

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

Petitioner:

Howard Stanley Dempsey, Jr., Objector,
v.

Respondents:

Michael A. Bowman, and David Theobald,
Proponents,

and

Title Board:

William A. Hobbs, Sharon Eubanks, and Daniel
Dominico

Attorneys for Petitioner:

Scott E. Gessler, #28944

Mario D. Nicolais, II #38589

Hackstaff Gessler LLC

1601 Blake Street, Suite 310

Denver, Colorado 80202

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FILED IN THE
SUPREME COURT

JUN 05 2008

OF THE STATE OF COLORADO
SUSAN J. FESTAS, CLERK

▲COURT USE ONLY▲

Case Number:

083A198

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2007-2008 #113 ("Severance Tax")**

Howard Stanley Dempsey, Jr., a registered elector of Colorado, by and through undersigned counsel, respectfully petitions this Court under C.R.S. § 1-40-107(2), to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2007-2008 #113 ("Severance Tax").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set the title and submission clause for Proposed Initiative 2007-2008 #113 on May 21, 2008. On May 28, 2008, Dempsey filed a Motion for Rehearing under C.R.S. § 1-40-170(1), and the Title Board considered the Motion for Rehearing at its next meeting on May 29, 2008. The Board denied in part the Motion. The Petitioner now seeks review of the Title Board's decision under C.R.S. § 1-40-107(2).

II. Issues Presented

A. Does the initiative violate the single subject requirement by creating an increase in the severance tax on oil and gas production in Colorado, while also creating spending mandates that are not dependent upon or necessarily connected with the severance tax increase, or one another?

B. Are the Ballot Title and Submission Clause incomplete and misleading because they state that scholarships are for state colleges and universities, when in fact the initiative's use of the term "higher education" excludes certain colleges, but includes occupational educational programs?

III. Supporting Documentation

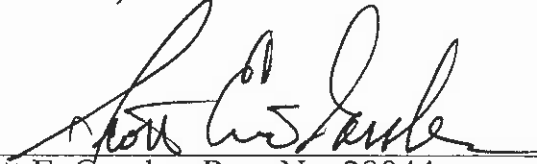
As required by C.R.S. § 1-40-107(2), attached is a certified copy of the Petition with the title and submission clause of the proposed constitutional amendment, a certified copy of the Motion for Rehearing, and final action by the

Title Board (**collectively Exhibit 1**). The Petitioner has also attached a copy of the transcript of the Rehearing (**Exhibit 2**).

IV. Relief Requested

The Petitioner respectfully requests this Court to reverse the actions of the Title Board with directions to decline to set a title and return the Proposed Initiative to the Proponents. Alternatively, the Petitioner requests this Court to remand the matter to the Title Board and instruct it to set a complete and accurate Ballot Title and Submission Clause.

Respectfully submitted this 5th day of June, 2008,

By: 
Scott E. Gessler, Reg. No. 28944
Mario D. Nicolais, II., Reg. No. 38589
Hackstaff Gessler LLC
1601 Blake St., Suite 310
Denver, Colorado 80202
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Attorneys for Howard Stanley Dempsey, Jr.

Address of Petitioner:
3110 Alkire St.
Golden, Colorado 80401

CERTIFICATE OF SERVICE

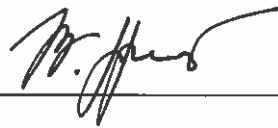
I hereby certify that on this 5th day of June, 2008, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #113 (“Severance Tax”)** was served via hand delivery, to the following:

Ed Ramey, Esq.
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, Colorado 80202

Attorneys for the Petitioners

Maurice G. Knaizer
Deputy Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Attorney for the Title Board





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **MIKE COFFMAN**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motions for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #113".....

..... **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 2nd day of June, 2008.

Handwritten signature of Mike Coffman in cursive script.

SECRETARY OF STATE

RECEIVED

MAY 09 2008

#113
11:00am
C# Final
kn

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

ELECTIONS
SECRETARY OF STATE

SECTION 1. 39-29-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS AND INTEREST OWNERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE AS APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION SHALL SUPPLEMENT, RATHER THAN SUPPLANT, CURRENT APPROPRIATIONS TO THE FOLLOWING ENUMERATED PURPOSES AND SHALL BE USED TO PROVIDE FUNDING FOR THE FOLLOWING PUBLIC PURPOSES: SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; THE PRESERVATION OF WILDLIFE HABITAT; RENEWABLE AND CLEAN ENERGY PROJECTS; TRANSPORTATION PROJECTS IN COMMUNITIES IMPACTED BY OIL AND GAS PRODUCTION; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. IT IS THE FURTHER INTENT OF THE PEOPLE OF THE STATE THAT THE PROGRAMS CURRENTLY FUNDED BY THE SEVERANCE TAX NOT BE ADVERSELY IMPACTED BY THE DISTRIBUTION OF THE ADDITIONAL REVENUE GENERATED BY THE CHANGES TO THE SEVERANCE TAX APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3).

SECTION 2. 39-29-105 (1) (b), Colorado Revised Statutes, is amended, and the said 39-29-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2009, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2009, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE; EXCEPT THAT OIL PRODUCED FROM ANY WELLS THAT PRODUCE SEVEN AND ONE HALF BARRELS OR LESS OF OIL PER DAY AND GAS PRODUCED FROM WELLS THAT PRODUCE FORTY-FIVE THOUSAND CUBIC FEET OR LESS OF GAS PER DAY, FOR THE AVERAGE OF ALL PRODUCING DAYS FOR SUCH OIL

AND GAS PRODUCTION DURING THE TAXABLE YEAR SHALL BE EXEMPT FROM THE TAX. NOTHING IN THIS PARAGRAPH (c) SHALL EXEMPT A PRODUCER OF OIL AND GAS FROM SUBMITTING A PRODUCTION EMPLOYEE REPORT AS REQUIRED BY SECTION 39-29-110 (1) (d) (I). THE TAX FOR OIL AND GAS PROVIDED FOR IN THIS PARAGRAPH (c) SHALL BE AT THE FOLLOWING RATE OF GROSS INCOME:

\$300,000 AND OVER

5% OF TOTAL GROSS INCOME

SECTION 3. 39-29-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-105. Tax on severance of oil and gas. (3) THE PROCEEDS OF THIS TAX RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AND INVESTMENT INCOME THEREON SHALL BE COLLECTED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING LIMITATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, OR ANY OTHER LAW, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE STATE OR ANY DISTRICT.

SECTION 4. The introductory portion to 39-29-108 (1) and 39-29-108 (2), Colorado Revised Statutes, are amended, and the said 39-29-108 is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-29-108. Allocation of severance tax revenues—definitions—repeal. (1) Except as provided in ~~subsections (2) and (3)~~ SUBSECTIONS (2), (2.3), AND (3) of this section, the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article shall be credited as follows:

(2) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 1981, EXCEPTING THOSE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), fifty percent shall be credited to the state-severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), TWENTY-TWO PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX TRUST FUND CREATED BY SECTION 39-29-109, TWENTY-TWO PERCENT SHALL BE CREDITED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED BY SECTION 39-29-110, AND THE REMAINING FIFTY-SIX PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND CREATED BY SECTION 39-29-110.5.

SECTION 5. Article 29 of Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-29-110.5. Severance tax stabilization trust fund—creation—administration. (1)(a) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER THE SEVERANCE TAX

STABILIZATION TRUST FUND. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL MONEYS IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED BY THE GENERAL ASSEMBLY FOR THE PURPOSES AND IN THE PROPORTION SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(b) THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE HELD IN TWO ACCOUNTS, AS FOLLOWS:

(I) **The perpetual base account.** TEN PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED THEREON SHALL BE RETAINED IN THE PERPETUAL BASE ACCOUNT. THE MAXIMUM BALANCE IN THE PERPETUAL BASE ACCOUNT SHALL BE ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND PURSUANT TO SECTION 39-29-108 (2.3). IN ANY YEAR IN WHICH THE BALANCE OF THE PERPETUAL BASE ACCOUNT EXCEEDS ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND, THE INTEREST GENERATED BY THE PERPETUAL BASE ACCOUNT AND MONEYS IN EXCESS OF ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(II) **The operational account.** NINETY PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND, PLUS ANY MONEYS REQUIRED TO BE TRANSFERRED TO THE OPERATIONAL ACCOUNT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(2) EACH YEAR THE MONEYS IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED AS FOLLOWS:

(a) SIXTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF SCHOLARSHIPS, TO BE KNOWN AS COLORADO PROMISE SCHOLARSHIPS, FOR COLORADO RESIDENTS ATTENDING STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., AND LOCAL DISTRICT COLLEGES AS DESCRIBED BY SECTION 23-72-121.5, C.R.S., AND SHALL BE DIRECTED TOWARDS MAKING HIGHER EDUCATION AFFORDABLE FOR COLORADO RESIDENTS FROM LOWER AND MIDDLE INCOME FAMILIES. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL ESTABLISH GUIDELINES AND POLICIES SETTING FORTH THE ELIGIBILITY CRITERIA FOR SCHOLARSHIPS FUNDED BY THIS PARAGRAPH (a), TO INCLUDE CONSIDERATION OF SUCH FACTORS AS HOUSEHOLD INCOME, FAMILY SIZE, ELIGIBILITY FOR OTHER SOURCES OF FINANCIAL ASSISTANCE, AND THE INSTITUTION THE STUDENT ATTENDS. THE COMMISSION SHALL ESTABLISH ACADEMIC PERFORMANCE CRITERIA FOR OBTAINING AND MAINTAINING A COLORADO PROMISE SCHOLARSHIP.

(b) FIFTEEN PERCENT SHALL BE DEDICATED FOR THE EXCLUSIVE PURPOSE OF MAKING COMPETITIVE GRANTS TO COUNTIES, MUNICIPALITIES, OTHER POLITICAL SUBDIVISIONS OF THE STATE, THE COLORADO DIVISION OF WILDLIFE, THE COLORADO DIVISION OF PARKS AND OUTDOOR RECREATION, AND NONPROFIT CONSERVATION ORGANIZATIONS, FOR ACQUISITION OF REAL PROPERTY OR INTERESTS THEREIN THAT WILL PRESERVE NATIVE WILDLIFE HABITAT ASSOCIATED WITH NATURAL AREAS, WORKING FARMS OR RANCHES, AND RIVERS AND STREAMS; AND TO THE EXTENT ACQUIRED WITH SUCH MONEYS, TO ASSIST WITH STEWARDSHIP OF REAL PROPERTY OR INTERESTS THEREIN. SUCH MONEYS SHALL BE ADMINISTERED AND OVERSEEN BY THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND CREATED PURSUANT TO SECTION 6 OF ARTICLE XXVII OF THE STATE CONSTITUTION, BUT SUCH MONEYS SHALL NOT BE SUBJECT TO THE LIMITATIONS AND RESTRICTIONS MADE APPLICABLE TO THE GREAT OUTDOORS COLORADO TRUST FUND BY ARTICLE XXVII OF THE STATE CONSTITUTION. FURTHER, IN ADMINISTERING AND OVERSEEING THESE MONEYS, THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE USED FOR EXPENSES OF ADMINISTERING THESE MONEYS OR REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

(c) TEN PERCENT SHALL BE CREDITED TO THE CLEAN ENERGY FUND CREATED IN SECTION 24-75-1201, C.R.S.;

(d) TEN PERCENT SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF TRANSPORTATION TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES OF THE STATE THAT ARE IMPACTED BY THE DEVELOPMENT, PROCESSING, OR ENERGY CONVERSION OF OIL AND GAS SUBJECT TO TAXATION UNDER THIS ARTICLE, WHICH FUNDING INCLUDES MAKING GRANTS FOR TRANSPORTATION PURPOSES TO THOSE IMPACTED COMMUNITIES; AND

(e) FIVE PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION, FOR THE EXCLUSIVE PURPOSE OF MAKING SMALL COMMUNITY DRINKING WATER GRANTS AND DOMESTIC WASTEWATER TREATMENT GRANTS. THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

SECTION 6. 24-75-1201(1) (a), Colorado Revised Statutes, is amended to read:

24-75-1201. Clean energy fund – creation – use of fund – definitions. (1) (a) The clean energy fund is hereby created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund at the end of the 2006-07 state fiscal year and at the end of each succeeding state fiscal year from the limited gaming fund created in section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701 (5), C.R.S., and from moneys received by the governor's energy office pursuant to section 39-29-109 (1.5), C.R.S., in accordance with section 39-29-109 (1.5) (h) (VII), C.R.S., AND FROM MONEYS RECEIVED PURSUANT TO SECTION 39-29-110.5 (2) (c), C.R.S. Interest and income earned on the deposit and investment of moneys in the clean energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund.

SECTION 7. 33-60-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

33-60-107. State board of the great outdoors Colorado trust fund. (4) IN ADDITION TO ITS OTHER POWERS UNDER ARTICLE XXVII OF THE COLORADO CONSTITUTION AND THIS ARTICLE, THE TRUST FUND BOARD SHALL HAVE THE POWER TO ADMINISTER AND OVERSEE MONEYS APPROPRIATED PURSUANT TO SECTION 39-29-110.5 (2) (b), C.R.S.

Proponents:

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28455 County Road HH, PO Box 482
Wray, CO 80758
mike@echogreen.org
(303) 570-9277 cell

David Theobald
113 West Olive St.
Fort Collins, CO 80521
(970) 491-5122
davetheo8@gmail.com

Counsel:

Edward T. Ramey
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, CO 80202
(303) 256-3978
eramey@ir-law.com

26 May 2008

State Title Board
Secretary of State
1700 Broadway #270
Denver CO 80290

RECEIVED

MAY 26 2008

ELECTIONS
SECRETARY OF STATE

CL
ASD

Re: motions for rehearing

Dear Board,

As a registered elector in the state of Colorado, I hereby move for a rehearing on initiatives 91(a), 103, 113, and 128 on the grounds that the ballot title is not lawful. Among other faults, Article X, section 20 (3) (c) requires those titles to be in all capital letters. That requirement was upheld in Denver District Court in a 1993 case filed against the state regarding the tourism tax issue. That was a final, binding judgment that was not reversed.

The C.R.S. requires ballot titles be printed in the petition. Therefore, it is not lawful to wait until the ballots are printed to correct this constitutional violation.

I further request that the secretary of state require that the printer's proof and printed sections for petition 95 list its ballot title in all capital letters.

Please let me know the date and time for the rehearings. In view of the distance I must travel, I request that it be no earlier than 10 a.m.

Thank you for your cooperation.

Sincerely,

Douglas Bruce
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

Cesiah Gomez

From: Douglas Bruce [taxcutter@msn.com]
Sent: Monday, May 26, 2008 9:50 AM
To: Cesiah Gomez
Cc: taxcutter@email.msn.com
Subject: REHEARING MOTIONS
Attachments: 2008 title appeals.doc

RECEIVED
MAY 26 2008
COLLECTOR
SECRETARY OF STATE
17

See attached and below-printed motions for rehearing of title board actions.
A paper copy will be mailed tomorrow.

Douglas Bruce

(719) 550-0010
taxcutter@msn.com

26 May 2008

State Title Board
Secretary of State
1700 Broadway #270
Denver CO 80290

Re: motions for rehearing

Dear Board,

As a registered elector in the state of Colorado, I hereby move for a rehearing on initiatives 91(a), 103, 113, and 128 on the grounds that the ballot title is not lawful. Among other faults, Article X, section 20 (3) (c) requires those titles to be in all capital letters. That requirement was upheld in Denver District Court in a 1993 case filed against the state regarding the tourism tax issue. That was a final, binding judgment that was not reversed.

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I further request that the secretary of state require that the printer's proof and printed sections for petition 95 list its ballot title in all capital letters.

Please let me know the date and time for the rehearings. In view of the distance I must travel, I request that it be no earlier than 10 a.m.

5/27/2008

Thank you for your cooperation.

Sincerely,

Douglas Bruce
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

RECEIVED

MAY 28 2008

CH: MTD: M

COLORADO TITLE SETTING BOARD

ELECTIONS
SECRETARY OF STATE

In re Title and Ballot Title and Submission Clause for Initiative 2007-2008 #113

MOTION FOR REHEARING

On behalf of Howard Stanley Dempsey, Jr. a registered elector of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title, and submission clause for Initiative 2007-2008 #113 "Severance Tax", set by the Title Board on May 21, 2008. As grounds, Dempsey states as follows:

The proposed initiative violates Colorado's single subject requirement contained in C.R.S. § 1-40-106.5 because it contains the following separate subjects:

1. An increase in the severance tax on oil and gas production in Colorado.
2. Spending mandates that are not dependent upon or necessarily connected with the severance tax increase, or one another, including but not limited to:
 - a. The severance tax trust fund;
 - b. The local government severance tax fund;
 - c. College Scholarships;
 - d. Native wildlife habitat preservation;
 - e. Renewable energy and energy efficiency enhancements;
 - f. Transportation projects;
 - g. Community drinking and water and wastewater treatment.

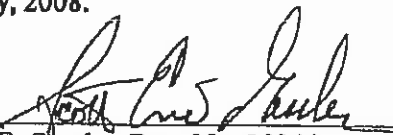
The title set by the Board is misleading, inaccurate, and incomplete for the following reasons:

1. The title is misleading because it substantially understates the size of the tax increase in the first year that the initiative goes into effect.
2. The title fails to identify the percentage of the tax revenues devoted to each new

spending mandate, thereby omitting critical information necessary to allow voters to make an informed choice.

3. The title is incomplete, because it does not accurately state that the ad valorem property tax credit is being removed.
4. The title uses the word "enhancements" as part of the spending mandate for renewable energy, which is an improper catch phrase that works to the proposal's favor without contributing to voter understanding.
5. The title is incomplete and misleading because it states that scholarships are for state colleges and universities, when in fact the definition of "higher education" excludes certain colleges, but includes occupational educational programs.
6. The title is incomplete, because it fails to inform voters that it imposes a new, five percent tax on gross income under \$300,000 when production wells meet a certain threshold, and the initiative further fails to inform voters that the new five percent tax is greater than the previous tax eliminated by the initiative.
7. The title is incomplete and misleading, because it fails to inform voters that an exemption from revenue collection and spending limits also applies to certain other revenue that may be collected and spent by the state or any district.
8. The title is incomplete and misleading, because it fails to inform voters that the measure reduces the exemption for small well producers by fifty percent.

Respectfully submitted this 28th day of May, 2008.

By: 
Scott E. Gessler, Reg. No. 28944
Hackstaff Gessler LLC
1601 Blake St., Suite 310
Denver, Colorado 80202
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(303) 534-4309 (fax)
sgessler@hackstaffgessler.com

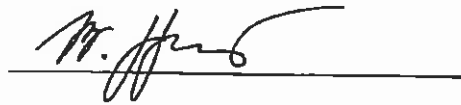
Attorney for Howard Stanley Dempsey, Jr.

Address of Petitioner:
3110 Alkire St.
Golden, Colorado 80401

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Ed Ramey, Esq.
Isaacson Rosenbaum P.C.
633 17th Street
Suite 2200
Denver, Colorado 80202

A handwritten signature in black ink, appearing to read "M. Hunt", is written over a solid horizontal line.

Cesiah Gomez

From: Barbora Hurd [bhurd@hackstaffgessler.com]
Sent: Wednesday, May 28, 2008 4:49 PM
To: Cesiah Gomez
Cc: 'Scott Gessler'; general@hackstaffgessler.com
Subject: Motions for Rehearing (#113, #123, #124)
Attachments: Motions for Rehearing 113, 123, 124.pdf

Dear Cesi,

Attached please find motions for rehearing regarding ballot initiative # 113, #123 and #124. The originals will be couriered to your office tomorrow morning. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

Barbora Hurd
Paralegal to Scott E. Gessler, Esq.

Hackstaff Gessler, LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202

ph. (303) 534-4317
fax (303) 534-4309
bhurd@hackstaffgessler.com

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Ballot Title Setting Board

Proposed Initiative 2007-2008 #113¹

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

STATE TAXES SHALL BE INCREASED \$321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST \$300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND 5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS.

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

SHALL STATE TAXES BE INCREASED \$321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST \$300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION

¹ Unofficially captioned "Severance Tax" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND
5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS?

Hearing May 21, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 5:20 p.m.

Hearing May 29, 2008:

Motions for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 7:47 p.m.

STATE OF COLORADO TITLE SETTING BOARD

Initiative 2007-2008 No. 113

EXHIBIT

tabbles®

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In the Matter of:

Rehearing for the Title, Ballot Title, & Submission Clause

TRANSCRIPT FOR:

REHEARING

DATE TAKEN:

May 29, 2008

PAGES:

1-142

REPORTED BY:

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STATE OF COLORADO TITLE SETTING BOARD

May 29, 2008

Rehearing For the Title, Ballot Title, and Submission Clause For Initiative 2007-2008 No. 113.

The rehearing for the Title, Ballot Title, and Submission Clause For Initiative 2007-2008 No. 113 commenced on May 29, 2008 at 4:24 p.m., at 1700 Broadway, Suite 270, Blue Spruce Conference Room, Denver, Colorado 80290, before the State of Colorado Title Setting Board: Daniel D. Domenico, Solicitor General; Sharon L. Eubanks, Office of Legislative Legal Services; William A. Hobbs, Deputy Secretary of State; and Maurice G. Knaizer, Assistant Attorney General.

The speakers were Scott E. Gessler, Esq., Hackstaff Gessler LLC, and Edward T. Ramey, Esq., Isaacson Rosenbaum, P.C.

Reported by: Lori A. Martin, RMR, CRR.

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1 tax. And as I understand it, the board has -- well, 2 has generally taken the expansive view of the single 3 subject but also expressed concerns that they've not 4 received adequate guidance from the Colorado Supreme 5 Court, so this may be the case that provides that 6 guidance.

