those measures. Id. at 824.

The Board contended that the initiative had a single subject, "tax cuts." Id. at 826. We disagreed. We held that, although a tax cut was one of the purposes of the initiative, the initiative also proposed to subject voter-approved local revenue and spending increases enacted since 1992 to a new Amendment 1 requirement -- that a fixed tax rate/maximum dollar amount must be stated in the ballot title of those measures. Id. Thus, we concluded that, because the initiative contained two subject matters, a tax cut and new criteria for voter approval of revenue and spending increases under Amendment 1, the proposed initiative violated the single-subject limitation. Id. at 827.

Shortly thereafter, we considered two more proposed initiatives which were somewhat similar to the initiative discussed in In re 1997-98 #30. See In re Proposed Initiative for 1997-98 #84, 961 P.2d 456 (Colo. 1998). These initiatives sought to change Amendment 1 by lowering various state and local

taxes and requiring the state to replace affected local revenue loss. Id. at 457. Under the proposed changes, the state's revenue replacement obligation was subject to all tax and spending limits. Id.

Like with Initiative #30, the Title Board argued that the only subject encompassed in these initiatives was "tax cuts." Id. at 459. We disagreed again, however, because the initiatives required the state to dedicate a portion of the state's current revenues to replace lost local revenue, which would have the effect of lowering the amount the state could spend on state programs. Id. at 460. Accordingly, we held:

Properly viewed, then, Initiative #84 and Initiative #85 violate the single subject requirement. . . . Initiative #84 and Initiative #85 still contain more than one subject. First, the initiatives provide for tax cuts. Second, the initiatives impose mandatory reductions in state spending on state programs. These two subjects are distinct and have separate purposes. While requiring the state to replace affected local revenue in itself sufficiently relates to a tax cut, requiring the state separately to reduce

its spending on state programs is not "dependent upon and clearly related" to the tax cut.⁹

Id.

C. Application of Law to this Initiative

The proponents of this initiative assert, and the Title Board agrees, that the text of this initiative contains only one general subject - time limits for ballot issues that would raise, continue, create, or increase taxes. Indeed, the text of the initiative seems, on its face, to concern only a single purpose or object, namely to require that "any ballot issue that raises a tax rate, continues a tax that would otherwise expire, creates a new tax, or increases public indebtedness . . . sunset, expire, and end within ten years of its passage."

Petitioners claim, however, that instead of containing one unified, general subject, this initiative contains at least three distinct unconnected topics, namely, applying a ten year

⁹ See also In re Proposed Initiative for 1997-1998 #86, 962 P.2d 245, 247-48 (Colo. 1998) ("Like the initiatives at issue here, Initiatives #84 and #85 would have established state and local tax cuts to increase in subsequent years, and also provided that 'the state is required to replace monthly the local government revenue affected by the tax cuts established by this measure, within all tax and spending limits.' . . . Because Initiatives #86 and #87 contain the exact same language as provided in Initiatives #84 and #85, providing for tax cuts and requiring the state to replace local government revenue affected by the tax cuts 'within all tax and spending limits,' we hold that Initiatives #86 and #87 violate the single subject requirement and, therefore, are unconstitutional."). See generally In re Proposed Initiative for 1999-2000 #25, 974 P.2d 458 (Colo. 1999).

expiration period to election results approving (a) tax measures; (b) public debt authorizations; and (c) the authority to spend rather than refund available revenues.

This case, then, raises the difficult question associated with the interpretation of single-subject jurisprudence, namely, when are the characteristics of an initiative too discreet and unconnected to pass constitutional muster, despite the breadth of general topic proposed by the proponent? In reliance upon the case law we just reviewed, we conclude that this proposed initiative has more than a single subject and is therefore unconstitutional.

In so holding, we rely primarily on In re Amend Tabor #25, which is directly on point. As noted above, the petitioners, claiming that the single subject of the petition was "revenue changes," proposed to modify Amendment 1 in several different ways, to establish a tax credit and to add various procedural requirements for future ballot titles. In re Amend Tabor #25, 900 P.2d 121, 125 (Colo. 1995). These changes involved both tax and revenue increase ballot titles. See id.

The Title Board asserted that the Amend Tabor #25 initiative properly constituted a single subject because it proposed an amendment to an already existing constitutional provision. Id. at 126. As an existing amendment to our Constitution, the Title Board further argued that Amendment 1

was itself a single subject, and that any initiative which sought to clarify the limits placed by the Amendment on the ability of the legislature to spend and raise revenues was likewise a single issue measure. Id. We disagreed, holding that Amendment 1 itself contains multiple subjects.¹⁰ Id.