7 The panel's heard many of my arguments 8 before. I'll try to be brief but nonetheless make a 9 clear record for the arguments before the -- before the 10 court. What happens here is we have a funding tax 11 increase and then multiple funding mandates and as -- 12 as the petitioner's or protestors in the last matter I 13 think properly stated, essentially the rule that has 14 been created is that as long as you have a funding 15 stream you can have disparate uses of those funds that 16 are not necessarily connected to one another or 17 necessarily connected to the -- to the funding increase 18 itself, and perhaps I should say necessarily connected. 19 Perhaps one can make a tenuous connection for nearly 20 anything through a logical chain or hypothetical chain 21 of events, but one that's not fairly connected. And in 22 this instance, we have a severance fund increase and 23 the money goes to the severance tax trust fund and 24 the -- I concede that that seems to be relatively 25 closely connected to a severance tax increase, sending

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1 WHEREUPON, the following proceedings were 2 taken.

3 * * * * * 4 MR. HOBBS: Okay. Let's resume. The time 5 is 4:24 p.m.. For the record, the Title Board for the 6 next agenda item is myself, Bill Hobbs; Dan Domenico, 7 and Sharon Eubanks. The next agenda item is 2007-2008 8 No. 113, which is before the board on motions for 9 rehearing submitted by Representative Bruce and Scott 10 Gessler on behalf of -- I don't have it in front of me. 11 So, in any event, since Representative Bruce is not 12 present, I'll just turn it over to you, Mr. Gessler.

13 MR. GESSLER: Thank you. For the record, 14 I represent Mr. Howard Stanley Dempsey in this motion 15 for rehearing.

16 MR. HOBBS: Thank you.

17 MR. GESSLER: And just -- my motion for 18 rehearing obviously focuses on both the single subject 19 and misleading title, and I'm happy to jump into single 20 subject rather than address Mr. Bruce -- or 21 Representative Bruce's concerns, if that's fine.

22 MR. HOBBS: Sounds fine.

23 MR. GESSLER: The single subject issue is 24 one that's been discussed multiple times in earlier 25 proposed ballot initiatives regarding the severance

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1 it to the existing severance tax trust fund and, 2 likewise with the local government, severance tax fund. 3 But then this matter goes on to provide 4 money or mandate money for college scholarships, native 5 wildlife habitat preservation, renewable energy and 6 energy efficiency enhancements, transportation projects 7 and even community drinking water and wastewater 8 treatment, and I submit those are not connected with 9 one another, and they're not connected with the 10 severance tax increase itself.

11 The standard, and certainly the board 12 knows it as well probably better than I, is that -- is 13 that matters that are discussed in an initiative should 14 be necessarily connected to or dependent upon one 15 another, and these are not. They're not connected to 16 one another. Certainly the spending mandates are not 17 connected to one another, and I think the reality is 18 that this board has been charged with helping make the 19 initiative process fair and by fair, I'll specifically 20 focus on the issue of log rolling. And I think 21 Mr. Ramey, in his -- Mr. Ramey, in his earlier comments 22 in other severance tax matters, you know, fairly -- 23 fairly set the issue before the board, and that is, you 24 know, this is essentially a coalition of groups or a 25 coalition of spending mandates that help a coalition of

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1 groups, and the question is, is that allowed or is it,
 2 in fact, infamous log rolling? And I'd argue that
 3 coalition rolling and log rolling are simply the
 4 opposite sides of the coin.

5 I don't mean to put words in Mr. Ramey's
 6 mouth. He may disabuse me of my characterization, but
 7 my point is that here what you have, I think, is very
 8 clear log rolling, and I think that the board should be
 9 cognizant of the fact that the rule that they have
 10 adopted in practice, at least on the earlier severance
 11 tax issues and the one just earlier with respect to the
 12 real estate transfer tax, is that essentially it allows
 13 groups to manipulate the initiative process, and that's
 14 something this board should be on guard against; and
 15 essentially, I think -- essentially what happens is
 16 that a group IDs, identifies, that it wants to increase
 17 a tax and direct the money towards a certain -- certain
 18 purpose, normally one that's connected with that
 19 group's interest, and that's all perfectly appropriate;
 20 but what it also -- what the groups also do is they
 21 craft -- they run -- they do polling. They do
 22 extensive surveying to determine what types of spending
 23 poll well within the -- within the electorates, and
 24 then they craft language for an initiative that
 25 essentially cherry-picks the polling items that poll

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1 well. So if one thing polls well, they'll include that
 2 because they'll try and collect a coalition or a group
 3 of people that would vote for this who otherwise
 4 wouldn't vote for another one.

5 So, for example, someone may vote for
 6 college scholarships. Perhaps a student who is trying
 7 to get into college, an 18-year-old student who can
 8 vote but would never vote for transportation projects
 9 because that person doesn't drive very much, so this
 10 sort of essentially log rolling approach to try to get
 11 someone to support one part of it even though they
 12 wouldn't support the general -- general approach or
 13 another part of it. And so the -- so the language is
 14 crafted to collect all of these well-polling and these
 15 popular issues and to create this coalition in order to
 16 get the issue passed.

17 And then sort of previewing my -- my
 18 comments with respect to the misleading title, I'll at
 19 least preview, I think that's even exacerbated in these
 20 titles because not only do you get these items in here,
 21 the ones that do spending for favored groups that poll
 22 well among the electorate, but then at least with this
 23 title, it doesn't tell you what percentage goes to each
 24 one of those groups. I know I've mentioned this before
 25 in other severance tax proposals. but it doesn't even

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1 discuss which groups get how much so each group is --
 2 can easily be satisfied that they're being heavily
 3 funded or a large portion funded or -- it's sort of up
 4 to their -- up to their imagination.

5 I guess going back to the -- the college
 6 student who's applying for college, you know, when
 7 you're applying for college, the world's your oyster.
 8 You can envision yourself going to any school or many
 9 schools before you actually have to choose, and by the
 10 same token, it's sort of the -- the approach that every
 11 group sees its -- its favored pet project in there and
 12 can foresee a lot of spending going to that project;
 13 and, like I say, that's exacerbated by the fact that
 14 it's -- and at least in this title, as I'll argue
 15 later, doesn't even have the percentages so you can
 16 have -- and I would submit that this opens up to the
 17 manipulation where a particular group gets 95 percent
 18 or the lion's share of money and then gives small
 19 amounts to these other groups in order to get large
 20 portions of the electorate who may not benefit all that
 21 much but at least see their favorite pet project.

22 That, I would argue, is the essence of log
 23 rolling. That's exactly what's going on here. That's
 24 what the Supreme Court has chosen to -- has stated
 25 that -- that this should not -- that this is one of the

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1 purposes behind the single subject. It's what the
 2 electorate passed and is what this board should be on
 3 guard about.

4 And then I would finally also submit to
 5 the board respectfully that by allowing this type of
 6 behavior, it does erode the -- the credibility of the
 7 initiative process and increase public cynicism that it
 8 is so open to this form of manipulation. So those are
 9 my points. I would -- I understand what the board is
 10 most likely going to come up with, but I would simply
 11 respectfully ask that -- the members of the board, if
 12 they desire, state their positions again on the record
 13 so we do have a complete record in the event of court
 14 review.

15 And after that, I'm happy to answer
 16 questions or yield the podium to Mr. Ramey, who I
 17 believe represents the proponents here.

18 MR. HOBBS: Questions for Mr. Gessler?
 19 (No response.)
 20 MR. HOBBS: Thank you. I'll turn it over
 21 to Mr. Ramey on behalf of the proponents.

22 MR. RAMEY: Mr. Chair, thank you, and I
 23 will try to be brief, as well. I'd like to
 24 characterize this a little bit differently than
 25 Mr. Gessler has on the single subject issue, and I

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1 think this is very important for the board to consider
 2 and anticipating that we will get some guidance as I
 3 think Mr. Domenico has -- has indicated would be very
 4 helpful, I think, to all of us from the Supreme Court
 5 if a title is set or title is maintained on this
 6 measure.
 7 One could view what the proponents are
 8 doing in this case, I suppose, as log rolling and that
 9 is, as Mr. Gessler put it, polling and finding out
 10 where to get support and where that might be most --
 11 where the most voting support could come. Another way
 12 to view this, and I think actually more appropriately
 13 in this and really in any case, I think, from the
 14 board's perspective, is that what is going on here is a
 15 policy decision. What's happening in this
 16 particular -- with this particular initiative is that
 17 the proponents are seeking to enhance a revenue stream.
 18 They are making a policy decision as to where the
 19 revenues from that stream should go and, more
 20 particularly in this case, they're enhancing a revenue
 21 stream from the severance of a nonrenewable resource,
 22 from the -- from the land, from the earth in the state
 23 of Colorado, and they are making a policy decision as
 24 to where the proceeds of that nonrenewable resource
 25 should be invested or how those proceeds should be

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1 invested for the good of the state.
 2 So a nonrenewable resource is being
 3 extracted. A tax, not a fee, a tax is being proposed,
 4 an enhanced tax is being proposed on that severance,
 5 and the policy decision is being made as to how to
 6 invest those proceeds for the -- for the future of the
 7 state in the best and most optimal way; and to the
 8 extent we proceed out of the Title Board and are able
 9 to gather enough signatures in a very short period of
 10 time, the people, the voters in the state will be asked
 11 to pass upon that.
 12 Our view obviously is that the single
 13 subject requirement should not be viewed to prevent
 14 that sort of policy decision when we're dealing with a
 15 single stream of revenue. I would concur with
 16 Mr. Domenico. It would be very helpful to the board,
 17 to us, to -- to opposition to measures like this, to
 18 everybody to get some guidance from the Supreme Court.
 19 The only guidance that we have at all on point to date
 20 is -- well, actually, we have a number of things. Most
 21 of it is really in the context of the issue not being
 22 raised very well. It was raised in 13 and 14. The
 23 court did a summary affirmance of the Title Board's
 24 actions after they went ahead and set a title. That's
 25 of limited guidance to the board in the future. but,

11

1 nevertheless, there is an indication there, I think,
 2 both of how the board at that time felt about this kind
 3 of measure and how the court felt.
 4 We do have provisions in the past such as
 5 the tobacco tax which invested money not only in
 6 tobacco education but health care for the poor and
 7 other items such as that, some of the money going to
 8 the General Assembly. I'm not sure this issue was
 9 raised quite as effectively as it's being raised today
 10 in that context, but, nevertheless -- at that point or
 11 if it was raised at all, but, nevertheless, that -- you
 12 know, that measure did proceed with the title. The
 13 board didn't seem to have too much difficulty with
 14 that. I would advocate to the board that it is
 15 important, when we're dealing with a single revenue
 16 stream to permit policy decisions as to the dedication
 17 of that revenue to be made in a fashion that doesn't
 18 artificially constrain those decisions in a way that I
 19 don't think the single subject requirement was ever
 20 intended to do.
 21 But I would concur with Mr. Domenico that
 22 if the board maintains its title, I'm quite confident
 23 that Mr. Dempsey and Mr. Gessler will present this
 24 matter to the Supreme Court and hopefully you will get
 25 some more guidance on that issue or perhaps we will get

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1 some more guidance on this issue, and I have really no
 2 further comments on the single subject issue unless the
 3 board has any questions for me.
 4 MR. HOBBS: Any questions or comments?
 5 Mr. Gessler?
 6 MR. GESSLER: If I may just make one brief
 7 comment with respect to 13 and 14. I would agree with
 8 Mr. Ramey that the issue was more starkly presented
 9 here. If I remember correctly in the briefs before the
 10 Colorado Supreme Court on Nos. 13 and 14, the argument
 11 was that both educational and local severance funds
 12 were directly connected to the impacts caused by oil
 13 and gas exploration and -- and I think in this instance
 14 there isn't a -- that strong a nexus. This argument is
 15 that there's a policy decision on what to do with the
 16 revenue stream, not necessarily that these are
 17 connected to one another based upon the severance
 18 drilling itself -- I'm sorry, severance tax on oil and
 19 gas drilling.
 20 So I think this is a little bit more
 21 starkly presented than Nos. 13 and 14 and for that
 22 reason, 13 and 14 does not serve as a very good
 23 precedent here; and, of course, as we learned in
 24 proposed Initiative No. 55 about two years ago that the
 25 summary affirmance by the Supreme Court also doesn't

13

1 provide any precedential value.
 2 MR. HOBBS: Thank you.
 3 MR. RAMEY: Mr. Chair, may I respond
 4 briefly just to that?
 5 MR. HOBBS: Yes.
 6 MR. RAMEY: And I do agree with regard to
 7 the limited precedential value. I think that's
 8 correct. With regard to 14, I would remind the board
 9 that some money was going to the impact on communities.
 10 Some of the proceeds were going into the education
 11 fund, state education fund. Some were going into
 12 capital construction projects. Some was going to the
 13 General Assembly. 13 was more constrained, but 14
 14 really did have a number of uses, not quite as broad
 15 as -- as the present initiative, but it did have a
 16 number of uses, and that issue was raised, I'm sure
 17 perhaps not briefed as well as Mr. Gessler will do it
 18 this time around, but the issue was raised and neither
 19 the board at that time nor the court seemed to have any
 20 difficulty with that.
 21 MR. HOBBS: Thank you. Do we want to
 22 discuss single subject? Mr. Gessler?
 23 MR. GESSLER: Mr. Ramey and I both agree
 24 on the desirability of -- of a Supreme Court review or
 25 at least additional guidance. I would ask for -- if

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1 members of the board still agree with that, to at least
 2 put it on the record so I don't have to provide initial
 3 transcripts to the Colorado Supreme Court which points
 4 out that the board itself is seeking guidance or at
 5 least some members of the board have sought guidance on
 6 this particular issue.
 7 MR. HOBBS: I did -- I did want to open up
 8 to -- at the appropriate point for board discussion for
 9 purposes of making whatever record you may want to
 10 provide, and we could move on and have that at the end;
 11 but at this point, if we want to go ahead and discuss
 12 the single subject issue, I suggest we go ahead and do
 13 that.
 14 Ms. Eubanks?
 15 MS. EUBANKS: I'll start. I'm still of
 16 the mind that this measure contains a single subject.
 17 I agree that, you know, at some point, does it cross
 18 the line in terms of the various purposes for which a
 19 revenue stream can be dedicated in terms of single
 20 subject. I don't know. From the legislative
 21 perspective, I've seen a revenue source be used for
 22 multiple purposes, totally similar to what's in 113 in
 23 terms of different types of programs that on their face
 24 don't seem to be connected among themselves.
 25 The single subject requirement is an

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1 outgrowth of the legislative single subject for bills
 2 and the fact that we're required to apply, by statute,
 3 this standard as to legislative measures. At this
 4 point, I'm -- I'm not willing to say that this is log
 5 rolling. Whether or not we get some guidance from the
 6 court -- I think that would be extremely helpful, but
 7 at this point, my position is that the measure contains
 8 a single subject and I remain where I was when we
 9 originally started this measure.
 10 MR. HOBBS: Mr. Domenico?
 11 MR. DOMENICO: Well, I -- I -- the more I
 12 see of these, the more troubled I think I am by the
 13 entire thing. I mean, I don't think it's possible,
 14 really, to imagine a clearer case of log rolling than
 15 this. I mean, it's essentially the definition of log
 16 rolling. The tax itself has one -- has two purposes
 17 behind it. It seems clear to me -- and raising money
 18 is the -- is probably a secondary purpose to making it
 19 more expensive to drill and extract oil and gas, which
 20 I think is a motivating purpose pretty clearly of a lot
 21 of the proponents, to raise the cost of -- of
 22 severance. The revenue stream is sort of related to
 23 that.
 24 And then in order to gain support for
 25 doing those two things, I mean, it's clear in the --

16

1 maybe not here, but in the papers the proponents of
 2 these measures have made clear that they try to figure
 3 out who they need to get on board to support a tax
 4 increase; and, I mean, I think if this were the inverse
 5 and someone came in and said we would like to eliminate
 6 the following state programs: the severance tax trust
 7 funds, the local government tax trust fund, college
 8 scholarships, any program that supports native wildlife
 9 preservation, any program that supports renewable
 10 energy and energy efficiency enhancements, any state
 11 funding for transportation or any state funding for
 12 drinking water or wastewater treatment, I mean, it
 13 would be quite clear that that violates the single
 14 subject.
 15 And so the fact that you've got it flipped
 16 around and you're saying we want to increase money on
 17 these -- you know, increase spending on these, how
 18 adding the additional purpose of adding a tax onto all
 19 the -- all of it eliminates the single subject problem
 20 is difficult to see.
 21 That said -- so sort of as a matter of
 22 first principles, it seems pretty clear to me that this
 23 is -- violates the single subject prohibition or single
 24 subject requirement. But as a matter of applying our
 25 obligation to interpret the initiative process and

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1 limits on it liberally to allow initiatives wherever
2 possible and sort of as a matter of stare decisis, if
3 you will, based on our previous decisions, until the
4 Supreme Court says that what we've been doing on these
5 sorts of things is wrong, I think I'm going to continue
6 voting for them even though I, as a matter of first
7 principles, can't imagine what the single subject
8 requirement is for if it's not to prevent this sort of
9 log rolling.

10 But that said, it's not really quite my
11 job just to impose my own interpretation on everybody,
12 and so I'm going to continue voting for them for now.

13 MR. HOBBS: And I -- I have to agree
14 essentially with the comments that Ms. Eubanks made.
15 I -- I think this really is a difficult issue. I
16 can -- I can see how one could view this as a classic
17 example of log rolling or I can see how one can view
18 this as quite the opposite, that this is a situation
19 where proponents want to increase revenue, increase
20 what government does and increase a tax, and that's
21 what this subject is. And like the income tax or other
22 taxes, they may go to multiple purposes, and I don't
23 know exactly how to square those since it depends on
24 how you look at it or maybe how it originated, which --
25 and I'm not comfortable for the Title Board to inquire

18

1 into the origination of language where, you know, in
2 the sense it leads to inquiring into the motivations of
3 proponents.

4 I guess where I -- where I come down on
5 this as being influenced is, as Ms. Eubanks pointed
6 out, that this is an outgrowth of the single subject
7 for bills, and the legislature referred the actual
8 single subject amendment for initiatives to the voters
9 and adopted companion legislation, which is now Section
10 1-40-106.5, where the General Assembly explained that
11 they intended that this would extend the single subject
12 role that was applicable to bills to initiatives, and
13 in doing so intended to protect initiatives from the
14 kinds of practices that the single subject requirement
15 for bills was intended to protect, and that includes
16 things like log rolling.

17 So I -- I don't -- on the one hand, as
18 Ms. Eubanks said, it seems like the General Assembly
19 could refer a measure raising the income tax and it
20 might have, by necessity, raised the income tax used
21 for many different purposes. That -- I don't view that
22 as a violation of the single subject requirement for
23 bills. It seems like citizens should be able to do
24 something like that, as well.

25 The fact that it may be viewed as log

19

1 rolling, you know, the constitution doesn't prohibit
2 log rolling, per se. It just says that the single
3 subject is there to protect against those kinds of
4 practices. So, to me, that kind of envelopes our
5 judgment about whether something is a violation of the
6 single subject but it doesn't control it. It's not a
7 prohibition of log rolling, and that -- maybe I'm
8 drawing too fine a distinction, but I'm trying to be
9 faithful to the legislative origins of the single
10 subject requirement, not the log rolling prohibition,
11 and that's -- like I say, I think -- I can see you look
12 at this in two completely opposite ways, but at this
13 point, based on the precedent we have including No. 14
14 and previous measures that I think increased taxes that
15 went to more than one purpose, I, at this point, still
16 am under the belief that this probably qualifies as a
17 single subject.

18 MR. DOMENICO: Can I just respond to a
19 little bit of what you said? I mean, what you said
20 were the two possible ways to look at this, if I
21 remember right, or is -- one is that it's the obvious
22 case of log rolling and the other permissible or
23 optimistic way of looking at it is that the people just
24 want to expand what government does and give government
25 more money, which I suppose is theoretically possible

20

1 that there are some people that just -- that's -- they
2 just generally want more government, but the idea that
3 that satisfies the single subject requirement that you
4 can then say, Well, we just want the government to do
5 more and have more money and then -- I mean, that might
6 be fine if all you did was raise the income tax or
7 create a new tax just because you think the government
8 ~~doesn't have enough money; but when you then specify~~
9 completely unrelated to one another purposes for which
10 the money is going to, you, I think, then make it
11 pretty clear that that's not, in fact, what's going on
12 and you're -- the reason that you specify those things,
13 if the only explanation is that you have more purposes
14 than simply providing more money or expanding the
15 government's role and that it's specifically to provide
16 money for these certain preferred programs and if those
17 purposes -- if those programs have no real relationship
18 to each other or to the tax, then the only connection
19 they have to each other is as a way to get support for
20 raising the tax, and I just -- unless we're going to
21 say that -- which is effectively, I think, what we have
22 said, that once the government -- once you're saying we
23 want more money for the government, you can do whatever
24 you want with it and you'll never violate the single
25 subject requirement. I don't see how you can say that.

21

1 Unless that's the line you're drawing, I don't think
 2 that you can uphold this one and that's effectively the
 3 line, I think, we've adopted; and, as I say, I'm not
 4 sure as a matter of first principles that complies with
 5 the single subject requirement, that is a matter of
 6 interpreting all of the provisions liberally and is a
 7 matter of not only our own precedents, but I agree that
 8 some of the precedents from the legislative history
 9 inform my decision to vote in favor of it even though,
 10 if I were starting from scratch, I probably wouldn't.
 11 MR. HOBBS: Well, Mr. Domenico, let me --
 12 let me ask for the sake of maybe helping me understand
 13 that just a little better. I'm -- I -- let me back up
 14 by saying my -- my simplified way of sort of explaining
 15 what the progression of thought that I have here is,
 16 number one, I think the General Assembly could have a
 17 bill to increase income taxes and that's all it did.
 18 Now, under TABOR, it would have to be referred to
 19 those, but it would be a simple bill to increase income
 20 taxes without any specification of the purposes and,
 21 therefore, it would go into the -- the revenue, I
 22 think, would go into the general fund and it would
 23 serve all of the purposes of state government that are
 24 currently served by the general fund presumably, so any
 25 number of purposes

22

1 And if the legislature can do that, I
 2 think citizens can do that, citizens could have an
 3 initiative to do the exact same thing, and I think
 4 that's one of the purposes of the initiative where the
 5 legislature fails to act or acts contrary to the
 6 people's will is people reserve the right to do -- have
 7 an initiative to do the very same thing.
 8 What I think I hear you saying is that
 9 that's maybe okay, but what they better not do is limit
 10 the use of revenue to -- they could limit it to one
 11 purpose or they could leave it at all purposes, but
 12 they can't pick and choose the purposes. Is that
 13 correct?
 14 MR. DOMENICO: That's about right. I
 15 mean, I can see -- as I think I've said before -- well,
 16 let me say, pretty much everything you said I agree
 17 with completely. The legislature could refer a tax
 18 just to raise money and can refer a tax for one
 19 purpose, and the same analysis would apply to an
 20 initiative. The problem is when you start specifying
 21 unrelated purposes. I do think it might be possible,
 22 under the single subject requirement, to limit it to
 23 more than one fund or specific -- limit the use of the
 24 revenue stream to more than one specific fund or type
 25 of thing as long as there -- all those purposes are at

23

1 least related to each other, which is why I probably
 2 have less of a problem with the housing initiative than
 3 with this. Or they're related to the activity that
 4 you're taxing and especially to impacts caused by that
 5 activity.
 6 So in some of the earlier severance tax
 7 ones, there was at least an argument to be made that,
 8 well, you're trying to offset some of the environmental
 9 costs or some of the costs when you extract a
 10 nonrenewable resource from a -- a local county, you're
 11 sort of taking away a resource that that county could
 12 use, and so you give money to the local government.
 13 But here you've got transportation that -- that I don't
 14 think can be related to it. College scholarships, I
 15 think, clearly is not related to it.
 16 When you start doing that, as I said,
 17 there's no difference to me -- well, in fact, if there
 18 is a difference between that and someone coming in and
 19 saying, I want to slash spending for all these
 20 different types of programs, I don't see the difference
 21 from a single subject standpoint when you add in
 22 that -- when you flip it around and say you're adding
 23 money to these and, in addition to that, you're
 24 creating a new tax which itself has two purposes, which
 25 I think is perfectly fine, but the two purposes are

24

1 both to increase the cost of oil and gas exploration
 2 and to raise money for the government, which that part,
 3 I think, is fine, but adding that onto the -- to
 4 changing how much money you spend on certain projects,
 5 certain state programs, I don't see how that solves the
 6 single subject problem.
 7 And so, yes, the answer to your question,
 8 I think, is yes. The problem I have is when you start
 9 dedicating streams to certain preferred projects that
 10 have nothing to do with each other or the activity
 11 being taxed. That, to me, is log rolling, and it's
 12 true that the log rolling isn't specifically
 13 prohibited, but what's prohibited is anything that
 14 practices like log rolling; and so I would think that
 15 that would be one of our more obvious ones. But, as I
 16 said, it's not easy, but you do run into difficulty
 17 sometimes, I think, drawing lines, but that's -- that's
 18 where I am, that the reason -- the only reason, really,
 19 to throw this in is to get a coalition of groups
 20 together who might otherwise not support the tax, and
 21 so that's the problem, I think, and it really is -- if
 22 you're going to have a single subject requirement,
 23 that's the reason to have it. Whether it's a good idea
 24 to have a single subject limit, I'm not sure, but we
 25 do.

25

1 MR. HOBBS: And if you're correct, it does
2 strike me that -- that that view of the single subject
3 rule for initiatives would have to apply to the single
4 subject rule for bills, and I don't see any difference,
5 but -- and maybe it should. Maybe -- because --
6 because the single subject rule for bills was intended
7 to protect against such practices as log rolling, as
8 well.

9 MS. EUBANKS: True.

10 MR. HOBBS: I think that would be a
11 surprising result, but maybe that will be a result.

12 With that discussion of the single subject
13 issue, Mr. Gessler, would you like to continue with
14 your motion for rehearing?

15 MR. GESSLER: Certainly.

16 MR. HOBBS: And I might -- by the way,
17 just relating to what I said about single subject and
18 what you're about to say, I -- I am, at this moment, a
19 little more inclined to go along with what I think is
20 Mr. Domenico's position and throw in some percentages
21 here in part because I think it does potentially
22 mitigate the potential log rolling issue if voters know
23 the share of the pie.

24 And that probably is not an accurate
25 representation of Mr. Domenico's position, but I -- I'm

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1 beginning to see at least some benefit in the titles to
2 consider explaining what the -- what these sizes of the
3 piece of the pie are going to be. So anyway,
4 Mr. Gessler?

5 MR. GESSLER: And -- and I do want to
6 thank the board very much. I mean, that was a very
7 thorough discussion, and I do appreciate that.

8 With respect to the size of the fiscal
9 impact for the note, I've prepared an analysis similar,
10 but more refined than the one I provided approximately
11 a month ago and I do have exhibits for the -- for the
12 board. I'll try and move through this in a brisk
13 fashion, but please stop me if -- if my reasoning does
14 not make sense to you or if you have certain questions
15 about it.

16 So to begin with, if I may approach the
17 board, I have three spreadsheets -- well, let me start
18 with just one spreadsheet, and I'll -- one copy for
19 each member of the board. So to begin with, this is
20 the -- this is the summary sheet of the calculations,
21 and I have a couple backup sheets and -- that explain
22 the assumptions, but the general framework is this: Ad
23 valorem tax -- I'm sorry, currently, the initiative
24 removes ad valorem credit, and the ad valorem credit is
25 based on property taxes paid the and property taxes

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1 that are paid are based on the value of the oil or gas
2 that are extracted. So, in other words, the -- the
3 value of the property, real property, is directly
4 proportional to the value of the oil and gas that has
5 been removed that year.

6 So what happens -- and the way the tax
7 works is that you have a valuation, for example, a 2005
8 valuation, and based on that valuation, you have
9 certain taxes that are paid. And so what I have is a
10 2005 property valuation and the taxes paid in 2006,
11 which is 315 million, and so what I've done is put
12 together the property valuations for 2005 through 2008,
13 and those derive the taxes paid for 2006 through 2009,
14 and the 2009 taxes are the ones that will actually be
15 paid, property taxes that will be paid under the
16 current regime for 2009 based on the 2008 values.

17 What I did there is I allocated 92 percent
18 of that to real property taxes. In other words, I
19 removed the improvements and removed the personal
20 property that form oil and gas property taxes, because
21 the ad valorem tax credit only applies to real
22 property, and then the ad valorem tax credit is only
23 87.5 percent. It's not 100 percent of the property
24 taxes paid. So you're only getting 87.5 percent.

25 So I took 87.5 percent of that, and I'd

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1 like to stop right there so we can focus on the ad
2 valorem, and then I'm happy to go to the stripper
3 wells. So my numbers -- where I received the numbers,
4 if I may approach again, for the assessed values and I
5 tried to use government data in all instances here --

6 MR. DOMENICO: Can I just ask you a
7 question before we get too deep into the math? And
8 avoiding the math is not my primary motivation for
9 this, but is it your position that -- that whatever
10 number -- that the number we put in there is irrelevant
11 to the size of the tax that people will pay?

12 MR. GESSLER: Yes. I -- I know we've had
13 this discussion before. I have changed -- I have come
14 to -- well, my view on this is that if a certain tax is
15 placed on the ballot initiative, that that's the
16 maximum amount that the state can collect and any
17 additional amount that it collects needs to be
18 refunded, and I think the board has expressed or
19 members of the board at least have expressed their
20 opinion on that interpretation, which I agree with,
21 well, then why do we care what the -- why do we need to
22 go into all this math?

23 MR. GESSLER: Because it's the board's
24 duty to do that.

25 MR. DOMENICO: Well, no, it's not. If we

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1 put \$10 in there and you -- and they collect all this
2 money, it just means that there's a pain in the -- I
3 mean, it's our duty to write in that first sentence how
4 much more in taxes people are going to pay in the first
5 year and if -- and if we all are in agreement that it's
6 a tautology, that whatever number we write in there is
7 how much the taxes are going to go up in the year, then
8 we don't have to get into the math, right?

9 MR. GESSLER: Well, I would slightly
10 disagree with you. Whatever number you put in there is
11 a cap on how much the taxes go up and -- in the first
12 year only. It's not how much they will go up. It's a
13 cap on how much they can go up, and I think the reason
14 why is that the -- the purpose of this is to provide
15 voters notice of the maximum amount that's going to be
16 increased.

17 I understand that members of the board
18 have expressed the opinion that the proponents can
19 simply choose whatever number they desire and it goes
20 in. I -- I'm willing to address that right now, if you
21 want to listen to that before going into these.

22 MR. DOMENICO: Yeah. I mean, I really
23 don't understand. If they wanted to come in and say,
24 shall taxes be increased by 700 billion, trillion
25 dollars, well, then that would, as you say, set the cap

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1 for how much in the first year it could be raised, and
2 the reason that they are -- they would prefer not to do
3 that is because it is a big, scary number; but if they
4 put in a number that's too low, then what -- who cares?
5 Then that just means that -- that the cap will come
6 into effect and the taxes will be raised by 321.4
7 million annually rather than the number you come up
8 with, and so the number we put in there is -- unless
9 you come in and say it's really going to raise a lot
10 less than this, then we might have an accuracy problem.
11 But it's accurate as it's written, right, unless the
12 number comes in lower than that?

13 MR. GESSLER: Well, I think the response
14 is a couple fold. First of all, the proponents do not
15 have the right to come in here and put whatever number
16 they want in. I don't think there's any statutory or
17 constitutional authority that allows them to do that.
18 If they want to do something like that, they could
19 certainly write an initiative that says taxes will be
20 increased by 5 percent on the ad valorem and the
21 stripper well production but no more than, and they
22 choose their number. They do that as part of the
23 initiative. They take that initiative, proposed
24 initiative to review and comment where it provides
25 public notice because the cap that they want to put on

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1 it is a substantive part of their proposal. It has to
2 go through review and comment, and then it comes before
3 the Title Board.

4 But what -- essentially the approach to
5 allow the proponents to put whatever number they choose
6 in there, it allows them to make a substantive and a
7 very substantive change or modification or perhaps an
8 initial -- however you want to characterize it -- an
9 initial draft of a very substantive provision of the
10 initiative without going through review and comments,
11 without going through review and comment and without
12 any authority that allows them, that authorizes them to
13 be able to do that as part of the Title Board process.

14 So I -- I think that, you know, from that
15 standpoint, I mean, first of all, it's unfair, I think,
16 to other folks looking at this analysis to simply say,
17 well, whatever the proponents do and we'll spring that
18 on them, you know, at the Title Board hearing and the
19 proponents can listen to what the -- what the
20 opposite -- or OSPB says or they can ignore what they
21 say, but it's up to them.

22 MR. DOMENICO: Well -- but wait a minute.
23 I might agree with you that it would be better to put
24 the money -- the number in there at the beginning
25 rather than at the end, but how does adopting your

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1 numbers do anything better than that? I mean, we're
2 just adopting -- at least people have had two weeks to
3 look at the other number. If we adopt your number, all
4 of a sudden there are no opportunities beyond the next
5 few minutes to comment on that number.

6 MR. GESSLER: Well, I think that -- and
7 perhaps I'm misconstruing the board's view on that, but
8 I -- but I do believe that the board -- we addressed
9 this exact issue that the board can consider additional
10 analysis with respect to the fiscal impact number at a
11 motion for rehearing for people who are -- who don't
12 believe that it's proper. And the motion for
13 rehearing -- the purpose for the motion for rehearing
14 is to provide notice to people to be able to respond to
15 that, and we provided certainly the notice that we
16 would be challenging this particular number at the
17 motion for rehearing, and I understand that was
18 yesterday. That's in part due to the constitution --
19 or I believe it's a statutory mandate for an
20 accelerated review process. Normally, this would be
21 a -- this would be a two-week process that people would
22 know what -- that there's going to be a challenge to
23 the actual number, and I think it's appropriate to be
24 able to allow the people to challenge that particular
25 number and to have the Title Board review that matter.

1 and I -- and along those lines, I would argue that it
2 is the Title Board's responsibility to at least make a
3 fair effort to put in an accurate number there as to
4 what it's going to raise.

5 MR. DOMENICO: But what I'm saying is it
6 is accurate, right, if it's going to raise -- if the
7 cap is 321.4 and it raises more than that, then there
8 will be -- the money will -- the tax will stop being
9 collected or however it will work? It'll be refunded
10 and so that number essentially, by definition, by
11 operation of how TABOR works, is accurate.

12 MR. GESSLER: Well -- and in that effort,
13 I would argue that that particular argument is a
14 tautology, that whatever is accurate is what the board
15 chooses. I think the board needs to have some fair and
16 reasonable standards for choosing what that number
17 should be. It's not simply an arbitrary choice by the
18 board saying, well, we think this particular -- this
19 particular matter -- for example, a hypothetical in
20 this instance: We think that the severance tax in this
21 particular instance should only be raised by a hundred
22 million or we estimate, because we want to, that it
23 will be raised by \$100 million and it's accurate, so,
24 therefore, we can do it and there is no appropriate
25 challenge because it's accurate

1 MR. DOMENICO: Well, where do you get the
2 authority for -- that we're obligated to pick the
3 number that -- I mean, to pick any other number? I
4 mean, where is the authority that says we have to pick
5 a number that's come up with by using your methodology
6 versus using the OSPB's methodology or by picking a
7 number out of a hat or by -- I mean --

8 (At this time Mr. Knaizer left the room.)

9 MR. GESSLER: I believe it's inherent in
10 the board's authority and responsibility to make
11 good-faith efforts to calculate what the tax is going
12 to do and inform voters of that, and the purpose of the
13 TABOR cap is to prevent the cap from being too high or
14 that number from being too high because this was the --
15 because that was a policy decision incorporated into
16 TABOR.

17 But, if you remember, also in TABOR is
18 that -- and I'm sorry I don't have that in front of me,
19 but I believe that the board -- that the board should
20 take the highest number that it thinks is reasonable
21 and now it -- and now certainly the board is willing
22 to -- is welcome to reject my analysis and say it's not
23 reasonable, you know, based on its thoughtfulness, but
24 I -- but I do think that the board should at a minimum
25 consider this. and -- at a minimum. and I -- I

1 understand that it's not fun being -- you know,
2 analyzing economic analyses, but at a minimum consider
3 this matter and at a minimum use good-faith efforts to
4 provide an accurate number as to what they think that
5 this -- that it is going to operate to do.

6 And that the -- and that the cap in
7 particular is a notice provision, not a -- it's not
8 something that grants proponents an unfettered ability
9 to pick and choose whatever number they want nor is
10 it -- nor does it grant the Title Board or does it
11 change the Title Board's normal procedures of making a
12 fair and honest effort to come up with the most
13 accurate numbers that they can.

14 MR. DOMENICO: No, but it is accurate.
15 It's a cap. It effectively caps the money, I mean,
16 that the state can bring in, and that's what we do. We
17 almost never get into trying to figure out what the
18 effects of anything are going to be, which is what your
19 analysis requires us to do, to say, well, if this --
20 the valuations are going to be this -- I mean, it
21 really is a totally different procedure now, so
22 obviously I'm not going to agree with you on that
23 point, but I -- so maybe I'll move on to something that
24 I think troubles me, and that is -- is something I'd
25 like to hear everybody discuss. It's not the first

1 year issue, because I think whatever we put in there
2 the first year is accurate no matter what number it is
3 because it is a cap.

4 I do wonder what happens after the first
5 year because the way these are written it should
6 just -- I mean, if the language were taken literally,
7 the cap of 321.4 or whatever number we put in there
8 would not just apply to the first year. It would be a
9 cap effectively forever, and that, I don't know, is
10 how -- I don't believe that's how TABOR votes are
11 typically interpreted, and so that's where I'm curious
12 if you might be able to convince me that we have a
13 problem using that number because it implies that it
14 will never -- not only in the first year, but it will
15 never go above that amount.

16 And maybe I'm wrong and maybe that is how
17 it should be interpreted, but do you -- does anybody --
18 maybe it's better to ask the proponents how much they
19 think they'll be allowed to take in in future years
20 given the numbers we use, because I'm not clear on
21 that, and that does really cause me a lot of the
22 problems you've brought up that maybe if that isn't
23 really a cap, an annual cap but just a onetime cap,
24 then I do have a problem with it.

25 MR. HOBBS: Ms. Eubanks. would you like to

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1 comment?
 2 MS. EUBANKS: And I don't know that I'll
 3 be very helpful. As far as I know, there hasn't been
 4 any judicial interpretation of the provisions, so in
 5 terms of everyone having their own opinions of what
 6 this means -- but the provision that's of issue here in
 7 TABOR, which is in subsection 3(c), where it has the
 8 mandatory ballot language where you have to fill in the
 9 blank, it starts out -- that provision starts out by
 10 saying, except by later voter approval, if a tax
 11 increase or fiscal year spending exceeds any estimate
 12 in B-3, which is the estimate that's actually in the
 13 notice that has to be sent out, which I assume would
 14 probably be based on the estimate that's in the ballot
 15 language, it says, if it exceeds that amount for the
 16 same fiscal year, the tax increase is thereafter
 17 reduced up to 100 percent in proportion to the combined
 18 dollar excess and the combined excess revenue refunded
 19 in the next fiscal year.

20 So in terms of -- and this is only my
 21 guess of how this would work, but the reason why the
 22 ballot language talks about first or phased-in final,
 23 full fiscal year dollar increase is that that first
 24 year you have a number, and whether it's, you know, 321
 25 million -- and if the revenue comes in above that

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1 amount, then this other provision of TABOR requires the
 2 tax rate, the 5 percent, let's say, in this measure to
 3 be reduced so that it's actually only producing the 321
 4 million, I mean, in theory.

5 MR. DOMENICO: Forever?

6 MS. EUBANKS: In theory, right, and so
 7 that's sort of my understanding. Now, the other aspect
 8 of that is that when you look at the spending limits
 9 for the state, for locals, whatever, you basically
 10 get your previous fiscal year spending adjusted for
 11 growth, which was age, population and inflation, plus
 12 voter-approved revenue changes, and at least it's my
 13 perspective that voter-approved revenue changes don't
 14 get adjusted by the growth factors, so it's only your
 15 fiscal year spending, and so voter-approved revenue
 16 change is that dollar amount.

17 So I think in theory, that that's at least
 18 one way it could work. How -- how it works out in the
 19 real world and whether anybody's ever run into this in
 20 terms of -- I don't think from the state perspective
 21 I'm aware of that. As to whether any local government
 22 has ever come in to have -- have this come into play, I
 23 don't know, but that's -- that's what it says. So I
 24 think at least that's one theory of how you get to that
 25 dollar amount in the out years is because it says if

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1 you're generating more that first year, then you have
 2 to reduce your tax rate in order to generate the amount
 3 that you set.

4 MR. DOMENICO: And that's -- it's hard to
 5 read TABOR and especially hard to read the required
 6 ballot language in TABOR as allowing anything else
 7 other than that. I mean, I don't see how you could say
 8 shall taxes be increased by any number we put in there,
 9 however we arrived at it, and allow it to -- unless you
 10 added some additional language saying it can be
 11 increased for inflation or -- and whatnot, which would
 12 be hard to do but may be possible.

13 My interpretation is that that would be a
 14 cap in perpetuity and if you wanted to raise more money
 15 than this number annually, you'd have to have another
 16 measure, which I'm not sure makes Mr. Ramey happy and
 17 I'm not sure it makes Mr. Gessler happy because it
 18 means I'm still right back where I was, which is
 19 whatever number we put in there is accurate by the fact
 20 that we put it in there and it reinforces why that's
 21 true because it puts Mr. Ramey in a difficult position
 22 because if that's a hard cap, then he can pick what
 23 number he wants in there and if he picks too low in
 24 order to make it easier to pass, then he runs up
 25 against this perpetual cap. And if he picks too high,

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1 then perhaps he'll be voted down, and I have
 2 difficulty -- and so in that sense, TABOR, in its
 3 strange way, makes sense, and it's hard to make sense
 4 of it any other way, but that's sort of where I am on
 5 that.

6 MR. GESSLER: I'll yield the podium to
 7 Mr. Ramey, but I will, with the board's permission at
 8 least perhaps continue the discussion about whether he
 9 has the right to -- or any proponent has the right to
 10 simply choose what cap it desires.

11 MR. HOBBS: Mr. Ramey.

12 MR. RAMEY: Mr. Chair, I just -- don't
 13 worry about this, okay? Independently, and I feel
 14 actually good about this, my interpretation is quite
 15 similar to Ms. Eubanks' and the board can take me on
 16 faith. I didn't just decide that while listening to
 17 her. I've actually kind of reached the same conclusion
 18 struggling with the language of TABOR.

19 I -- I think what TABOR would require us
 20 to do, if we are low in this estimate, is, A, a refund
 21 and, B, an adjustment of the tax rate. That's the
 22 thing that makes sense, which will have an effect on a
 23 going-forward basis. I'm aware of no decisions that
 24 have said that. I'm aware of no situation where this
 25 has come up before any court to date. I suppose

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1 someday it will, and how you adjust the tax -- I would
2 say I'm not quite sure that's particularly clear. How
3 do you adjust the rate? Do you adjust, in our
4 particular case, the removal of the ad valorem credit?
5 Do you do something else? Do we have the option?