Like the proposed initiative analyzed in Amend Tabor #25, the initiative in this case imposes a ten-year expiration, or "sunset," date upon "every ballot issue that must adhere" to the voter approval requirement of article X, section 20 of the Colorado Constitution. Thus, this initiative, just like the Amend Tabor #25 initiative, seeks to join under the rubric of "time limits for taxes," measures which refer to both tax and debt measures and necessarily incorporate voter approved relief from spending limits.

Our holding is likewise consistent with the Initiative 1996-4 case. There, the proponents, under the rubric of "limiting government spending," sought not only to repeal

¹⁰See In re Amend Tabor #25, 900 P.2d at 126 ("The Legislative Council's Analysis of 1994 Ballot Proposals, Research Publication No. 392 at 3, identified Amendment 1 as a ballot proposal which probably includes more than one subject and which, under the single subject requirement of article V, section 1(5.5), 'might not have been permitted unless [it was] changed to reduce its scope.'").

Amendment 1 but also to reenact certain parts of it. In re Proposed Initiative 1996-4, 916 P.2d 528, 533 (Colo. 1996). Relying on our Amend Tabor #25 case, we again held that Amendment 1 would not have met the single-subject requirement of the Constitution. Id. We went on to hold that since the proposed initiative sought to repeal portions of Amendment 1 relating to spending and revenue limits, elections, local responsibility for state mandated programs, and emergency reserves, the characterization of the subject of the initiative - limiting government spending - was too broad and general to satisfy the single-subject requirement. Id.

Similarly, in In re 1997-98 #30, the proponents sought to change Amendment 1 by subjecting voter-approved local revenue and spending increases enacted since 1992 to a new Amendment 1 requirement - that a fixed tax rate/maximum dollar amount must be stated in the ballot title of those measures. 959 P.2d 822, 824 (Colo. 1998). They suggested that the single subject of this initiative was "tax cuts." Id. at 826. We disagreed, however, and again noted that Amendment 1 placed revenue limitations as well as spending limitations on state and local governments, and that these provisions operated separately and independently. Id. Discussing Amend Tabor #25, we noted that because Amendment 1 contained multiple subjects, any initiative

proposing to amend both the revenue and the spending limitation in Amendment 1 likewise contained multiple subjects. Id.

In short, rather than presenting the single subject of "time limits for ballot issues authorized by article X, Section 20," Initiative #74 presents multiple subjects: (1) time limits for tax measures; (2) time limits for public debt authorizations; and (3) time limits for voter-authorized relief from spending limits. While voters may well be receptive to a broadly applicable ten-year limitation upon the duration of tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligation to fund public projects. While either or both tax or debt limitations may be attractive, the voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from Amendment 1's wholly independent spending caps. Certainly, the voters are entitled to have each of these separate subjects considered upon its own merits.

For this reason, the proposed initiative violates the constitutional provision against single subjects and cannot stand.

JUSTICE COATS dissents.
JUSTICE EID does not participate.

Ballot Title Setting Board

Proposed Initiative 2005-2006 #74¹

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

An amendment to the Colorado constitution concerning a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people.

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 a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people?

Hearing January 18, 2006:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:20p.m.

Hearing February 1, 2006:

Motion for Rehearing denied

Hearing adjourned 2.28 p.m.

¹ 'Unofficially captioned "Expiration of Voter-Approved TAB OR Issues" 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:

Section 20 of article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

(10) **TERM LIMITS FOR TAXES.** (A) THIS SUBSECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL PREVENT ONE GENERATION'S DECISION TO INCREASE TAX OR DEBT FROM BURDENING FUTURE GENERATIONS WITHOUT FUTURE GENERATIONS' DIRECT VOTING CONSENT.

(B) ANY 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 PASSED AFTER DECEMBER 31 2006 MUST SUNSET, EXPIRE, AND END WITHIN TEN YEARS OF ITS PASSAGE. SUCH BALLOT ISSUE MAY BE RENEWED BY A SUBSEQUENT VOTE OF THE PEOPLE, BUT NOT FOR LONGER THAN 10 YEARS.

In re Ballot Title 2005-2006 # 74 - 06SA41
JUSTICE COATS, dissenting.