6 At this stage, I don't know, but I think
7 there is a going-forward effect that our
8 underestimating would cause. I think that's the only
9 logical way to read TABOR, and I guess I agree with
10 Mr. Domenico on that, as well. I -- I don't see 321.4
11 as becoming a cap in that then the second year 321.4 is
12 a cap and the third year it is, but I'd like to defer
13 that discussion.

14 You know, I think we're in a bit of a moot
15 scenario right here because we don't really have a
16 factual situation to pose, but there is a consequence
17 to the proponents of being low.

18 Having said that, I am not suggesting to
19 the board -- and maybe Mr. Domenico is right. We could
20 come in here with any estimate we want. We could read
21 tea leaves and come in with an estimate. I'm not going
22 to argue that the proponents don't have the
23 responsibility of behaving in good faith before the
24 board and the board doesn't have the responsibility of
25 having some rationale arguably, hopefully accepting

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1 the -- deferring to the proponents to some degree with
2 regard to that number, bearing in mind the consequences
3 the opponent's will shoulder by being off on their
4 number.

5 Also having said that, I would request
6 that the board -- and this may be the last thing you
7 want to hear from me. Permit Mr. Gessler to complete
8 his presentation, however the board may feel about this
9 particular issue. He has gone to some effort. We have
10 obviously adopted the upper end of a fairly large
11 continuum that the Office of State Planning and
12 Budgeting proposed. We took their top number with
13 quite a spread that they presented as -- as possible
14 outcomes of the first year's tax, but I think
15 Mr. Gessler should be permitted to put his rationale on
16 the record, at least, whatever the board decides to do
17 with it, and not be prohibited from -- from doing that.

18 MR. DOMENICO: Can I ask you one question?

19 MR. RAMEY: Yes, please.

20 MR. DOMENICO: I think you skipped over
21 what my big question is, which is what happens in years
22 two through infinity because, to me, if that number
23 doesn't apply annually, then how do we set -- annually,
24 to me, means -- annually means more than just the first
25 year. How do we write an accurate title? How can

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1 the -- any number we put in there be accurate if the
2 tax will increase 321.4 million the first year and 400
3 million the second year or 645 million the second year?
4 How is that title accurate if that's what TABOR is
5 taken to mean?

6 MR. RAMEY: Mr. Domenico, all I can do is
7 guess, as Ms. Eubanks says that she was doing and I
8 think all of us can do, because I don't know of any --
9 that this has ever been addressed in a judicial forum
10 as yet. My guess -- and it's purely a guess and it's
11 no better than yours or anybody else's in the room. My
12 guess is that we would be required to lower the tax in
13 some fashion or another -- in addition to refunding the
14 overage the first year, we would be required to lower
15 the tax so that it would have generated the number that
16 we predicted that first year and then the tax stays
17 lower --

18 MR. DOMENICO: Okay.

19 MR. RAMEY: -- from that point on. Now,
20 that is a guess. Don't let me interrupt. I may argue
21 a different position.

22 MR. DOMENICO: Sure and I may end up
23 having to defend a different position in court myself,
24 but the -- the question, I guess, is is it really the
25 intent of the proponents to raise more than that number

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1 in the future or do they intend -- because then I
2 really do have a problem with a low estimate and would
3 want to err on a really high estimate because it would
4 be misleading otherwise, and everything I've said about
5 you guys being able to pick whatever number you want I
6 would have to retract, because I think it really
7 would -- is misleading if that's what we're saying.

8 And so I guess that's -- my question is do
9 you intend to raise more than \$321.4 million in any
10 year?

11 MR. RAMEY: Mr. Domenico, I mean, that
12 question can't be answered, because that is dependent
13 upon the revenue that's produced by the -- by the
14 production of oil and gas in the state, which we have
15 no control over. That presumably, responding to all
16 sorts of national, international and local variables,
17 will go up and down and vary in all sorts of different
18 ways. It is not our intent to do anything
19 surreptitious here. It is our intent to impose a tax
20 with a rate that we have stated, eliminating a credit,
21 eliminating or reducing various exemptions, and then
22 having that tax as we have structured apply to whatever
23 the income from the severance of oil and gas in this
24 state happens to be.

25 Now, that number -- I have no expectation

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1 that that would stay at 321.4 million or any number
2 that Mr. Gessler may come up with or any other number
3 at all. It may go up. It may go down. It depends on
4 a lot of things that the structure of this tax is not
5 designed to control, but what we are attempting -- but
6 I guess what I'm trying to say is in the first year, I
7 think what TABOR does is -- is say that if we come in
8 in the first year with more revenue than we have
9 estimated, A, we have to refund it; B, we then have to
10 lower the tax in some fashion or another so that the
11 tax would have produced that amount, the number that we
12 estimated the first year. And from there on, the tax
13 is the tax.

14 MR. DOMENICO: So that's just a onetime --

15 MR. RAMEY: No.

16 MR. DOMENICO: -- adjustment?

17 MR. RAMEY: Well, no. It's a onetime
18 adjustment of the tax, but its effect carries forward
19 in the future barring further voter choice.

20 MR. DOMENICO: All right. So what you're
21 saying is if it turns out that you needed to -- to
22 raise 321, you only needed a 3 percent income or
23 however -- I understand there may be other ways to do
24 it.

25 MR. RAMEY: Right.

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1 MR. DOMENICO: That, then, you would
2 refund any extra money and the new tax would somehow be
3 adjusted so that it would have, in the first year,
4 raised this number that we put in here and then there's
5 no more adjusting ever again, that whatever it brings
6 in, it brings in?

7 MR. RAMEY: Yes, based upon the -- all the
8 other variable factors as to the income that the
9 producers' royalty owners would be receiving.

10 MR. DOMENICO: Right.

11 MR. RAMEY: They're being taxed at a
12 particular rate of their income subject to the various
13 other provisions of this proposal. Now, I may be
14 absolutely dead wrong about that. I wish I could cite
15 an opinion, Mr. Domenico, to you. There is none. And
16 someday, in some context -- hopefully not this tax --
17 I'm sure we'll all be educated on that.

18 But the important point is that I think
19 the only fair way to read TABOR is not just that we do
20 a refund the first year and then we just go back to
21 whatever we were doing before and we can -- we can rake
22 in massive amounts of money inconsistent with the
23 estimate that we provided the first year. I don't
24 think -- I don't think TABOR would be applied that way.
25 I don't think that's a fair reading of TABOR. but that

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1 is a guess. Maybe a court will decide that is a fair
2 reading of TABOR. If that's the case, I don't know
3 what to do.

4 MR. DOMENICO: Well, I don't think that's
5 a fair reading of it. But the third way, the way
6 I'm -- the way I'm reading it, and it's really based
7 sort of on this language that we're forced to put in
8 here, is that it is a permanent cap on how much,
9 because I don't know how we can write an accurate title
10 that conveys that taxes will be increased by 321.4
11 million the first year and then by some other number
12 forever more.

13 MR. RAMEY: Well, TABOR does say -- and I
14 agree with you. The wording of TABOR and the wording
15 of that language that the board is required to use and
16 we're required to adopt is not optimal, but it does --
17 that number is to -- is stated to be a first-year
18 estimate and we're having to live -- we're having to
19 live with that.

20 MR. DOMENICO: Right.

21 MR. RAMEY: I don't think it means that
22 that number becomes a cap forever so that the
23 first-year estimate becomes a ceiling no matter what
24 the income of the producers or royalty owners --
25 taxpayers in this case -- would be. But, again, I --

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1 you know, the unfortunate thing about this discussion
2 is -- is all of us can go around and around about this,
3 and I'm not sure we can answer it. The one thing I
4 think is clear, it's not just the first-year penalty.
5 It's not just -- I don't think it's a fair reading to
6 say we have a refund the first year and then we all
7 forget about it. No. There is an ongoing consequence
8 of some sort. Someday we'll learn what it is.

9 Again, having said that, I guess I would
10 ask the board's patience or permission to permit
11 Mr. Gessler to make his presentation, because that may
12 be a factual basis if this turns out to be the tax
13 becomes relevant.

14 MR. HOBBS: And I think, from my
15 perspective, I -- I think we are driven by the language
16 of TABOR that says we have to fill in the blank that is
17 the first full fiscal year. I don't -- it sounds like
18 there's questions about what happens thereafter, but it
19 seems to me the number for us to use is the -- is the
20 first full fiscal year dollar increase. That's the
21 language of TABOR. And, I mean, with an exception
22 being that if a tax is phased in, then it's the final
23 year in the phase-in, but I don't think that's the
24 situation in this particular measure.

25 MR. RAMEY: Right.

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1 MR. HOBBS: So, to me, we have -- the
 2 board has to fill in a number that is the first full
 3 fiscal year dollar increase. Now, I -- I am -- unless
 4 I'm missing something. If so, somebody probably can
 5 correct me. As far as how we get that number, which
 6 is -- which is another thing that -- a very critical
 7 thing that I think Mr. Domenico is raising, it seems to
 8 me that we have an obligation to fill that number in
 9 based on the language of the measure like we -- like
 10 the rest of the title. I think we're driven by that
 11 the language of the measure, and we know that -- and as
 12 opposed to what the proponents say it is, I don't think
 13 that drives it necessarily. I -- I think we have an
 14 independent obligation to make a good-faith estimate of
 15 what the measure itself will produce in revenue in the
 16 first full fiscal year.

17 Now, I also have no way of knowing that.
 18 I mean, just typically, it's where -- where would we,
 19 as board members, start to figure out that kind of
 20 thing, and I think we can turn to any reliable source
 21 or multiple sources where there may be competing
 22 estimates. I think proponents, opponents and the
 23 Office of State Planning can all come to different
 24 results based on good analysis, and then I think the
 25 board's obligated to, in good faith, adopt what appears

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1 to be a reasonable estimate.

2 Like other questions involved in the
 3 meaning of a measure, I personally am influenced by
 4 what the proponents believe to be the effect of their
 5 measure, and there's some support in the case law
 6 that -- that statements made on the record become
 7 relevant; but in this particular case, I recognize that
 8 in fact it's more than that. It's not just like the
 9 other provisions of the title where we're trying to
 10 guess at what it does. Here, there really is a
 11 consequence under TABOR to the number we pick, but I
 12 don't focus on the self-fulfilling prophecy that we can
 13 say \$10 or something else and then it becomes true. I
 14 think we have to look at it in terms of what the
 15 measure itself provides, and I -- and maybe I'm beating
 16 a dead horse here, but in part I just don't think it
 17 would be right for the proponents to draft a measure
 18 that raises, say, \$500 million a year in revenue and
 19 then later decide that that's not palatable and come
 20 into the Title Board and say we want you to put in \$100
 21 million, and then we'll -- you know, I agree with, I
 22 think, the comments earlier that they ought to amend
 23 their measure to say that.

24 I -- on the one hand, I'm very much
 25 influenced by what the proponents want because of the

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1 consequences. The proponents are in the best position
 2 to balance competing considerations and on the one hand
 3 they probably want to maximize the revenue toward their
 4 intended purposes, but at the same time sensitive to
 5 the fact that the higher the revenue, the -- maybe the
 6 harder it is for voters to approve it, which is, I
 7 think, why TABOR wants it right up front.

8 And so I think I really do rely on the
 9 proponents' view of the estimates. I -- but I believe
 10 we're obligated to make an independent assessment of
 11 the evidence in front of us.

12 MR. RAMEY: Mr. Hobbs, may I -- just
 13 responding to that, I would advise the board that
 14 frankly the proponents thought the figure would be
 15 lower than this and without the OSPB estimate, we had
 16 been asked -- I would have had a lower number for you,
 17 not that I was trying to -- to engage in a political
 18 maneuver, but we really thought by our analysis the
 19 number would be lower. I can also advise the board
 20 that among people with whom the proponents have
 21 consulted, the -- the range of possible numbers covers
 22 the gamut, though most of them are lower than the 321.4
 23 that we are using now.

24 This number came because in addition to
 25 our own analyses, we looked at the estimate of the

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1 Office of State Planning and Budgeting, and they gave
 2 us a range, and I don't have it in front of me right
 3 now, but I think it was something about \$100 million
 4 lower than the 321.4. 90-some million dollars lower,
 5 up to the 321.4, and we decided, notwithstanding
 6 perhaps the political ramifications of having a higher
 7 number in there, that we would go with the highest
 8 number in the OSPB range.

9 So I say that not to necessarily justify
 10 that number vis-a-vis whatever number Mr. Gessler is
 11 about to present but to say that -- that it has been
 12 presented in good faith and I would agree, Mr. Chair,
 13 that I think the proponents have -- have -- I guess the
 14 proponents should be expected to present the board with
 15 a number that makes sense, and I think the board does
 16 have an obligation to engage in some level of a
 17 reasonable analysis, bearing in mind and in this
 18 particular case, even OSPB said this is really a hard
 19 estimate to make, and it's due to all the variable
 20 factors that come into play when you're dealing with
 21 revenues in the production of oil and gas. So we do
 22 the best we can, but I think we presume we all approach
 23 it in good faith.

24 MR. HOBBS: Thank you.

25 MR. DOMENICO: Well, all this just

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1 highlights why I think that it's got to be interpreted
 2 as some kind of a true cap because otherwise we're just
 3 throwing numbers around and there are dozens of
 4 good-faith numbers we could come up with. We could, I
 5 think, adopt a rule that we're just going to
 6 automatically take the OSPB's number, and if they give
 7 a range, we'll take the middle of that range, because
 8 none of us has any reason to choose that number over
 9 Mr. Gessler's or vice versa or the proponents', if
 10 they'd have come in with their own lower estimate.
 11 There's no reason to justify it. The only reason to
 12 put any number in there is that it's a hard number that
 13 the state can't collect any more money that goes above
 14 that number.

15 Now, if -- and I appreciate that Mr. Ramey
 16 has come up -- has got sort of a middle -- a middle
 17 approach to it in that the 321.4 million annually means
 18 321.4 million annually and then you adjust all the
 19 future calculations so that they're based on -- so that
 20 they would have raised that amount in the first place.

21 That at least eliminates the difficulty
 22 somewhat, but -- actually, it eliminates, I think,
 23 entirely the difficulty of us trying to figure out
 24 whose estimate is best, and -- but what it doesn't do
 25 is make the title accurate because you're raising the

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1 tax by more than 321.4 or -- or maybe less, depending
 2 on the year, and maybe -- it seems to me that -- I know
 3 we're stuck with that language from TABOR, but if --
 4 if -- if that's what we're going to say and that's not
 5 a hard cap, a perpetual cap, then I think we need to
 6 say that in the title. I mean, I can't vote for a
 7 title that says shall we raise taxes by X dollars
 8 when -- annually when we're only raising taxes by X
 9 dollars in 2009 and in future years we're raising it by
 10 whatever number we happen to come up with. I mean, I
 11 don't know how I can discharge my duty to tell people
 12 accurately what they're voting on if that's the case.

13 MR. RAMEY: Mr. Chair, I mean, I --
 14 respectfully, I do have a problem if the board starts
 15 messing around with the language requirements of TABOR.
 16 I would concur, Mr. Domenico, with you completely that
 17 the language of TABOR and the language that TABOR
 18 requires be used here is not optimal. I would
 19 respectfully request the board strenuously, because I
 20 have no opportunity really beyond today to deal with
 21 this, but don't start changing what TABOR requires you
 22 to do in the context of this initiative. I mean, that
 23 will kill this initiative. It will be, I think, an
 24 extra jurisdictional act by this board and I would
 25 strongly request you not do that.

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1 Now, you raise an extremely important
 2 issue, Mr. Domenico, as to what the future consequences
 3 should be, and I do think that is not ripe before us
 4 today. Someday, we are going to have to face that
 5 issue, hopefully sooner than later, hopefully not in
 6 the context of this initiative, but maybe we should be
 7 so blessed as to have that happen with this initiative,
 8 but we don't have the answer to the question that you
 9 were raising yet.

10 We've done our best not only in terms
 11 of -- we're doing our best to come up with a number,
 12 but we've done our best to speculate as to the
 13 consequences of being wrong, but I don't think we
 14 should be going beyond that given the charge that this
 15 board has under a constitutional provision; that is,
 16 TABOR.

17 MR. DOMENICO: No, I wouldn't suggest that
 18 we change the required language. The only way to try
 19 to deal with it would be to add some language later,
 20 after the required language, that makes clear what's
 21 going on. I certainly agree that it would be a mistake
 22 to --

23 MR. RAMEY: But we don't know what's going
 24 on. That's -- I don't know how we do that.

25 MR. DOMENICO: Well, right. I mean, the

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1 only way we know what's going on and the only way -- I
 2 mean, what is in front of me and the board today is
 3 that we're required to set a title that accurately
 4 tells people what they're voting on, and one easy --
 5 the easy way to do that is to interpret the TABOR
 6 language as a perpetual cap. If we're not going to
 7 interpret it as a perpetual cap, then we run into real
 8 difficulties, and I don't know what to if we -- if
 9 that's the way it's interpreted.

10 MR. HOBBS: But how -- how is that not
 11 involving us in determining the future effects of the
 12 measure?

13 MR. DOMENICO: All I know is I'm being
 14 asked to vote -- to set an accurate title, and I'm also
 15 required to vote on something that says state taxes
 16 shall be increased 321.4 million annually. So, to me,
 17 the only way I can do both of those things is to
 18 interpret that "annually" as meaning annually, meaning
 19 every year, and if that's the interpretation, I'm fine.
 20 If it's not the interpretation, then I don't know what
 21 I'm -- I don't know how we can set an accurate title.

22 So I guess that's my point, is if -- if
 23 that's not the interpretation, we really do have some
 24 difficulty in trying to both discharge our duty and not
 25 involve ourselves in extensive interpretation. but I

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1 don't know how else to comply with TABOR and set an
2 accurate title than to interpret that as a cap.

3 MR. HOBBS: Well, I guess I'm just viewing
4 this as TABOR dictates that language, as unsatisfactory
5 as it may be because of these concerns and until some
6 court addresses what the future effects are, I -- I am
7 I'm not sure why the board is compelled to go on and --
8 because TABOR requires a number, why the board is then
9 required to make a determination as to what -- what
10 TABOR will derive in future years. I just --

11 MR. DOMENICO: Well, because we're
12 required to set an accurate title and if everybody is
13 in agreement that this will in future years raise 500
14 million or a billion dollars or 323 million, then we're
15 not setting an accurate title because it discusses how
16 much taxes shall be increased annually. That -- I
17 mean, that's why.

18 MR. HOBBS: Isn't that what TABOR requires
19 us to do?

20 MR. DOMENICO: TABOR requires us to put
21 that number in there. We also have an obligation to
22 set an accurate title, and so simply because TABOR
23 tells us to put a certain number in there doesn't
24 mean -- I don't see how we can say that that means we
25 don't also have to accurately tell people, and so

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1 maybe -- maybe we just leave that number in there and I
2 justify it by saying, well, the only reasonable way to
3 square TABOR's requirements with the requirement of an
4 accurate title is that it'll have to be interpreted as
5 a perpetual cap, and I guess that's fine with me, but
6 nobody else seems to share that interpretation, in
7 which case it seems to me we're misleading people.

8 MR. HOBBS: And I don't think I know the
9 answer to the questions that you're raising. I -- what
10 I'm seeing is that TABOR says the first full fiscal
11 year is the annual increase. I'm not agreeing with
12 that. I'm just saying that's what TABOR dictates. To
13 me, that's kind of an anomaly. That's kind of
14 contradictory to say that the first year is the annual
15 increase.

16 MR. DOMENICO: I agree, and the only way
17 to make it make any sense is, as I've said, to make it
18 a permanent cap, and -- and so that's the difficulty.

19 MR. HOBBS: Well, Mr. Ramey?

20 MR. RAMEY: Mr. Chairman, I don't mean to
21 belabor this point. I guess two -- two observations:
22 Number one, with regard to severance tax in particular,
23 and this may not be true of all taxes, that the amount
24 of revenue -- let's assume we're dead on and the first
25 year we come in with 321.4 million, precisely as

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1 predicted, it is anticipated revenue from severance tax
2 will eventually go down, so ultimately this number is
3 going to be high, and eventually the extraction of oil
4 and gas will go away and there are different
5 predictions as to how quick that'll happen. So this
6 isn't just a question of potentially underestimating,
7 it's overestimating.

8 Secondly, Mr. Domenico, I'll -- again, I
9 share your concern. I don't know how you ever set a
10 TABOR title -- a title in a TABOR measure if we do what
11 you're suggesting should be done. Having said that,
12 I -- again, I appreciate the making of the record here
13 today, because I think some of the concerns that you've
14 expressed are highly legitimate and valid. It's just
15 that it's a problem we can't solve and the Title Board
16 can't solve. It's a problem that needs to be addressed
17 in another capacity.

18 Virtually anything you do, not only in
19 terms of changing this language, but if you do
20 something later in the measure, even with the
21 proponents' and the opponents' concurrence, that --
22 that dilutes or changes or indirectly affects the
23 impact of that first language, I would suggest you
24 violated Article X, Section 20 and -- and exceeded the
25 jurisdiction of the board. You can't do that

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1 notwithstanding the legitimacy of the concerns you're
2 raising.

3 So, again, I would ask the board, don't go
4 there. Someday, we'll get this sorted out but not in
5 this context.

6 MR. DOMENICO: Yeah. I think -- now that
7 I think about it, I think you're right about that. I
8 think it would be a mistake to try to explain the other
9 interpretation of it in there. Now, I do think that if
10 somehow -- if one day we do get an interpretation that
11 says, well, annually really is just kind of -- it
12 doesn't really mean an annual cap, then maybe in the
13 future, we would in the future measures explain that
14 somehow later.