Once again the majority deprives the voters of an opportunity to express themselves on a proposal to limit public fundraising. And once again its action is premised on some variation of the theme that public fundraising by taxation and public fundraising by borrowing are separate subjects, unable to be considered by the voters in a single initiative. Because I can find no principled basis for treating the identical limitation on taxation and public indebtedness presented here as different subjects, I would not extend our prior reliance on this distinction to the particulars of the current proposal. I therefore respectfully dissent.

As the majority itself acknowledges, the single-subject limitation on initiatives was a direct outgrowth of, and embodies the same purposes as, the single subject limitation on legislation already found in article V, section 21 of the state constitution. See § 1-40-106.5, C.R.S. (2005). Subject to judicial review, the title board is entrusted with the obligation to ensure that popularly initiated measures contain a single subject. § 1-40-106.5(3). Although the language of the constitutional limitation itself might appear at first blush to leave the board with tremendous discretion to disapprove initiatives as exceeding that limitation, see Colo. Const. art.

V, § 1(5.5), both case law and legislative history make clear that this provision must be understood as directed against two specific evils: 1) increasing voting power by combining measures that could not be carried on their individual merits, Catron v. Bd. of County Comm'rs, 18 Colo. 553, 557, 33 P. 513, 514 (1893); § 1-40-106.5(1)(e)(I); and 2) surprising voters by surreptitiously including unknown and alien subjects "coiled up in the folds" of the proposal, In re Breene, 14 Colo. 401, 404, 24 P. 3, 4 (1890); § 1-40-106.5(1)(e)(II). See In re Ballot Title 2001-2002 # 43, 46 P.3d 438, 440 (Colo. 2002) (Rice, J.); In re Ballot Title 2003-2004 # 32, 76 P.3d 460, 471 (Colo. 2003) (Coats, J., dissenting).

The majority makes no attempt to relate its finding of multiple subjects to these purposes, and instead simply concludes that the proposal at issue in this case contains subjects that are not sufficiently "dependent upon" or "connected with" each other because a similar distinction had been made with regard to other public funding proposals in the past. Maj. op. at 7. Whatever the merits of those prior holdings, given the complexity and potential for misunderstanding of the individual proposals in those cases, it is clear (at least to me) that neither danger meaningfully threatens the current proposal. The proposed initiative in this case consists of two short paragraphs of two sentences each, and

it is closely paraphrased in a single sentence, with the addition of a cross-reference to the TABOR amendment, in the title fixed by the board. Both the proposed initiative and the title expressly and clearly state that the proposal would limit the effective life of any ballot issue increasing either taxes or public indebtedness.

The proposed time limitation on the effective life of public fundraising measures applies evenhandedly to all such devices governed by TABOR, which merely amount to different methods of raising public funds for expenditure. Whether they involve taxation or incurring public indebtedness, the techniques of public fundraising covered by the proposal are not sufficiently distinguishable in the public mind to suggest either an attempt to combine disparate voting blocks in order to secure passage or to surreptitiously include certain fundraising techniques that voters would be surprised to find in combination with the others. Quite the contrary, in light of their common purpose, there is little or no reason to believe that voters who would be inclined to favor a time limitation on exceptions to TABOR would be so inclined only if it included exceptions involving either taxation or debt creation, but not both.

Even a cursory review of this court's ballot title jurisprudence reveals an unmistakable lack of uniformity in our treatment of the single-subject requirement. Surely it cannot

go unnoticed that popularly initiated measures affecting public funding have been subjected to far more exacting, and seemingly arbitrary, line-drawing than has been applied to most other initiatives. See, e.g., In re Ballot Title 1999-2000 # 200A, 992 P.2d 27 (Colo. 2000) (finding no violation of single-subject requirement by initiative to adopt the "Woman's Right-To-Know Act," adding to the revised statutes a dozen new sections, with more than 50 paragraphs, imposing on physicians a plethora of notice-to-patient requirements and data reporting requirements, as well as civil and criminal penalties for violation). While we have disapproved funding bills of the general assembly for including multiple subjects, such harsh action has apparently been reserved for laundry lists of fees and expenditures for numerous and diverse purposes, similar to a general appropriations bill. See, e.g., In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987); cf. In re House Bill No. 168, 21 Colo. 47, 39 P. 1096 (1895). Even if this disparity of treatment could be characterized as an attempt to protect voters from themselves, I do not believe such paternalism finds support in the language or history of the constitutional single-subject provision.

Because I believe today's judgment strips Colorado voters of a fundamental prerogative reserved to them by the state constitution, without protecting them in any meaningful way from

either of the evils contemplated by the single-subject requirement, I would affirm the action of the title board. I therefore respectfully dissent.