15 But I think you're right, that for now,
16 that's too much kind of us putting our own spin, as you
17 say, even if everybody agreed with it, and so I think
18 you're right. We probably should just leave that as it
19 is and have a fight later.

20 MR. HOBBS: Shall we return to
21 Mr. Gessler's presentation of this fiscal information?
22 I don't know how speedy he was intending to be, but
23 given the hour, I'm hoping it's fairly speedy.

24 MR. GESSLER: I will do my best to make a
25 quick audition as an oil and gas economist. I will try

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1 to -- try to move through this pretty quickly. Just
2 starting back, the property valuations are based on the
3 value of the oil and gas extracted, and so they operate
4 in tandem with oil and gas prices, and the severance
5 taxes -- I'm sorry, the property taxes are, of course,
6 based upon the property valuations, and what I think I
7 handed the board was the property valuations for 2005,
8 2006, and 2007 based on the -- based from the
9 Department of Local Affairs. Those are published
10 government documents.

11 So from that, we get 2005, 2006, 2007.
12 What we need to do here to accurately identify what the
13 values of the property and therefore the property taxes
14 paid is we have to project what the property valuation
15 will be for 2008. So what you have there is the
16 projection. I'll explain how that works.

17 Then what we do is we get the taxes -- the
18 property taxes paid for 2009. Of those property taxes,
19 92 percent is allocated to real property taxes and the
20 ad valorem credit applies only to 87.5 percent of that,
21 so the ad valorem credit for projected 2009 that people
22 would get -- I'm sorry, that oil and gas companies
23 would get would be based on 536,998,000 or \$536,998,551
24 dollars. Does that make sense?

25 So to explain some of my assumptions, you

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1 have in front of you the assumptions for the property
2 tax valuations for 2005 through 2007. The next item is
3 the taxes paid, and the taxes paid is based upon an oil
4 and gas economic impact produced by the Colorado Energy
5 and Research Institute, Colorado School of Mines. This
6 is the same document I passed out a few weeks ago. I'm
7 also going to provide the board the full -- I've
8 provided an excerpt. Here is the full analysis. Oops.
9 I'm sorry. Can I give you this one? That one's fine.

10 And basically if you look on page -- the
11 third sheet, Roman numeral XII, the tax revenue based
12 on the 2005 property valuation was 315 million, and if
13 you turn to the next page, that's page 57 of the
14 report, basically what it says is the two -- that
15 number, that \$315 million is based upon the 2005
16 valuation, but it was deflated to produce it in 2005
17 dollars rather than 2006 dollars. So, in fact, the
18 2006 taxes actually paid were a little bit higher than
19 the 315 million, because that 315 million represents
20 the 2006 taxes less the inflation rate for 2005 to
21 2006, so just to explain -- explain the approach
22 there.

23 So what we -- what we did then is
24 basically take that proportion, the \$5 billion property
25 valuation that resulted in \$315 million property taxes

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1 paid and extrapolated that same rate for the future.
2 So based upon that rate, by 2008, the \$10 billion
3 valuation will result, using the same rate, in \$667
4 million in property taxes paid.

5 Then the 92 percent allocation of property
6 taxes, I base that upon the 2006 report to the Governor
7 and General Assembly. If I may approach. And what
8 this number is, if -- I've included sort of the table
9 of contents, and the important page to look at is from
10 the -- counting from the back -- and I'm sorry this
11 isn't numbered. One, two, three, four, five, six --
12 the seventh page from the end, okay? And it has -- and
13 it's entitled 2006 Abstract Data by Type of Property.
14 It has oil and gas land, oil and gas improvements, oil
15 and gas personal property. Those categories.
16 Obviously it includes vacant land and the other
17 categories, but I'm focusing on the oil and gas.

18 And so basically what I did is I took
19 those numbers and -- and derived, calculated that
20 92 percent is based on land and the other 8 percent is
21 based on improvements and personal property.

22 So what I did then is basically take that
23 number, the 92 percent, and I allocated of the \$667
24 million in 2009 or the \$315 million in 2006 -- I took
25 92 percent of that number. Say that's the number that

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1 represents the real property to which the ad valorem
2 credit applies, and then I simply multiplied that by
3 87.5 percent, so this represents the credit against the
4 severance taxes that the -- that the oil and gas
5 companies received.

6 Now, to explain some of the other
7 assumptions in there, the next item is the gas pricing,
8 and I have another spreadsheet; and if the board
9 remembers correctly, what I did is I sort of used a
10 benchmark of spot oil prices to identify the percentage
11 increases. I think that's incorrect because most of
12 what in Colorado is produced is natural gas as opposed
13 to oil, and what I did here is to come up with that
14 property valuation number, okay? What -- what I did is
15 I identified the percentage increase from 2007 to 2008,
16 the percentage increase in the value of all of the
17 production in Colorado, and then I applied that, excuse
18 me, same percentage increase to the 2007 property
19 valuation to result in the 2008 valuation, and these
20 are my numbers.

21 For the Colorado -- for the gas pricing,
22 the Colorado average was \$5.10 in 2007 and the
23 projected is 6.9 percent in 2008. That's a 35 percent
24 increase. Actual -- the production, these are taken
25 from actual numbers for 2007. 2008. I projected that

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1 the 2008 level of production would equal the 2006 level
2 of production. That's based on two factors. The first
3 is that the 2007 levels of production were slightly
4 depressed due to pipeline problems and transportation
5 problems and that there have been a massive number of
6 well permitting and additional drilling that's going
7 on. So I simply said that 2008 will climb back up to
8 the 2006 numbers.

9 And then I simply multiplied the average
10 price per MCF times the production to get me a value,
11 the dollar amount produced. That's the gross income.
12 I did the same thing with oil pricing. I took the
13 Colorado average for 2007, those are actual numbers,
14 and then projected to 2008 based on the West Texas
15 estimated increase benchmark, and I'll show you what
16 that is in a moment. I'll show what you the West Texas
17 is, and the percentage change was 51 percent.

18 So I basically applied the 51 percent
19 price increase to the -- to the 2007 Colorado average
20 in order to get to the 2008 Colorado average. I again
21 took actual production numbers for 2007 and actual
22 production numbers for 2006, which I inserted for 2008,
23 okay, and came up with a value of oil production here
24 in Colorado. For the total, I simply added the gas
25 plus the oil, and I came up with the 2007 and the 2008

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1 That number is a 48 percent increase in production
2 value. That 48 percent increase actually -- I added a
3 significant digit to the first spreadsheet. That's the
4 48.2 percent there. That's how I derived that number
5 in order to move from the 2007 to 2008.

6 Below that, on the sheet I handed you is
7 the proportion of real and personal property from 2006.
8 The 2006 property valuations, that 92 percent blend --
9 this is just the math. I copied those numbers from
10 that spreadsheet to identify that.

11 The last items I have are basically the
12 numbers that I used to project the actual prices for
13 the -- for the -- for the future in 2008 costs for oil
14 and gas, if I may approach one more time. So this is
15 the spreadsheet here, and what I -- and what I did and
16 I'll explain it first and then provide the backup
17 documentation, is I took from the EIA -- that's the
18 Energy Information Agency from the United States, as
19 part of the United States Government. I basically
20 identified -- these are the 2004 through 2007 numbers,
21 our national wellhead averages, and then the 2008
22 number is the short-term estimated energy outlook for
23 the national average wellhead prices, and that provides
24 me with a magnitude of increase on a national level of
25 35 percent.

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1 And based on that, I'm assuming that
2 Colorado will rise in proportion to the national
3 increases. In fact, Colorado will probably rise more
4 than that because there is recently a pipeline that was
5 completed or a large portion of the pipeline that was
6 completed that's allowing Colorado to deliver its
7 energy, its natural gas more efficiently to Midwestern
8 markets, so that's going to substantially increase the
9 price of Colorado gas.

10 What I did next is I produced the
11 published Colorado gas prices. These are from the --
12 from the Colorado Conservation Oil and Gas -- Colorado
13 Oil and Gas Conservation Commission. The 2004 through
14 2007 are actual prices. The -- the 2008, that 6.90 is
15 estimated on the 35 percent. I think this number is
16 conservative again because of that pipeline, and you
17 can see how the Colorado published prices substantially
18 dropped a lot more than national prices.

19 I will note, and I can attest to this from
20 personal experience, that the published gas prices only
21 account for a small portion and that oil and gas
22 companies are truly very hesitant to provide what the
23 actual prices are that day, even when some of those are
24 connected to your client, so actually getting those
25 numbers is -- is sometimes challenging.

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1 This -- the third number is the NYMEX.
2 That's the New York Mercantile Exchange numbers, and
3 those are based upon projected numbers. The \$7.48 from
4 2007, that was the projected contract for projected
5 prices in December of 2007. That's the highest number.
6 The 2008, that was last week's contractual price
7 estimating what the prices are going to be for July.
8 What I did is I used the national -- the NYMEX as sort
9 of a benchmark to say, okay, is my 35 percent number
10 crazy. And, in fact, compared to the NYMEX and what
11 traders are planning on, the 35 percent number is a
12 little bit more conservative.

13 For the Colorado actual -- for the -- for
14 the cost per barrel, what I did for 2007 and 2008, I
15 compared the first four months of 2007 and 2008. Those
16 are actual numbers. Those aren't estimates or those
17 aren't derivations. Those are actual numbers from the
18 Colorado Oil and Gas Conservation Commission. You can
19 see that currently in April, last month, it was \$106
20 per barrel at the wellhead the Colorado producers were
21 getting.

22 I did two -- I did two projections. I
23 took the West Texas crude standard, that's \$72 in 2007
24 and it's estimated to be in, 2008, \$109. That's a
25 51 percent increase. I simply applied that percentage

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1 increase to the Colorado average, which brings it from
2 65 to \$92. As you can see, both March and April have
3 already exceeded that average number that I'm using for
4 the Colorado average for 2008. So, again, that's a --
5 that's a reality check. If anything, that Colorado
6 average is probably low, okay?

7 The backup numbers for that, I'll pass
8 out -- I want to make sure I'm not inundating the board
9 with paper. I've got four -- four items that I'll hand
10 the board for the natural gas price backup, and, again,
11 this is all government data that I'm relying on here.
12 The first item is just a graph showing forecasts and it
13 gives you the -- a composite wellhead price, that's the
14 composite price I used. You can just generally see how
15 that -- the bottom line is the composite wellhead
16 price, and there are other standards, for example, the
17 residential price is more volatile, but you can see in
18 general that those natural gas prices are pretty much
19 on target.

20 The next item I handed you was the Energy
21 Information Administration. This is -- this provides
22 actual measurement data from the U.S. -- from the U.S.
23 energy information, the U.S. governmental statistics.
24 It provides year five and year six numbers, 2005, 2006.
25 It doesn't have 2007 numbers, so it's a little bit

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1 limited, but it does give you a -- give you a sense of
2 actually what the actual prices were.

3 The next item is the production numbers.
4 These are monthly coal bed and conventional gas prices
5 produced by county. These are actual numbers for 2007,
6 2006, and there's a little bit of 2005. That
7 unfortunately does not print out very well, based on
8 the website; and then finally are the published gas
9 prices, and the final column on the right is the
10 Colorado Gas Price Index. That's dollars per thousand
11 cubic feet. That's the proper comparison. The other
12 ones are based on dollars per -- per hundred
13 thousand -- I believe it's per hundred thousand btu's.
14 That's a different measurement. So the one on the
15 right, those are the actual. You can see, starting in
16 December of '08, December of '07 and onward, we don't
17 have actual reported data for Colorado, but we do have
18 that report data. So when I say that these are actual
19 measurement numbers, this is based on the COGCC
20 numbers. That's my backup for -- I mean, that's what I
21 derived those numbers for, for the natural gas
22 increases and how I estimated the 2008.

23 With respect to crude oil, again, crude
24 oil is around -- a little bit under 20 percent of total
25 value. but we still have to look at it. This is the

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1 general forecast, and it gives you the West Texas
2 intermediate price. I used that as a benchmark because
3 it's a benchmark, a natural benchmark or a domestically
4 produced oil that provides a sense of the magnitude of
5 increase. That's how I got the 51 percent increase
6 that I used to extrapolate for Colorado.

7 The next item is the U.S. Energy
8 Information Administration. Those are some -- and it
9 shows U.S. energy nominal prices. That basically means
10 in non-adjusted, non-inflated dollars, so these are the
11 actual dollars that people pay. Crude oil prices, it
12 shows you the West Texas averages for 2006, 2007 and it
13 goes to 2008. That's where I got the magnitude of
14 increase. If you average out all these months on the
15 crude oil price graph I handed you, you'll get the same
16 thing.

17 The next page is the Colorado -- actual
18 measured Colorado numbers, and you can see we have a
19 lot more in oil and gas than we do in -- I'm sorry, for
20 oil than we do for gas. Oil, we have actual
21 measurements if you look in the bolded column, January
22 through April of this year. So you can actually see
23 this year's prices, so our numbers are less -- you
24 know, I mean, we have a much better reality check.

25 And then the last one -- remember, I said

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1 I added up the actual amount that was produced by -- by
2 the state in those years, and that's what -- that's
3 what we get for the actual production for 2007, 2006,
4 and 2005. There's a slight, slight variation. I did
5 some -- we did some analysis where basically we took
6 the monthly price times the monthly production and
7 added those up rather than the average price times the
8 total production. It was an absolute minimal change,
9 so I didn't want to swamp the board with that.

10 What that does is that produces the
11 overall percentage increase for the oil, percentage
12 increase for the gas. We have production estimates for
13 the oil, production numbers for the gas. That gives us
14 our total produced value. Our total produced value, we
15 show a percentage increase. We apply that percentage
16 increase to the property valuations and then
17 extrapolate -- and then from that extrapolate what the
18 severance tax ad valorem credit will be.

19 If you go back to the very first page,
20 that comes up with a \$536 million number. For the
21 stripper well exemption, all that I did is I took the
22 stripper well production amounts, and those are based
23 on the percentage of production in Colorado based on
24 stripper wells. Those are 2006 numbers that I obtained
25 from the Colorado Legislative Council staff report.

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1 And basically if you look at page -- page 7 of that
2 report, it shows share of wells and production from
3 stripper wells. That's spelled striper in my view, but
4 I may be wrong in the spelling. But for 2006, it shows
5 oil production was 59.7 percent from stripper wells;
6 natural gas production was 20.4 percent, okay.

7 So I looked at the total production value,
8 and I multiplied it by the production, which gave me
9 the stripper well production value for 2008, okay, for
10 both oil and gas. I added those two together. I
11 basically assumed that half of the stripper wells will
12 lose their exemption and half will keep them because
13 currently a stripper well is 15 barrels per day or
14 less, and the new exemption will basically say stripper
15 wells are exempt at 7-1/2 per day less, so I took that
16 median number, 7-1/2. I assumed half above, half
17 below, and so I said there's a 50 percent loss on the
18 exemption. So, in other words, the total stripper well
19 production, we have to reduce that by half. I
20 multiplied it by the 5 percent rate that's going to be
21 applied to that portion of production now, and that
22 gave me 78 million.

23 Below that, all that I did is I did a
24 reality check. I compared the estimate, the OSPB
25 estimate for Initiative 113, which we have here, and I

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1 compared that to the estimate for Initiative 88, which,
2 as I remember correctly -- and I could be incorrect and
3 I'm happy to be disabused of this notion if I am.
4 Initiative 88 only removed the ad valorem tax. It
5 didn't touch the stripper well exemption.

6 So, in other words, 113 is the ad valorem
7 removal plus the stripper well change, so I'm basically
8 isolating the stripper well change, and that comes out
9 to about 108.1 million. That's a rough estimate, okay,
10 and I recognize that, but I basically used that as a
11 reality check to make sure that my \$78 million number
12 wasn't crazy, and I compared that to the OSPB numbers
13 for their stripper. Unfortunately, stripper wells --
14 the data is exceedingly difficult to identify and find
15 and use, and I couldn't find, I thought, reliable and
16 usable government sources to be able to provide to this
17 board, so this is my analysis.

18 So basically it comes up with a total tax
19 increase on the industry -- I took the ad valorem, I
20 added the stripper well portion to it. I used the low
21 end of the stripper well number that I came up with, a
22 high end of the difference between the 321 and the 213,
23 and I understand that that 321 itself represents the
24 high end of an estimate. I recognize that. So that's
25 why I didn't just put together a range of 615 million

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1 to 645 million total. Whew.

2 I'm happy to answer any questions, and I
3 tried to be as brief as possible, and I apologize for
4 that lengthy economic analysis there.

5 MR. HOBBS: Ms. Eubanks?

6 MS. EUBANKS: Okay. A couple questions.
7 The first is in terms of timing and just -- and this is
8 in regard to the removal of the ad valorem credit. In
9 terms of the timing of -- for property tax year, the
10 production for that property tax year, I mean, then
11 they get billed the following property tax year for the
12 production. So, for example, for production in 2007, a
13 producer would get a bill in 2008, which then is used
14 as the basis for the credit, the ad valorem credit
15 for -- against their production in 2008? Is -- am I
16 understanding -- I'm just trying to get the -- the time
17 sequence so that your numbers make sense to me.

18 MR. GESSLER: No. I -- I understand
19 exactly your question. I'm -- I don't know the exact
20 answer to that. What I'm basing it on is the CERI
21 analysis, which seemed to indicate that there was a
22 very solid \$315 million that people paid in 2006 and
23 that that was based on those 2005 numbers at 2005
24 valuation.

25 I also looked at that -- if you look at

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1 the 2007 assessments, the sheet that I handed out, that
2 was actually -- if you look at the bottom of that
3 sheet, it was prepared in January of 2008, so it seems
4 as though it's a very quick turnaround and there isn't
5 that much of a lag as we would normally face with, for
6 example, residential property taxes.

7 So that -- that was my assumption, and I
8 recognize I could be wrong. If I am on that, you know,
9 the 2008 number would actually be the 2009 number, so
10 we would have 362,000 plus the -- 362 million plus the
11 78 to 108, so I'm trying to be transparent in the
12 analysis, but that was my assumption, and that was how
13 I analyzed it.

14 MS. EUBANKS: And in terms of the numbers
15 that you have given us in terms of your estimate of the
16 impact of repealing the ad valorem credit as well as
17 the stripper well, do the numbers that you've provided
18 take into account the fact that this initiative doesn't
19 impose any tax until you hit the 300,000 gross income
20 threshold? So did you make any -- I mean, because I --
21 I don't know for a fact, but I assume that there may be
22 stripper wells that although their production is as
23 you've stated and you take half of that away in terms
24 of being exempt, still, if they haven't hit the 300,000
25 gross income threshold for imposition of the tax, they

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1 still wouldn't be taxed?

2 MR. GESSLER: No. I didn't go into quite
3 that level of granularity. My assumption is this, that
4 the production of the ad valorem is -- the production
5 of stripper wells is obviously very closely connected
6 to the value that it receives, and, likewise, what
7 we're doing is we're facing in 2008 far higher oil
8 prices. So to the extent there is that uncertainty,
9 stripper wells themselves -- even if they produce the
10 exact amount, we're going to have stripper wells that
11 exceed the \$300,000 for the same production in 2008, a
12 substantial number that didn't exceed that \$300,000 in
13 the past; and, likewise, this doesn't take into account
14 the anticipated, you know, increased well production
15 because of the higher prices and the increased number
16 of stripper wells.

17 I don't have those exact numbers. I don't
18 know if they're even possible to get, but I do think
19 that some of these uncertainties here tend to balance
20 one another out; and, again, that's why in some of
21 these instances I took a more conservative approach
22 than -- than a higher approach on this.

23 MS. EUBANKS: In terms of the fiscal note
24 that we had received from OSPB on this initiative and
25 it talks about a lot of, you know, difficulties of not

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1 having this type of data specifically, I mean, it
2 basically said that the total value of all ad valorem
3 tax credits and small well exemptions is not tracked by
4 the department of revenue, blah, blah, blah, so it
5 isn't really possible -- they weren't making the
6 statement that it wasn't possible for them to very
7 accurately come up with an estimate. So -- so based on
8 all this information, you've come up with these
9 estimates. Can you tell me why they wouldn't have been
10 able to do that?

11 MR. GESSLER: I think what they should
12 have done is look at the CERI analysis and what --
13 really what it comes -- my -- one of the foundations of
14 the analysis is this Colorado Energy Research Institute
15 analysis, and it's produced by the Colorado School of
16 Mines. That's why I provided the entire copy there.
17 And if you look at this analysis, they do provide --
18 they do do a lot of work in order to track the property
19 taxes collected, and so even though the Department of
20 Revenue doesn't track that. This organization did.

21 So at a minimum, if you look at the 2006
22 taxes and you run through these calculations, which I
23 feel very good about because those aren't -- those
24 don't require an extrapolation, those don't require
25 estimates for future oil prices. They are -- it's a

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1 hard measurement of the taxes, the property taxes that
2 were paid in 2006 based on 2005 numbers; and that
3 92 percent valuation is based on a 2006 department
4 analysis, so it's not far off from the actual 2005
5 numbers, and the 87.5 percent credit hasn't changed and
6 even that number comes out to the \$253 million amount.

7 And then if you look at the change from
8 2005 to 2006, at the minimum there, we're looking at a
9 45 percent increase. So unless the actual tax rates
10 for property taxes just collapsed by 45 percent, you're
11 going to see a continual 45 percent increase for the
12 taxes paid in 2007, which results in 367 million.

13 So I just think that the foundation of the
14 analysis by OSPB -- they relied on the lack of
15 government data to make these guesses, and I've
16 provided you-all government data except -- except for
17 the CERI report, which -- which I think is the best
18 thing out there, and -- and what this says is we went
19 out and we -- Booz Allen provided a model and analysis
20 and da-da, da-da, da-da, and you're welcome to look at
21 that description to actually measure what the property
22 taxes were that were collected.

23 So this is a number that says we're
24 relatively confident that that's the number that was
25 collected as opposed to OSPB that -- that said we just

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1 can't track it.

2 MS. EUBANKS: Okay. Then my last
3 question. I mean, all of this is very complex. I know
4 that the folks at OSPB that work on this are economists
5 and just -- so, for the record, can you tell me your
6 expertise? I mean, either you are a math major or
7 maybe, you know, you had an undergrad in econ. But
8 just for the record, so I can sort of evaluate the
9 information that you're providing me, can you tell me
10 your expertise or the expertise of the folks that
11 helped you pull this all together?

12 MR. GESSLER: Certainly. I'm happy to
13 provide that. I -- my expertise is, you know, I do
14 have a -- a master's in business administration from
15 Northwestern, and I'm a little bit of a Wonk in the
16 sense that when I started off as a lawyer, I took
17 statistics courses at the Department of Agriculture in
18 D.C., just because I liked it, although I'm embarrassed
19 to admit it. Perhaps it's to my advantage here. So I
20 do have something of a background and spent eight years
21 outside of law doing sort of business work. So that's
22 where the mathematical analysis -- I also relied upon
23 the person who's basically the head of tax calculations
24 for Chevron corporation, and he -- he instructed me
25 that he did not have authorization to testify before

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1 this -- before this board, has to get corporate
2 clearance, and I'll certainly mention his name, Wade
3 Hopper, because I don't mean to hold anything back, but
4 I will give you that caveat. So I've had extensive
5 conversations with him.

6 I've also called, you know, a few people
7 from, for example, Anadarko to confirm, you know, real
8 gas prices; and, you know, they confirmed that
9 basically the prices sort of collapsed in 200- -- last
10 year because of problems with -- with -- with
11 distribution, but those problems have been resolved
12 with pipelines and so the prices have actually
13 rebounded.

14 And I've also spoken with Mr. Stan
15 Dempsey, who's here at the Colorado Petroleum
16 Association, as well. So, no, I'm not an economist and
17 I do not mean to delay things, and I'm certainly not
18 averse to showing this to the -- to the economists. I
19 was hesitant to talk to them in advance, first of all,
20 because I didn't have all these numbers and analysis
21 done and I did not want to do anything outside of the
22 proponents' views, and that may have been a mistake, so
23 I apologize. So I'm not trying to spring anything on
24 people and would be happy for them to review this and
25 go through that I understand the timing issues here

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1 with respect to the ballot initiative process probably
2 precludes that.

3 MS. EUBANKS: Thank you.

4 MR. HOBBS: Any other questions for
5 Mr. Gessler? On this subject, maybe, Mr. Ramey, do you
6 want to respond or -- I just --

7 MR. RAMEY: Not -- not really, Mr. Chair.
8 I -- I feel absolutely unqualified to -- to do that
9 notwithstanding the fact that I have an undergraduate
10 degree in economics.

11 MR. DOMENICO: Yeah. Me, too.

12 MR. RAMEY: I don't think I could do
13 anything with it. I have noticed a couple things that
14 are relatively minor. For example, the figure referred
15 to for the estimate of the Initiative 88, I think, was
16 the one prior to the adjustment that we made when we
17 realized that OSPB was calculating the figure wrong and
18 the figure went up.

19 Ms. Eubanks raised a couple issues. I
20 assume that OSPB took into account the fact that
21 lowering the exemption for stripper wells will result
22 in some stripper wells not producing anymore, an
23 economic decision to be made by them; but, frankly, the
24 impact of those I am in absolutely no position to
25 comment on the proponents' position.

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1 And, frankly, I don't mean this --
2 Mr. Gessler may turn out to be dead right and we come
3 back to the question of consequences that we discussed
4 for about an hour earlier today, but the proponents
5 would opt to -- to go with the OSPB estimate if for no
6 other reason than that we do have a group of highly
7 qualified economists that I have to assume engaged as
8 best they could in an analysis similar to Mr. Gessler's
9 with the data that they thought was reliable, and they
10 came up with the range they did, and we took that
11 range.

12 So that would be the proponents' request,
13 to stay at the high end of the OSPB estimate without
14 casting any aspersion on -- on Mr. Gessler's efforts or
15 the fact that he may be right and they and we may be
16 wrong.

17 MR. HOBBS: Thank you. Mr. Gessler, do
18 you want to go on with rest of your motion for
19 rehearing?

20 MR. GESSLER: Certainly. Just in the
21 interest to be complete, I was informed that --
22 although I'm not absolutely sure about this, that a --
23 that a well producer cannot claim the ad valorem tax
24 credit during the first two years of production and
25 that the consequence of that -- if you remember

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1 correctly, in my analysis, I said assumed a slight
2 increase from 2007 to 2008; but, in fact, that increase
3 would not exist for purposes of the ad valorem tax, so
4 that would probably stay -- stay level. So the numbers
5 should probably be reduced by about 10 percent based on
6 that -- that factor.

7 MR. HOBBS: By 10 percent, you say?

8 MR. GESSLER: That's what I would guess.

9 MR. HOBBS: Okay.

10 MR. GESSLER: The second item on the
11 motion for rehearing, "The title fails to identify the
12 percentage of the tax revenues devoted to each new
13 spending mandate, thereby omitting critical information
14 necessary to allow voters to make an informed choice."

15 This again connects to the argument I
16 earlier made with respect to the log rolling issues,
17 that you basically have what we would characterize at
18 least as log rolling, a lot of -- a lot of different,
19 disparate groups that are receiving benefits from this.
20 Some may be receiving great benefits, some may be
21 receiving very few, if any, benefits. Well, I
22 shouldn't say "if any." Few benefits. And that can --
23 and that's important information especially in light of
24 perhaps mitigating the log rolling aspects of it.

25 The second -- the third item. "The title

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1 is incomplete, because it does not accurately state
2 that the ad valorem property tax credit is being
3 removed."

4 Basically the arguments here is that we
5 believe that the term "ad valorem" should be -- should
6 be included as a modifier of property tax in this
7 particular initiative. I've got a few reasons for
8 that. One is ad valorem is a specific tax. I looked
9 it up in Black's Law Dictionary. I'm happy to provide
10 a copy to the board, if you would like, but there are
11 19 different types of taxes defined in Black's Law
12 Dictionary, and property tax is one of the ones, but it
13 is different and it's broader, actually, than what an
14 ad valorem tax is.

15 Ad valorem is based on the particular
16 value of the property; and, in fact, also as part of
17 the definition in Black's, ad valorem is something that
18 is calculated estimated on an annual basis. This tax
19 here in particular is unique. It's not a normal
20 property tax. It's not a property tax that people
21 would assume by looking at the title initiative, sort
22 of like what they pay -- you know, what they pay on
23 their personal residential property taxes because the
24 ad valorem tax varies because the property value varies
25 so dramatically. Based on the price of oil, the ad

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1 valorem tax here is essentially more analogous to a
2 sales tax. When oil is high, you get more money; when
3 oil is low, you get less money because high oil prices
4 produce high property valuations, which form the
5 basis -- so the ad valorem indicates that there's a --
6 there's a high variability here; and, indeed, it's --
7 it's different than simply a property tax that the
8 normal person would understand, the normal homeowners,
9 the normal business owner would understand.

10 Now, I understand ad valorem is -- is a --
11 is not something used often. I, at least -- I don't
12 think this would be a catch phrase. I don't think -- I
13 can't imagine anyone using this as a campaign slogan,
14 but it does provide an indicator that this is a
15 different type of property tax, and that's sort of
16 analogous to the board's often -- oftentimes use of
17 "certain." Shall something be done and, you know,
18 certain things happen, and that's an indicator for
19 people who read this. If they want to look at it and
20 research a little bit further, look at the -- look at
21 the initiative.

22 And then, finally, I'd argue that it's not
23 unduly cumbersome. I did count the actual words in
24 this ballot title. There is 213. I'm proposing that
25 we add two words. So that's my argument for item

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1 No. 3.
2 For Item No. 4, "The title uses the word
3 'enhancements' as part of the spending mandate . . ."
4 I think enhancements is simply another word for saying
5 increases good things. I think that that's clearly
6 a -- a catch -- perhaps not a catch phrase but an
7 improper catch word that works in the proposal's favor
8 without contributing to voter understanding because
9 you're looking at -- on this, you're looking at -- let
10 me just find it -- enhancements in renewable energy and
11 energy efficiency. Who can be against enhancing energy
12 efficiency? So I think that the term "enhancements"
13 should be struck as a -- as a catch phrase here.
14 "Enhancements" in this context is simply a synonym for
15 good or better.

16 MR. HOBBS: Would you suggest another
17 word? Improvements?

18 MR. GESSLER: ". . . the preservation of
19 wildlife habitat," perhaps "spending related to
20 renewable energy and energy efficiency"? Something
21 neutral along those lines rather than saying
22 "improvements" or "enhancements," because I think both
23 of those essentially mean good. We're just doing good
24 stuff. I know that "related to" is sometimes mushy,
25 but it would be sort of a -- a non-biased approach

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1 here.
2 With Item No. 5, "The title is incomplete
3 and misleading because it states that scholarships are
4 for state colleges and universities, when in fact, the
5 definition of 'higher education'," as used in this,
6 "excludes certain colleges, but includes occupational
7 education programs."

8 If I may take just a moment to look at my
9 stack of papers, I'll pull out that -- the exact
10 language that I can refer the board to.

11 MR. HOBBS: Okay.

12 MR. GESSLER: So basically the initiative
13 refers to definitions in 23-18-102. I believe higher
14 education is defined by that, and if you look at
15 23-18-102, subsection (10), okay, it says -- I'm sorry,
16 yes, (10). It basically says, "'State institution of
17 higher education' means a public postsecondary
18 institution that is governed by:" and then it goes
19 through ten board of trustees for the Colorado state --
20 board of trustees for the University of Colorado.

21 Then, in subsection (b), it says, "'State
22 institution of higher education' does not include a
23 junior college as part of a junior college district
24 organized pursuant to," and then goes on from there.

25 So, in other words, higher education does

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1 not include junior colleges. So to say that this
 2 provides scholarships for colleges would be misleading
 3 because it indicates that it includes junior colleges,
 4 so -- and in that instance, I think it's misleading;
 5 and then it also says, as part of that, if you look at
 6 also in section (10), Item X, when I told you there
 7 were -- section (10)(a), Roman X, when I said "public
 8 postsecondary institution that is governed by," it
 9 includes "The state board for community colleges and
 10 occupational education."

11 So occupational education programs
 12 would -- scholarships for occupational education
 13 programs would be included. I would simply argue that
 14 it should simply include the term "higher education"
 15 rather than universities and colleges by using that --
 16 the exact language from the initiative.

17 For Item No. 6, "The title is incomplete,
 18 because it fails to inform voters that it poses a new,
 19 five percent tax on gross income under \$300,000 when
 20 production wells meet a certain threshold," and it --
 21 and it fails to explain to the voters the magnitude of
 22 this change. I think that goes to -- and I can
 23 specifically focus on the -- on the language that I'm
 24 referring to in this particular item. It goes to
 25 items -- lines 3 to 4 where it says "changing the rate

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1 of the tax to five percent."

2 And basically what this is doing, this is
 3 eliminating the old tax and it is imposing a new tax
 4 and the new tax is higher than the old tax, because
 5 it's 5 percent on everything below 300,000 rather than
 6 the scaled amount, so I would argue that "changing" is
 7 not the -- does not provide adequate information
 8 because it could be changed from a higher rate to the
 9 5 percent, it could be changed from zero percent to
 10 5 percent, it could be changed from 1 percent or
 11 4 percent. I think simply "imposing on" -- "imposing a
 12 new tax at the rate of 5 percent of gross income" would
 13 be the proper way to do it because it does impose. And
 14 if the board wants it could also say "and removing an
 15 earlier tax of" a lesser amount or put the exact amount
 16 in there. I'm open to either one of those, but I think
 17 that the -- as written, it's -- it's incorrect.

18 The next item, Item No. 7, and for this,
 19 it basically says the revenue collection and spending
 20 limits also applies to certain other revenue that may
 21 be collected and spent by the state or any state
 22 district. And basically all that I'm doing there --
 23 and the actual language of 39-29-105, the language
 24 itself reads, "The proceeds of this tax received in
 25 accordance with the provisions." et cetera. "shall be

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1 collected and spent by the state as voter-approved
 2 revenue change without regard to any spending
 3 limitation contained within section (20) of Article X
 4 of the state constitution or any law," and then here is
 5 the operative language, "and without limiting in any
 6 year the amount of other revenue that may be collected
 7 and spent by the state or any district."

8 I'm not exactly sure what that means, but
 9 I do think that whatever it means, it's -- it is
 10 another release from the TABOR restrictions. That's an
 11 important thing, and it should be in the ballot title.
 12 So I'm not arguing that it's confusing or vague and I
 13 understand that, you know, undefined language within
 14 the initiative itself is not -- doesn't necessarily
 15 have to be resolved by the board. I'm simply arguing
 16 that the board should follow the language of the
 17 initiative as it's written as part of the title to
 18 inform voters of that.

19 And then "The title is incomplete and
 20 misleading because it fails to inform voters that the
 21 measure reduces the exemption for small well producers
 22 by fifty percent." That's the -- that's the reduction
 23 of the stripper well. It changes the definition of
 24 stripper wells, and it reduces that from 15 to 7.5. I
 25 understand there's general language to that effect, but

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1 I think the -- it should be specific. And, again, this
 2 goes to my earlier arguments of the magnitude of what's
 3 going on here, that the magnitude is important, too,
 4 and it doesn't add unduly cumbersome or extensive
 5 language. This particular one doesn't look for a
 6 rewrite. I don't think any of these items look for a
 7 rewrite but changes of words here and there or slight
 8 additions to words or slight additions to phrases
 9 without major surgery or, I should say, major expansion
 10 of the number of words in the language.

11 So with that, I'm certainly willing to
 12 answer any questions, and I know I tried to be brief in
 13 going through all of that.

14 MR. HOBBS: Thank you. Are there any
 15 questions for Mr. Gessler?

16 Thank you. Mr. Ramey, would you like to
 17 respond to those additional objections?

18 MR. RAMEY: Briefly? I will. With regard
 19 to Item 2, my only concern with putting the percentages
 20 in is that it may have the tendency to create clutter.
 21 We're going to have a bunch of numbers and so forth.
 22 It does address a concern -- I'm not sure --
 23 Mr. Chairman, I think you expressed it and perhaps
 24 Mr. Domenico that given the -- the log rolling
 25 concerns. if that helps ameliorate some of that

93	<p>1 problem, if the board wants to do that, we would have 2 no objection to doing it. I just -- I'm afraid it 3 would look cluttered, but --</p> <p>4 MR. HOBBS: That was my offsetting 5 concern, that I wondered how it would look, but --</p> <p>6 MR. RAMEY: We may try it, and the 7 proponents would have no particular objection to doing 8 that. Again, I would note we've got two levels of 9 percentages, then, because we've got the 22, 22 and 56 10 to go into the three funds, and then out of the 56 11 percent that goes in the stabilization fund, we have 12 the various percentages going out from there. But if 13 the board thinks it could be done in a way that doesn't 14 turn this into spaghetti, the proponents would 15 certainly not have a substantive objection to that.</p> <p>16 With regard to No. 3, if -- if -- I guess 17 I agree with Ms. Eubanks' statement the last time that 18 few people know what "ad valorem" means, but if the 19 board wishes to add those two words, the proponents 20 would have no objection to that.</p> <p>21 With regard to No. 4, the way we got into 22 this quagmire with enhancements is that initially the 23 title, I think, referred to "clean energy fund." That 24 was suggested as possibly a catch phrase, which is -- 25 notwithstanding the fact that that's the name of a</p>	95	<p>1 and gas" is the best way to state it, given the way 2 that this provision operates.</p> <p>3 No. 7, what is going on there is that some 4 people have taken the position that if a -- a measure 5 is de-Bruced, that there is a collateral effect that 6 that will have on the ability of a district to spend 7 revenues that they are receiving from other sources. 8 In other words, if they're now permitted to spend the 9 increased revenues from the source that we are 10 proposing, they have to spend less than they would 11 otherwise be able to spend from -- from other sources 12 which they're currently permitted to expend.</p> <p>13 All this language is intended to do in the 14 measure is make that neutral and say we are intending 15 to have no effect, direct or indirect, on any funds 16 which the district -- the state in this case -- may 17 otherwise be able to spend or not be able to spend. 18 It's a neutral provision.</p> <p>19 Now, how you put that in the title I don't 20 know, but -- but it would emphasize that the point is 21 not to have this provision have an effect on the -- on 22 that other spending. It's to keep this provision 23 neutral as to that other spending so it is what it is, 24 as if this provision never existed. 25 Finally, No. 8, the 50 percent, the</p>
94	<p>1 fund, so we attempted to restate it. The word that 2 comes out of the actual clean energy fund statute 3 itself is "advancing energy efficiency," which probably 4 would be more objectionable to the opponents than 5 enhancing it.</p> <p>6 Having said all of that, if there's a more 7 neutral way to state that, I doubt that the proponents 8 would have any objection to that.</p> <p>9 No. 5, if we want to insert "higher 10 education," I think I heard Mr. Gessler say, for "state 11 colleges and universities," the proponents would not 12 object to that. I think "state colleges and 13 universities" generically is probably better understood 14 by the electorate than "higher education." 15 "Institutions of higher education" probably is 16 something we can't use because that's a defined term, 17 and we do have some things in there that are outside of 18 that defined term, particularly the two community -- I 19 guess the two, whatever they're called, local district 20 colleges, but perhaps "higher education" works as well 21 as "colleges and universities."</p> <p>22 With regard to Item No. 6, frankly, I've 23 struggled with that, and I -- I think the way the board 24 has the statement of "changing the rate of the tax to 25 five percent of total gross income from the sale of oil</p>	96	<p>1 proponents would be fine if the board feels that they 2 want to put another number in there. Again, we're 3 dealing -- there's a point where clutter starts 4 outweighing completeness, and we may be getting to that 5 stage, but the proponents would have no substantive 6 objection to that.</p> <p>7 MR. HOBBS: Thank you. Any questions for 8 Mr. Ramey? I guess not. Then I believe there's no one 9 else signed up to testify, and I'll turn to board 10 discussion of the motion for rehearing.</p> <p>11 Let's turn to board discussion on the 12 motions for rehearing. As I recall, we've pretty much 13 discussed the single subject issue or was that in a 14 previous lifetime?</p> <p>15 MR. DOMENICO: I think we handled that 16 part.</p> <p>17 MR. HOBBS: Okay. Any comments on the 18 other objections to the board's previous action?</p> <p>19 MR. DOMENICO: Well, I'll start with the 20 issue of the size of the tax increase as related to 21 what we've already spent a lot of time talking about. 22 And while Mr. Gessler's research and work is certainly 23 impressive, it really highlights to me why we should 24 just take whatever number the petitioners think is 25 right. Otherwise, we're going to get into a battle of</p>

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1 where we're sitting -- the three of us are sitting here
2 looking at two piles of research and two spreadsheets
3 and comparing the undergraduate educations of various
4 people that the proponents and opponents bring in, and
5 that's enough of a problem.

6 Even more of a problem is somehow this
7 would be turned into this board, the three of us,
8 deciding whether a tax is going to bring in 300 million
9 or 600 and some million. I mean, the three of us have
10 no business saying whether the tax should be capped at
11 300 or 600 million, and it really highlights to me why,
12 A, we should interpret this as a cap because otherwise
13 someone really should be able to come up with a really
14 good number and we are just not equipped to do that;
15 and, second, it just highlights the complete
16 uncertainty of what the numbers are if that isn't
17 interpreted in the way I think it should be.

18 And so I'm where I was before, that --
19 that this number should be up to the proponents, that
20 it should be interpreted as a cap. I think Mr. Gessler
21 brings up a good point, that it may not really make
22 sense for that number to be stuck in at the Title Board
23 hearing, that it probably should be hashed out in a
24 more appropriate forum.

25 On the other hand, if it were up to me,

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1 the proponents would just say here is the number to put
2 in there and there would be no discussion about it
3 whatsoever and it would be a matter for fighting out in
4 the campaign for or against it. Otherwise, I see no --
5 no legitimate reason to pick one number over another,
6 and even if I did, I'd be nervous about the three of us
7 having that kind of power.

8 MR. HOBBS: I think I -- again, reflecting
9 on our earlier discussion, I think I feel an obligation
10 to make a good-faith estimate based on the information
11 in front of us even though I recognize that our
12 qualifications are somewhat suspect. It's just that
13 legally we're required to do it and --

14 MR. DOMENICO: But -- I'm sorry to
15 interrupt, but I don't understand what we're legally
16 required to do. We're legally required to put a number
17 in there that is the amount it'll raise the first year,
18 and the number we put in there is the amount it'll
19 raise the first year, and so I don't understand why we
20 should trust one spreadsheet over another rather than
21 just saying that this is going to be the cap.

22 MR. HOBBS: Well, I wasn't going to
23 suggest trusting one over the other. I -- I'm just
24 saying I think we have an obligation to make a
25 good-faith -- to pick a good-faith number.

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1 Now, what we have, I think, in this case
2 is two different estimates, both from, I think,
3 credible -- I think they're both credible from what
4 I've heard. I think the estimate from OSPB is credible
5 primarily because of the source and their
6 qualifications. What we don't have from OSPB is the
7 benefits of their analysis, and -- and I believe that
8 OSPB estimates are credible and trustworthy. If that's
9 all we have, I'm pretty comfortable with that.

10 On the other hand, we have from
11 Mr. Gessler what I believe is a credible estimate, as
12 well. Now, it may not be as neutral, but it's better
13 substantiated, and to the extent that I follow the
14 analysis, it seems credible. I -- I don't have a basis
15 for picking one number or the other. Like I say, I
16 think they're both credible. I guess, just for the
17 sake of fulfilling the obligation to make a good-faith
18 estimate, I would average the two. I would take
19 Mr. Gessler's number, reduced by 10 percent, as he
20 indicated probably it should be, take that number and
21 average it with the 321.4 million from OSPB. I don't
22 know whether there's any support for that. That ends
23 up being -- 451.0 million would be the estimate I would
24 suggest.

25 I'm also fine with picking a number or --

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1 or even going along with the -- being heavily
2 influenced by proponents' preference, except that I
3 don't think that dictates the answer. I think
4 independently we still have to put a number in that we
5 believe could be the amount raised by the measure
6 according to its language in the first full fiscal
7 year.

8 MR. DOMENICO: Well, here is the one thing
9 we know for essentially certain. None of these
10 estimates are accurate. None of them is going to turn
11 out to be the actual number, and so I don't -- I mean,
12 we could flip a coin, we could draw numbers out of a
13 hat, we could split the difference. None of that makes
14 any sense to me as a matter of -- I mean, the
15 good-faith number we have to put in there is the number
16 that it's going to raise, and I think there might be a
17 problem if it -- if we thought it was going to raise
18 far less than the number the proponents wanted to put
19 in there because of the language that TABOR uses. Then
20 I might have some difficulty simply accepting their
21 number.

22 But when the adjustments in tax rates that
23 they are proposing and the elimination of certain
24 credits means that they're going to run up into a cap,
25 then our good-faith estimate is simply to put in what

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<p>1 the cap is and if they want to -- and it seems to me 2 the way TABOR sort of -- the structure of it works is 3 that it's got an internal cap. Even if you're messing 4 around with tax rates or creating a new tax rate, that 5 it's got a dollar amount cap, and if we -- whatever 6 number we put in there, as long as it's not over our 7 best estimate, then it seems to me we've discharged our 8 duty, and splitting the difference and trying to adjust 9 here and there for errors that may have been made in 10 various things, it's just completely beyond what the 11 Title Board should be doing.</p> <p>12 And it seems to me if we put a number in 13 there that will effectively be a cap, then we've done 14 our duty and doing anything else is really pretty 15 remarkable that because we decided to split the 16 difference, it may be that Colorado taxpayers end up 17 paying 200 and some million more dollars in taxes 18 simply because that was the best we could come up with. 19 I would rather put that on the shoulders of the 20 proponents, let them come up with a number, and have 21 that be the cap and then let it be a political fight if 22 that's too low or too high.</p> <p>23 MR. HOBBS: Moving a little bit in that 24 direction, I -- I -- I think I would prefer, rather 25 than the average that I suggested, a different average,</p>	<p>1 the number that the board has previously inserted in 2 the title.</p> <p>3 MS. EUBANKS: Well, I think the -- the 4 difficulty here is the fact that the best we can do, in 5 terms of the information that's given to us, are 6 estimates, and that's what estimates are. They're -- 7 they're always wrong, because they're either higher or 8 lower. I mean, that's the nature of the beast and how 9 we deal with it.</p> <p>10 I do have to disagree with Mr. Domenico's 11 characterization. I don't think the proponents can 12 come in and just pick a number. I think there has to 13 be some basis, whether it's the estimates -- and as 14 imperfect as they are, I think there's a basis for 15 coming up with a number. Yes, we do ask them, you 16 know, for their input, their comfort levels, the risks 17 that they're willing to take in terms of the numbers, 18 especially when there's a disagreement as to the 19 estimates, but I think, you know, we have to put a 20 number in.</p> <p>21 What the effect of that number is remains 22 to be seen. We all have our opinions. Until we see a 23 situation where it actually plays out, I don't know 24 what that answer is, and -- and so I'm -- I don't know 25 that I'm able to take Mr. Gessler's number even with</p>
<p>1 and that's to start with the low estimate from OSPB, 2 which I think was 253.3 million. That's the low 3 estimate. We've got a high estimate from Mr. Gessler, 4 and I would average those two, and I'm taking into 5 account the proponents' belief, from their own 6 independent sources, although I don't think they used 7 numbers, but I think they indicated that their 8 independent assessment was that the OSPB estimate was 9 high, so that that also pushes me towards believing 10 that if there's a -- if we're going to try to pick a 11 number, which I think we're obligated to do, that it 12 ought to be somewhere in between the low and the high, 13 and that actually would be 417 million.</p> <p>14 Again, I don't know whether anybody -- I 15 mean, we have just a different point of view. I just 16 feel like we've got to pick a number, and I think it's 17 got to be driven by the language of the measure, and I 18 understand there's legal consequences of that. I'm 19 just trying to follow the dictates of TABOR. So I 20 don't know.</p> <p>21 Ms. Eubanks, would you have any comment? 22 MS. EUBANKS: You want me to say 23 something? 24 MR. HOBBS: I don't know whether we 25 will -- the issue being is there a support for changing</p>	<p>1 the 10 percent reduction because of some of the issues 2 that I raised. I think it may be somewhat lower than 3 that based on his assumptions. Whether we stick with 4 the number we have, whether we average it, as Mr. Hobbs 5 is suggesting, it's -- it's pretty much, you know, a 6 shot in the dark based on what people with more 7 expertise than we have can tell us in terms of that 8 information.</p> <p>9 MR. DOMENICO: But -- and I -- I guess I'm 10 kind of beating a dead horse, but it's not just a shot 11 in the dark. The number we put in there, whether it 12 has an effect just the first year or forever, has a 13 huge impact on how much people are going to pay or at 14 least it can unless it comes in under that number.</p> <p>15 MS. EUBANKS: And I don't disagree with 16 that.</p> <p>17 MR. DOMENICO: So what -- so it should be 18 up to the proponents how much tax they want to impose 19 or ask the people to impose on themselves, not on us; 20 and it's much better, it seems to me, to let the 21 proponents take the shot in the dark than for us to 22 take a shot in the dark, because, as you say, we -- 23 nobody can tell us what these numbers are going to be, 24 but we are putting a number in there that's going to 25 have some effect.</p>

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1 So the best we can do is say effectively
2 what TABOR lets proponents do is create a new tax or
3 adjust taxes, but they can -- they have to put a -- but
4 they inherently have a limit on how much they can
5 raise, and so proponents can say we want to change the
6 tax in such a way to raise this much money, and why we
7 should overrule their decision on how much money it
8 should raise, I don't understand.

1 proponents -- that you have to, because of the language
2 of TABOR, read that into the structure, read that into
3 every tax-raising measure, otherwise it doesn't make
4 any sense to me.

5 And so, I mean, the idea that we would
6 say, well, the proponents say the cap should be at
7 321.4, but we've got these estimates and so we're going
8 to say 417 or 502 doesn't make any sense to me based --
9 we don't -- I don't see where we have an obligation to
10 do that, given that it -- it affects the cap.

11 I would agree if it didn't -- if that
12 language had -- essentially was -- truly was just an
13 estimate of what we thought it would raise and if it
14 went over or under that, so be it; but when it actually
15 affects a limit, then we've discharged our duty and
16 otherwise we are changing what the proponents are
17 trying to do, it seems to me, if we put a higher cap on
18 it than what they want there to be, and it's just -- I
19 mean, in this case, it was complicated enough, but if
20 we start getting into this business, next time,
21 Mr. Ramey won't just let us get away with his
22 characterization of what his people thought, he'll come
23 in with his own estimates, and then I don't think I
24 want to go down that road.

25 MR. HOBBS: Mr. Ramey?

9 MS. EUBANKS: And I think that if they
10 draft the measure in such a way to generate so much
11 revenue, that's their way of controlling the amount.

12 MR. DOMENICO: But --

13 MS. EUBANKS: I mean, if, based on the
14 text of the measure and based on sort of the best
15 information available, we're told, through folks that
16 deal with these types of estimates all the time, that a
17 particular tax proposal is going to generate \$300
18 million, I don't know. Now, if the proponents want to
19 generate only 200 million, then they should draft their
20 measure that way, but based on the text of the measure
21 and based sort of on the facts known and everything
22 else remains the same, I think the best information
23 available is going to be the estimate that comes from
24 the experts.

25 MR. DOMENICO: I agree that that's the

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1 best estimate available.

2 MS. EUBANKS: And so you want the 300 even
3 though now they're saying 200, even though they could
4 have drafted the measure to have a \$200 million fiscal
5 impact. I think -- I think we're obligated to try to
6 come up with an estimate based on the text of the
7 measure rather than an arbitrary choice that may be for
8 a lot of reasons --

9 MR. DOMENICO: But --

10 MS. EUBANKS: -- other than factual. I
11 mean, if they want to control the amount of revenue
12 that they generate, they -- they do that through the
13 way they draft the measure.

14 MR. DOMENICO: Except the one fact we
15 actually know is that the number we put in there is
16 a -- is the top end, at least for the first year, and I
17 will take that. So the one fact we know is that, and
18 so whatever we put in there is the top end, and so if
19 we start shifting that around, we are changing based on
20 our guess, on our analysis of things we don't really
21 know or understand very well. We are changing the one
22 thing that we could know for sure, which is the cap,
23 and what I'm essentially -- the only way I can make
24 sense of how TABOR interacts with these titles is that
25 inherent in every measure is a cap, and that the

1 MR. RAMEY: Mr. Chair, if I may just
2 comment with a request. I'm going to ask the board not
3 to do an average because frankly I think that's
4 probably the worst number that we could come up with
5 because it doesn't mean anything. It's just averaging
6 numbers, and I -- I tend to agree with Mr. Domenico,
7 though I'm not going to take him up on the threat to
8 come in with my own economic analysis of anything.

9 Referring to TABOR, the -- the way that
10 the language reads for the estimate is for the -- it's
11 supposed to be for the first full fiscal year of each
12 proposed district tax increase, the district estimates
13 of the maximum dollar amount of each increase, and I'm
14 referring to that (B)(3) section that triggers the --
15 the cap or the lowering of the tax refund and so forth.
16 In a normal tax increase situation, it would be the
17 district. It would be not the Title Board or the -- or
18 any other group that would be making the estimate, it
19 would be the district proposing the tax.

20 In this case, we don't have a district
21 proposing a tax, we have proponents proposing the tax,
22 and I guess I think the closest we could come to -- to
23 complying with TABOR in the context of -- of a
24 citizen-initiated initiative is to read district as, I
25 mean, the proponents. Let us propose the tax in good

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1 faith, and I think the board does have an obligation to
2 hold us into the realm of reality with some basis for
3 what we're doing, and our basis is the high end of the
4 OSPB estimate, but to defer to our choice in that
5 regard. And, as Mr. Domenico says, if we're wrong,
6 there's a consequence. We can argue about what that
7 consequence may look like, but there certainly is a
8 consequence to us, and I would certainly submit it's
9 more than just a one-year refund.

10 And if we start raising the number,
11 obviously that creates political issues for us which
12 are sort of the least of the considerations here, but
13 it also does precisely what Mr. Domenico says. If we
14 do come in with 500 million, we get to keep it all then
15 over and above what our intention was.

16 So I guess the closest we would come to
17 complying with TABOR, I think, would be to view the
18 proponents' estimate as the district estimate as the
19 language would be intended in TABOR since the district
20 isn't making an estimate here and defer to -- to us as
21 long as we're -- we have some basis for saying what
22 we're saying and not substitute a board judgment.

23 I agree with Mr. Domenico. I don't know
24 how you do that other than making estimates which are
25 clearly -- which don't comport with anything other than

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1 the fact that they're just averages.

2 MR. HOBBS: Ms. Eubanks?

3 MS. EUBANKS: And I'd have to disagree
4 with Mr. Ramey.

5 MR. RAMEY: I was waiting for that.

6 MS. EUBANKS: Only in the sense that I do
7 think you have a district here and that's the state and
8 under, you know, Article V, Section (1), the right of
9 an initiative in terms of law making is the same and
10 equal to what the General Assembly makes in terms of a
11 law. So in terms of what the people are proposing, I
12 view that at the same level as if the General Assembly
13 was proposing a tax increase.

14 And so you do have a district. It is the
15 state. And for -- for either the proponent -- for it
16 to be an initiated measure or a referred measure, I
17 view the Title Board as having the obligation to come
18 up with the state's estimate, you know, that is used
19 for purposes of TABOR. I mean, we're the -- the state
20 entity that is acting in this regard just like the
21 General Assembly, when it comes up with its title for a
22 referred measure, fills in the blank of the estimate
23 for the ballot title.

24 And so I see it a little different, and so
25 I'm not willing to defer to the proponents quite --

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1 quite as much as you might suggest in terms of -- as
2 the action of a district, but I -- I do think that in
3 the past where we've had conflicting, competing
4 estimates, we tend to go with OSPB, and so I think I'm
5 fine staying with the 321 million, point 4, that we --
6 that we set in the title originally.

7 MR. HOBBS: And I'm fine with that, as
8 well. I mean, it's still within the range, between the
9 low end and the high end, and I'm -- I'm fine with
10 that. So I -- I really do think -- I mean, this is an
11 important discussion. I really feel like if the
12 proponents want to set the amount, they need to do that
13 in the measure itself. They can do it, as Ms. Eubanks,
14 I think was suggesting, they can set the rates and so
15 forth so that they can guess it's going to be the
16 amount that they're targeting or they can just write a
17 cap in. They're perfectly free to draft the measure
18 that way, but I don't think we can delegate to the
19 proponents or anybody else the title-setting
20 responsibility for what that -- what the language of
21 the measure will drive.

22 So, in any event, I -- it sounds like
23 there's no support for changing the title. I guess I'd
24 suggest we move on to the other objections to the
25 title

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1 MR. DOMENICO: I suggest we do insert the
2 percentages even though the -- this one is kind of
3 confusing. Of course, I've been suggesting that for
4 every one of these we've seen, so I'll stop there.

5 MR. HOBBS: Okay. Could you just -- and
6 I've indicated I'm really willing to do that now if --
7 again, I'd like a better picture of what it would look
8 like and what complications we're going to face. Can
9 you just tell me roughly, before we put it up here on
10 the board, how simple or how complicated that would
11 be.

12 MR. DOMENICO: Well, this one
13 unfortunately is more complicated than usual because
14 within No. 3, there are sub -- I think -- let's see.
15 The Nos. 1 and 2 that we've got up there on line 9, I
16 think, would simply get -- oh, where does it go?

17 MR. HOBBS: 22 percent each?

18 MR. DOMENICO: Yeah. Is that right?
19 Yeah, 22 percent each. The problem, then, is that the
20 remaining 56 percent that goes to 3 is split up into --
21 it's five or six -- whatever it is -- three or four
22 subcategories. So I'm not sure if it makes sense to do
23 the little bit of math and say 22 percent after --
24 22 percent to the severance tax trust fund, 22 percent
25 to the local government severance tax fund. and 3 --

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1 the remainder to the severance tax stabilization trust
 2 fund, which would distribute -- and then do whatever
 3 the 60 percent of 56 percent or if there's a better way
 4 to do it.
 5 MR. RAMEY: Mr. Chair?
 6 MR. HOBBS: Mr. Ramey.
 7 MR. RAMEY: May I just caution the board
 8 in this exercise, the design of this measure, if you
 9 recall, is sort of -- this is the whole harmless aspect
 10 of this, by intent. In other words, the 22 and the
 11 22 percent are to the severance tax trust fund and the
 12 local government severance tax fund. They're supposed
 13 to be roughly what they're receiving now.
 14 The increased portion of the tax is
 15 supposed to be that which is divvied up through the
 16 stabilization fund in No. 3. Therefore, rather than
 17 taking percentages of percentages, it probably would
 18 make the most sense, if you want to put those in, to
 19 have the 22 and 22 and 56; and then actually with
 20 regard to the 56 use the percentages of the 56, which
 21 would be, for example, for the scholarship provision,
 22 the 60 percent, because the 60 percent going to
 23 scholarships represents the portion of the increased
 24 revenue, as this measure is designed to operate. So
 25 that will really more accurately inform the voters of

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1 where the increased revenue stream is going.
 2 Otherwise, you've got a lower number there and it sort
 3 of loses track of -- of where -- where the increase is
 4 going. I don't know if I'm making any sense or not,
 5 but --
 6 MR. HOBBS: Well, maybe I'm
 7 misunderstanding, but if we're talking about saying 22
 8 and 22 and then 60 and 15 and 10 and 10 and 5, I mean,
 9 isn't the voter going to be confused by this is all
 10 going to add up to more than 100 percent?
 11 MR. RAMEY: Well, what I'm suggesting, I
 12 guess, is if this can be done in some way that is
 13 readable, is starting on line 9, specified percentages
 14 of the tax -- of the tax revenues to be credited to (1)
 15 22 percent to the severance tax trust fund (2)
 16 22 percent to the local government severance tax fund,
 17 and (3) 56 percent to the severance tax stabilization
 18 fund, which the measure creates to be -- and you're
 19 going to have to change the wording -- to be used
 20 60 percent to scholarships, blah, blah, blah, blah,
 21 blah, but to keep the distribution within the
 22 stabilization fund sort of matching the percentages in
 23 here. Otherwise, we lose track of -- of the fact that
 24 we've got sort of this whole harmless and we're
 25 divvying up the increased revenue.

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1 Now, you could do it the other way where
 2 you're taking 60 percent of 56 percent, but you're
 3 going to have weird percentages now.
 4 MR. DOMENICO: Yeah. Your way is the way
 5 to do it.
 6 MR. HOBBS: Ms. Eubanks?
 7 MS. EUBANKS: It's worse than that because
 8 not only is it 60 percent of, what, 56 percent, it's --
 9 of the 56 percent, it's the 90 percent that goes to the
 10 operational account, which then 60 percent is used for
 11 scholarships.
 12 MR. RAMEY: And it's worse than that,
 13 because then we have the --
 14 MS. EUBANKS: The flow?
 15 MR. RAMEY: The cap on the --
 16 MS. EUBANKS: The 10 percent that's going
 17 to the perpetual base accounts?
 18 MR. RAMEY: One of the funds that spills
 19 over into the other, so the percentages would be very
 20 strange and constantly changing. So, you know, I think
 21 the only -- I think Ms. Eubanks is correct that the
 22 only practical way to do it is 22, 22, 56 and then lock
 23 the percentages in on the 56 as they appear in the
 24 measure, and I think that reflects the design, as well.
 25 MR. HOBBS: Mr. Gessler?

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1 MR. GESSLER: I was and probably still
 2 will continue to agree with Mr. Ramey's approach on
 3 that. And perhaps, you know, for Item No. 3, say you
 4 have the 56 and say "of which," approximately
 5 such-and-such percentage shall be used for (A), such
 6 and such for (B), such and such -- so the "of which"
 7 indicates that it's of the 56 percent and that -- and
 8 perhaps the use of "approximately," you know, will
 9 help -- will help solve some of those -- of those
 10 problems.
 11 I mean, my -- our concern to a great
 12 extent is -- I mean, precision is very important,
 13 obviously, but I -- I recognize you have to balance
 14 that against complexity, and here what we're trying to
 15 focus on is the -- is the approximate -- is the
 16 magnitude of the -- of the distributions, so I think
 17 that gets --
 18 MR. DOMENICO: Can we start out by doing
 19 the 22, 22, 56, at least, and then see if we can come
 20 up with a way to break it down further.
 21 MR. HOBBS: Ms. Eubanks?
 22 MS. EUBANKS: And I'm fine with that. You
 23 know, part of the difficulty -- I mean, if you were
 24 going to, I don't know, grammatically be correct, the
 25 way that we lumped it right now in terms of the title

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1 we set, we said "requiring specified percentages of the
 2 tax revenues," so if you were to change it in the
 3 normal sense, it seems like you'd say "requiring
 4 22 percent of the tax revenues to be credited" to this,
 5 22 to that, and -- which makes it long, and I'm not
 6 sure improved, and so I'm just wondering whether we
 7 could sort of keep the language as it is but then at
 8 the end of where it says like "severance tax trust
 9 fund," and whether it would be confusing because you
 10 put in parens 22 percent at the end to be an indicator
 11 so you're still saying specified percentages of the tax
 12 revenues and you don't have to continue to restate that
 13 over and over again, or maybe you do a hyphen and then
 14 say, you know, 22, the number 22, with the percent sign
 15 to give that indication without doing it -- I don't
 16 know.
 17 MR. DOMENICO: Yes. The only other way I
 18 think you could do it is I don't think you'd have to
 19 repeat all of it in every one. You could say
 20 "requiring the tax revenues to be credited (1)
 21 22 percent to the severance tax trust fund."
 22 MS. EUBANKS: Well, you could change it to
 23 say "requiring the following percentages of the tax
 24 revenues."
 25 MR. HOBBS: And I might suggest, by the

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1 way, however -- I'm not sure of the best approach here,
 2 but that the paren (1), (2), (3) be changed to (A),
 3 (B), (C) to help distinguish. If we're going to use
 4 numbers for the percentages, it might help make it more
 5 readable.
 6 MR. DOMENICO: Yeah, or you could say
 7 "requiring the tax revenues to be credited as follows:
 8 (A) 22 percent to the severance tax trust fund."
 9 MS. EUBANKS: I'm fine with that, too.
 10 MR. HOBBS: Shall we try that?
 11 MS. EUBANKS: Don't strike the "tax
 12 revenues."
 13 MR. DOMENICO: Leave the "tax revenues."
 14 MS. EUBANKS: So strike through "of."
 15 MR. DOMENICO: Delete the "2" at the end
 16 of that.
 17 MS. EUBANKS: Right there.
 18 MR. DOMENICO: And do --
 19 MS. EUBANKS: "As follows."
 20 MR. DOMENICO: "As follows," colon.
 21 MS. EUBANKS: And then for the -- after
 22 the -- no. Keep -- you're going to change it to (A).
 23 That's fine.
 24 MR. DOMENICO: Yeah. I think (A), (B),
 25 and (C) is better.

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1 MS. GOMEZ: Where did you want me to go?
 2 MS. EUBANKS: Before the "severance tax
 3 trust fund" language, say -- and I'd do it numerically.
 4 So "22," and then the percent sign "to be" -- and then
 5 you get the -- and then down. Do it again. Before
 6 "the local government severance tax trust fund,"
 7 insert -- oh. "Each unit to be" and then 22 percent
 8 to -- and then change (3) to (C) and insert 56 percent
 9 of.
 10 MS. GOMEZ: Of or two?
 11 MS. EUBANKS: Oh, two, sorry. And then
 12 I'm just wondering whether or not it would help us
 13 because otherwise it gets so long, whether it's helpful
 14 to put a sem after "which the measure creates," and
 15 then, I mean, to sort of -- that that's your initial
 16 three-tier split and then to specifically talk again
 17 about the severance tax stabilization trust fund in
 18 terms of whatever we're going to do with the rest of it
 19 to try to break it up.
 20 MR. HOBBS: Mr. Gessler?
 21 MR. GESSLER: Perhaps to say 56 percent to
 22 the newly created severance tax stabilization trust
 23 fund so at least it gets rid of the "which the measure
 24 creates" clause.
 25 MS. EUBANKS: Or you could say a new

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1 severance tax --
 2 MR. HOBBS: A new?
 3 MR. GESSLER: That's fine, too.
 4 MR. HOBBS: Okay. Try that.
 5 MS. EUBANKS: Strike the "the" at the end
 6 of line 10.
 7 MR. DOMENICO: Yeah. I think the way --
 8 the reason it's as it is is because in the past it was
 9 easier to lead into the "to be used to fund," but if
 10 we're going to change that, this is probably better.
 11 MS. EUBANKS: Okay. So then insert "a
 12 new" and then strike the comma after "fund" through
 13 create, and I think it should be a semicolon. Now the
 14 hard part.
 15 MR. DOMENICO: Right. I mean, the -- you
 16 could sort of repeat what we said in saying, directing
 17 that funds that the money in the severance tax
 18 stabilization fund be distributed as follows. I
 19 also -- well, yeah.
 20 MR. HOBBS: Mr. Gessler?
 21 MR. GESSLER: I'll just provide a couple
 22 suggestions here. Perhaps a -- you know, "to a new
 23 severance tax stabilization trust fund," and then you
 24 could say, "of which 10 percent shall go to the" -- "a
 25 perpetual base account." comma. and then multiply your

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1 60 percent times your 90 percent, 56 percent to this,
2 so that gives you the direct percentages, the derived
3 percentages that are accurate and you're not really --
4 you're not really moving into, you know, the effect of
5 this in any speculative matter. It's a mathematical
6 derivation. That's maybe another way to do it.

7 Another way to do it, which is a little
8 more complex, I think, from a word standpoint is to say
9 "a new stabilization trust fund," and then you'd say
10 "which shall" -- "which shall be divided 10 percent to
11 the perpetual base account and 90 percent to the" --
12 "to the operational account, of which 60 percent shall
13 go to" --

14 MR. DOMENICO: Can't we just skip the
15 "perpetual base account" and just do your original
16 idea? Basically say "of which 56 percent is to be used
17 to fund" the scholarships and then whatever the math on
18 the other one is, 90 percent of the other numbers.

19 MR. GESSLER: As I've thought about it,
20 instead of saying "approximately," I think it would
21 make sense to say 10 percent to the perpetual and then
22 56 percent so voters do sort of see it add up to
23 100 percent. But if you want to exclude the 10 percent
24 and just say 56 percent to scholarships, to use those
25 mathematical derivations, I guess I'm fine with that

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1 proponents would object.

2 MR. GESSLER: And just on behalf of
3 Mr. Dempsey, we'd be fine with that approach.

4 MR. DOMENICO: Let's do it if anybody
5 remembers what it was.

6 MS. EUBANKS: Well, so you could say -- I
7 don't know. You could say "the majority," but that
8 doesn't -- the majority of the funds to be used, blah,
9 blah, blah, but that doesn't -- I mean, you could say
10 most of the -- if you go to trust fund, most of --
11 well, see, then we go back to a comma rather than a
12 semicolon. If you could end something like "with most
13 of these revenues to be used to" --

14 MR. RAMEY: Mr. Chair, I don't mean to
15 interrupt Ms. Eubanks, but --

16 MS. EUBANKS: No. Be my guest.

17 MR. RAMEY: If I may, because this path, I
18 think, is going to cause a problem ultimately here.
19 All of the revenue is going to be used ultimately
20 according to the percentages that are stated in the
21 measure. It's just that the use of the perpetual base
22 account slows it down slightly, and as the 56 percent
23 decreases eventually coming into that account, there
24 will be a spillover out of that -- out of the perpetual
25 base account into the operational account and

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1 I'm just trying to provide a couple options.

2 MR. RAMEY: Mr. Chair, may I just comment
3 briefly on that point? Ultimately all the money goes
4 according to the percentages because you'll recall the
5 perpetual base account is capped by the preceding
6 year's revenue so it's going to go down.

7 So to avoid all kinds of complexity that
8 really comes out to the same percentage in the long
9 run, all the stabilization account -- all the perpetual
10 base account is doing is stabilizing the cash flow. I
11 guess I would agree with Mr. Domenico's comment that --
12 don't get into the -- the perpetual base versus the
13 operating account, operational account, but just use
14 the percentages because roughly that's what's going to
15 happen.

16 MR. HOBBS: And perhaps use the word
17 "approximately" to signal this isn't exact?

18 MR. RAMEY: If the board feels compelled
19 to use the word "approximately," that would be fine.
20 The actual effect of the stabilization through the
21 perpetual base account is so minor the way it's been
22 designed, that "approximately" almost suggests that
23 there's more variation in there from the stated
24 percentages than there will be, but if the board feels
25 that they wish to insert that word. I don't think the

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1 ultimately all of the funds, all of them, 100 percent
2 are going to be distributed through the operational
3 account as defined by the percentages.

4 All the -- all the perpetual base account
5 does is slow it down so that there's -- there aren't
6 quite the peaks and valleys that might appear
7 otherwise, and my fear is that using language like
8 "with most of the revenues to be used as follows"
9 suggests some revenues are going someplace else or
10 staying forever in the perpetual base account and
11 they're not. They're all going to come out, only a
12 little more slowly than if -- if it came out
13 100 percent on a year-to-year basis.

14 So "approximately" is -- is okay, because
15 there will be a little differential from year to year,
16 but to suggest that some money is going someplace other
17 than as stated here, that would be inaccurate and
18 misleading, I believe.

19 MS. EUBANKS: And that's due to the
20 125 percent of the previous fiscal year's revenue?

21 MR. RAMEY: Yeah, exactly. And the
22 125 percent of the 56 percent is merely a tamping
23 mechanism. That will eventually go down and force all
24 of the money out of the perpetual base account into the
25 operational account to be distributed 60 percent. 15.

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1 MS. GOMEZ: You want me to show you it?	1 MR. DOMENICO: I mean, I know programs can
2 MR. DOMENICO: I can -- I'm okay with	2 be kind of a -- a term of art in government talk, but I
3 it.	3 think, in normal person talk, it just means stuff that
4 MR. HOBBS: I think it's okay as shown on	4 has to do with renewable energy, and I doubt -- I doubt
5 the screen.	5 that that fund has anything that's not related to
6 MS. EUBANKS: I think there should be --	6 something like that in the sort of general use of the
7 is there a space when we're at "15 percent to fund"?	7 term.
8 MS. GOMEZ: Yeah. There's a space right	8 MR. GESSLER: We're entitled to toss in
9 there.	9 the word "certain."
10 MR. DOMENICO: I think there's an extra	10 MR. DOMENICO: Yes, "certain."
11 space on line 10 after "fund," for the comma.	11 MR. HOBBS: Mr. Ramey?
12 MS. GOMEZ: Right here?	12 MR. RAMEY: Mr. Chair, that would be
13 MS. EUBANKS: No, before the (B).	13 acceptable. You know, legally, and I've got the Clean
14 MR. DOMENICO: No. At the beginning.	14 Energy Fund definitions here, it -- it's supposed to
15 Should I -- should I move for those	15 attract investment, assist in technology transfer,
16 changes? Are you ready for that? All right. I move	16 provide marketing centers, implementation of
17 those changes.	17 projects.
18 MR. HOBBS: Second. Further discussion?	18 MR. DOMENICO: Are those broken down in
19 All those in favor say "aye." Aye.	19 percentages?
20 MR. DOMENICO: Aye.	20 MR. RAMEY: No, thank heavens. If they
21 MS. EUBANKS: Aye.	21 were, I'm not about to monkey with those percentages.
22 MR. HOBBS: All those opposed, "no."	22 MR. DOMENICO: I think those are all
23 (No response.)	23 programs in the typical sense of the word.
24 MR. HOBBS: That motion carries three to	24 MR. RAMEY: The only other language is any
25 zero.	25 other plan which serves the purposes of advancing
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1 Further changes to the titles?	1 energy efficiency, and "purposes" is such a weird word,
2 Ms. Eubanks?	2 so "programs" might be as good as we can do, but that
3 MS. EUBANKS: In terms of the use of the	3 is -- that's a layman's word and not a legal word.
4 word "enhancements," while I'm agreeable to change it,	4 MR. DOMENICO: Yeah, yeah.
5 whether or not we change it to "advancements," whether	5 MR. HOBBS: I'll move the change as shown
6 Mr. Gessler thinks that's any better in terms of it	6 by Ms. Gomez on the screen so that that portion reads
7 tracks with the statutory language or whether or not --	7 "10 percent to fund renewable energy and energy
8 and I don't know if it makes any difference. Maybe we	8 efficiency programs."
9 just get rid of "enhancements in" so it's "10 percent	9 MR. DOMENICO: Second.
10 to fund renewable energy and energy efficiency."	10 MR. HOBBS: All those in favor say aye.
11 MR. HOBBS: Mr. Domenico?	11 MR. DOMENICO: Aye.
12 MR. DOMENICO: I thought you might be able	12 MR. HOBBS: Aye.
13 to do something like that and just at the end say --	13 MS. EUBANKS: Aye.
14 after "efficiency," say "programs." I'm not totally	14 MR. HOBBS: All those opposed, "no."
15 familiar with how that fund works.	15 (No response.)
16 MS. EUBANKS: Me, either. And I just	16 MR. HOBBS: That motion carries three to
17 don't know whether they're all for programs, per se, or	17 zero.
18 whether --	18 MR. DOMENICO: Did we dispense with the ad
19 MR. DOMENICO: I don't know if it's	19 valorem issue? I think -- I don't think it needs to go
20 programs.	20 in there.
21 MR. HOBBS: Mr. Gessler?	21 MR. HOBBS: I'm okay with the title as
22 MR. GESSLER: We'd be -- thank you,	22 is.
23 Mr. Hobbs. We'd be agreeable to removing the phrase	23 MS. EUBANKS: As is.
24 "enhancements in" and then adding "programs" after	24 MR. HOBBS: Mr. Gessler.
25 "efficiency." That works fine for us.	25 MR. GESSLER: Mav I just make one

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1 last-ditch attempt, and I guess we do feel somewhat
2 strongly about this; but, I mean, ad valorem is a
3 specific type of property tax, and it's an indicator as
4 to what's going on, and I would analogize it to the
5 board's frequent use of the term "certain" and the
6 board's reasoning, I think has been, you know, the term
7 "certain" sort of provides an indicator that there's
8 more going on and that certain means something.

9 By the same token, ad valorem means
10 something here, and the concern is that, you know,
11 the stability of property taxes that most people are
12 used to -- I mean, most people are used to property
13 taxes based on the market value of the desirability of
14 the property rather than the market value of a
15 commodity, and because just about -- I shouldn't say
16 "just about," but a huge portion of people in Colorado
17 directly pay property taxes, whether it's business or
18 commercial, that has a certain meaning in people's
19 minds; and ad valorem -- these taxes are -- are really
20 sort of more akin to a -- to a sales tax because
21 they're so heavily driven by commodity prices. So
22 that's why we're looking for that indicator of ad
23 valorem.

24 MR. HOBBS: Ms. Eubanks?

25 MS. EUBANKS: And I -- I guess I have to

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1 disagree with Mr. Gessler because I think all the
2 property taxes that people pay, whether it's on
3 residences or commercial, is all ad valorem because
4 it's based on value, and that's what the word is
5 indicating. So all property taxes are ad valorem
6 taxes. Property tax is really sort of a short form for
7 ad valorem taxes, and so I don't think that ad valorem
8 in this context is going to add anything in the sense
9 that ad valorem for wells being any different than ad
10 valorem for residential or commercial, and it doesn't
11 mean that it's based on production versus anything
12 else. It's based on value, and that's what the latin
13 term means, and that's what ad valorem tax is. It's
14 based on the value of the property. That's my
15 understanding, at least, and that's why I'm not
16 inclined to insert "ad valorem."

17 MR. GESSLER: If I may say one more thing
18 for the record, and I'll sit down. I'm happy to pass
19 out definitions from Black's Dictionary. I have enough
20 copies for everyone, but according to this, an ad
21 valorem tax is a tax for a fixed proportion of the
22 value of the property with respect to which the tax is
23 assessed and requires the intervention of assessors or
24 appraisers to make the value of such property so the
25 amount due from each taxpayer can be determined, and

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1 that's done on an annual basis for oil and gas ad
2 valorem; whereas, the definition of property tax is a
3 tax levied on the owner of property, especially real
4 property, usually based on the property's value, so
5 it's not necessarily -- and here we have oil and gas
6 taxes are specifically reevaluated every year whereas
7 property taxes sometimes are two to three years before
8 they're reassessed, so there is that -- that greater
9 stability in that change. So there is a difference,
10 perhaps not a meaningful one in -- and I can understand
11 that --

12 MR. DOMENICO: Could the producers -- do
13 the people who take this credit pay two different kinds
14 of property tax? Do they pay both an ad valorem and
15 some other kind of property tax?

16 MS. EUBANKS: No.

17 MR. GESSLER: No. They just pay an ad
18 valorem tax.

19 MR. DOMENICO: Yeah. So --

20 MS. EUBANKS: I mean, when you look at
21 Section (3) of Article X, which is the constitutional
22 basis for property tax in the state, it talks about the
23 way different properties are valued, such as
24 residential being from the market, and it has the --
25 basically the production of the wells are -- it's --

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1 it's based on law, but it can be done on production,
2 and so that's -- it's -- all property tax comes out of
3 this provision, and it's always based on value. It's
4 just the method of valuation that may differ between
5 wells and residential property or commercial. There's
6 just a different basis for how you determine the
7 valuation, but they're all, in my mind, ad valorem
8 taxes.

9 MR. GESSLER: When I was in college, in my
10 Middle Ages course, we had an extra credit question to
11 determine which two saints debated how many angels
12 could dance on the head of a pin.

13 MS. EUBANKS: Right.

14 MR. GESSLER: So I recognize we're
15 approaching that area. We're strongly -- we'd like it.
16 I don't think it adds much complexity or
17 cumbersomeness, and it seems as though the proponents
18 don't object, so I would make a cost benefit argument
19 here and leave it at that. Thank you very much.

20 MR. HOBBS: On a different objection
21 raised by Mr. Gessler's motion for rehearing, I am
22 wondering about, in line 11, whether this goes to the
23 issue about -- the title states "colleges and
24 universities." Is it better to say something like
25 "used to fund higher education scholarships for

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1 Colorado residents"? I think that was a suggestion I
2 heard.
3 MR. DOMENICO: Well, I -- the only issue
4 with that is it might suggest you could use them
5 anywhere. You could -- I'm not sure I have a problem
6 with it as is, but you could say state institutions of
7 higher education, which I think is the language in
8 the -- in the measure and I think avoids the potential
9 definitional difficulty.

10 MR. RAMEY: Mr. Chair?

11 MR. HOBBS: Mr. Ramey.

12 MR. RAMEY: The problem with that is --
13 and this is a technical one, Mr. Domenico. "State
14 institutions of higher education" is a defined term,
15 and in the measure, it's defined in Section 23-18-102
16 and it leaves out the local district colleges, which
17 are separately described in another section, so I guess
18 I have a little hesitancy to use the phrase that
19 Mr. Domenico used because it is a defined statutory
20 term that is not inclusive of everything we're
21 covering. I was suggesting just using --

22 MR. DOMENICO: Oh, yeah. That was the
23 problem last time.

24 MR. RAMEY: Exactly, which posed the
25 problem -- we would refer to it all as higher education

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1 because it all is, though that's a bit overinclusive
2 because it includes the junior colleges, which are not
3 part of this. Colleges -- "state colleges and
4 universities," to me, that's about as close as you can
5 come.

6 I like the language as it is, but I'm not
7 going to kick and fuss if you change it to "higher
8 education," but don't use that defined term, would be
9 my recommendation.

10 MR. HOBBS: Any other suggestions for
11 changes to the title? I'll suggest that we change the
12 title to all caps. Mr. Domenico? Before we do that?

13 MR. DOMENICO: Before you do that, the
14 one -- the business about the 5 percent changing the
15 tax on gross income under 300,000, I thought you might
16 resolve that without causing too much harm by just --
17 maybe it doesn't solve it at all, but in lines 4 and 5,
18 just getting rid of "the rate of" and so it would just
19 say "changing the tax to 5 percent of total gross
20 income," because I think part of the problem was that
21 Mr. Gessler suggested that the current language
22 suggested all you're doing really is changing the --
23 the rate when really you're changing the rate and
24 applying it in a new way; and so if you got rid of
25 that, I don't know if it solves the problem, but that

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1 was the only thing I could think of to address that
2 concern.

3 MS. EUBANKS: So you would change --

4 MR. DOMENICO: It would just say "changing
5 the tax to 5 percent of Total gross income," and then
6 the rest of that clause actually incorporates the
7 concern expressed in the petition for motion for
8 rehearing in that it -- it incorporates the \$300,000
9 limit, and so this way you're not trying -- you're not
10 giving the signal that all you're doing is changing the
11 rate of the tax, you're changing the tax and here is
12 what it applies -- here's how it applies, 5 percent,
13 and so it doesn't explicitly say that all of the --
14 that you're -- I mean, I think the problem with the old
15 way was basically we were saying -- it seemed to be
16 saying you're changing the tax rate and that's it, and
17 this way I think it says you're changing the tax, and
18 the tax is now 5 percent, and it's got this limit.

19 And so I think it's -- it's the best I can
20 do without really rewriting it, and I don't even know
21 if you can capture that concern, but it seems to me to
22 resolve the potential problem of falsely signaling that
23 the only change is to the rate, that you're changing a
24 lot about the tax or more than just the rate. That's
25 all. I don't really see a -- I don't know that it

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1 solves the problem, but it doesn't seem to have a
2 downside, and it may address it a little bit.

3 MR. HOBBS: I'll move that change.

4 MS. EUBANKS: Second.

5 MR. HOBBS: All those in favor say "aye."

6 MR. DOMENICO: Aye.

7 MS. EUBANKS: Aye.

8 MR. HOBBS: Aye.

9 All those opposed, "no."

10 (No response.)

11 MR. HOBBS: That motion carries three,
12 zero, and I'll move that we change the titles to all
13 caps, because I think it's pretty clear in this case
14 these are -- this is a tax increase that is subject to
15 TABOR's requirements.

16 MR. DOMENICO: Second.

17 MR. HOBBS: Further discussion? All those
18 in favor say "aye." Aye.

19 MR. DOMENICO: Aye.

20 MS. EUBANKS: Aye.

21 MR. HOBBS: All those opposed, "no."

22 (No response.)

23 MR. HOBBS: That motion carries three to
24 zero.

25 I will move, then, that the board deny the

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1 motions for rehearing except to the extent that the
 2 board has amended the title; and, again, the
 3 understanding is that all the changes we've made in the
 4 title would be reflected in the ballot title and
 5 submission clause, as well. Is there a second?
 6 MS. EUBANKS: Second.
 7 MR. HOBBS: Any further discussion? If
 8 not, all those in favor say "aye."
 9 MR. DOMENICO: Aye.
 10 MS. EUBANKS: Aye.
 11 MR. HOBBS: Aye.
 12 All those opposed, "no."
 13 (No response.)
 14 MR. HOBBS: That motion carries three to
 15 zero.
 16 That completes the action on No. 113, and
 17 the time is 7:47 p.m.
 18 WHEREUPON, the within proceedings were
 19 concluded at the approximate hour of 7:47 p.m. on the
 20 29th day of May, 2008.
 21 * * * * *
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 23
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REPORTER'S CERTIFICATE
 STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)
 I, LORI A. MARTIN, Registered Merit
 Reporter, Certified Realtime Reporter, and Notary
 Public, State of Colorado, do hereby certify that the
 within proceedings were taken in machine shorthand by
 me at the time and place aforesaid and were thereafter
 reduced to typewritten form; that the foregoing is a
 true transcript of the proceedings had.
 I further certify that I am not employed
 by, related to, nor of counsel for any of the parties
 herein, nor otherwise interested in the outcome of this
 litigation.
 IN WITNESS WHEREOF, I have affixed my
 signature this 2nd day of June, 2008.
 My commission expires June 2, 2012.
 ___ Reading and Signing was requested.
 ___ Reading and Signing was waived.
 ___X___ Reading and Signing is not required.

REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

I, LORI A. MARTIN, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public, State of Colorado, do hereby certify that the within proceedings were taken in machine shorthand by me at the time and place aforesaid and were thereafter reduced to typewritten form; that the foregoing is a true transcript of the proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 2nd day of June, 2008.

My commission expires June 2, 2012.

Reading and Signing was requested.
 Reading and Signing was waived.
 Reading and Signing is not required.



Lori A. Martin

Lori A. Martin
 Registered Professional Reporter