

<p>SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p>	<p>FILED IN THE SUPREME COURT JUN 12 2008 STATE OF COLORADO SARAH J. FLETCHER CLERK</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2007-2008, #113 ("Severance Tax")</p> <p><b>Petitioner:</b> HOWARD STANLEY DEMPSEY, JR., Objector,</p> <p>v.</p> <p><b>Respondents:</b> MICHAEL A. BOWMAN and DAVID THEOBALD, Proponents,</p> <p>and</p> <p><b>Title Board:</b> WILLIAM HOBBS, SHARON EUBANKS, and DANIEL DOMENICO</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Respondents: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 256-3978 Fax Number: (303) 292-3152 E-mail: <a href="mailto:eramey@ir-law.com">eramey@ir-law.com</a></p>	<p>Case No. 08SA198</p>
<p><b>OPENING BRIEF OF RESPONDENT-PROONENTS</b></p>	

## TABLE OF CONTENTS

I.	STATEMENT OF THE ISSUES PRESENTED FOR REVIEW .....	1
II.	STATEMENT OF THE CASE.....	1
	A. Nature of the Case, Course of Proceedings, and Disposition Before the Title Board. ....	1
	B. Statement of Facts.....	2
III.	SUMMARY OF THE ARGUMENT .....	4
IV.	ARGUMENT .....	4
	A. Standard of Review.....	4
	B. The Proposed Initiative Contains a Single Subject. ....	6
	C. The Title is Not Misleading. ....	12
V.	CONCLUSION .....	14

### Attachments:

1. Text of Proposed Initiative for 2007-2008 #113
2. Title Set for Proposed Initiative for 2007-2008 #113

## TABLE OF AUTHORITIES

### Cases

<u>Bloom v. City of Fort Collins,</u> 784 P.2d 304 (Colo. 1989) .....	8
<u>Catron v. Board of County Comm'rs,</u> 18 Colo. 553 (Colo. 1893) .....	10
<u>Colorado Criminal Justice Reform Coalition v. Ortiz,</u> 121 P.3d 288 (Colo. App. 2005) .....	10
<u>In re Amend Tabor #25,</u> 900 P.2d 121 (Colo. 1995) .....	6
<u>In re Amend Tabor #32,</u> 908 P.2d 125 (Colo. 1995) .....	10
<u>In re Breene,</u> 24 P. 3 (Colo. 1890) .....	10
<u>In re Interrogatory re House Bill No. 1353,</u> 738 P.2d 371 (Colo. 1987) .....	11
<u>In re Parental Rights,</u> 913 P.2d 1127 (Colo. 1996) .....	9
<u>In re Proposed Initiative for 1997-1998 # 62,</u> 961 P.2d 1077 (Colo. 1998) .....	13
<u>In re Proposed Initiative for 1997-1998 #74,</u> 962 P.2d 927 (Colo. 1998) .....	5
<u>In re Proposed Initiative for 1999-2000 #29,</u> 972 P.2d 257 (Colo. 1999) .....	5
<u>In re Proposed Initiative for 1999-2000 #256,</u> 12 P.3d 246 (Colo. 2000) .....	5, 9, 14
<u>In re Proposed Initiative for 2005-2006 #55,</u> 138 P.3d 273 (Colo. 2006) .....	6
<u>In re Proposed Initiative for 2005-2006 #73,</u> 135 P.2d 736 (Colo. 2006) .....	6
<u>In re Proposed Initiative for 2005-2006 #74,</u> 136 P.3d 237 (Colo. 2006) .....	5
<u>In re Proposed Initiative for 2007-2008 # 17,</u> 172 P.3d 871 (Colo. 2007) .....	7

<u>In re Proposed Initiative for 2007-2008 #57,</u> 2008 Colo.LEXIS 496 (Colo. 2008).....	6, 13
<u>In re Proposed Initiative for 2007-2008 #61,</u> 2008 Colo.LEXIS 454 (Colo. 2008).....	5
<u>In re Proposed Initiative for 2007-2008 #62,</u> 2008 Colo.LEXIS 455 (Colo. 2008).....	6
<u>In re Public Rights in Waters II,</u> 898 P.2d 1076 (Colo. 1995).....	9

### **Constitutional Provisions**

Colorado Constitution, Article V, § 1(5.5).....	5
Colorado Constitution, Article V, § 21 .....	10

### **Statutes**

Colorado Revised Statutes § 1-40-106.5(1)(e) (2007).....	6
Colorado Revised Statutes § 1-40-106.5(2) (2007) .....	5
Colorado Revised Statutes § 1-40-106.5(3) (2007) .....	9
Colorado Revised Statutes § 1-40-107(1) (2007) .....	2
Colorado Revised Statutes § 1-40-107(2) (2007) .....	1
Colorado Revised Statutes § 23-18-102(10)(a) (2007).....	12
Colorado Revised Statutes § 23-18-102(10)(a)(X) (2007) .....	13
Colorado Revised Statutes § 23-72-121.5 (2007).....	12
Colorado Revised Statutes § 39-29-101 (2007).....	7, 9
Colorado Revised Statutes § 39-29-101(1) (2007) .....	8
Colorado Revised Statutes § 39-29-109 (2007) .....	2
Colorado Revised Statutes § 39-29-110 (2007).....	3

Michael A. Bowman and David Theobald ("Respondents"), through their undersigned counsel, respectfully submit the following Opening Brief pursuant to the Order of Court, dated June 6, 2008:

## **I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Proposed Initiative for 2007-2008 #113 ("Severance Tax") contains a single subject: creation of a single source of revenue and dedication of the uses for that specific revenue.

2. The title set for proposed Initiative for 2007-2008 #113 is not misleading in its use of the term "state colleges and universities" to describe the institutions at which scholarships funded by the measure may be used.

## **II. STATEMENT OF THE CASE**

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

This Original Proceeding under § 1-40-107(2), C.R.S. (2007), challenges the actions of the Ballot Title Setting Board in setting a title for proposed Initiative for 2007-2008 #113 ("Severance Tax"). These Respondents are the Proponents of the proposed initiative.

The Title Board conducted its initial public meeting and set the title and ballot title and submission clause for proposed Initiative for 2007-2008 #113 on May 21, 2008. Petitioner Dempsey filed a Motion for Rehearing, pursuant to § 1-

40-107(1), C.R.S. (2007), on May 28, 2008. The Motion for Rehearing was heard by the Title Board on May 29, 2008. At the rehearing, the Board granted in part and denied in part Dempsey's Motion. Dempsey filed his Petition for Review with this Court on June 5, 2008.

**B. Statement of Facts.**

Proposed Initiative for 2007-2008 #113 would increase the severance tax on gross income from the sale of oil and gas extracted from the earth in Colorado. The tax increase would result from the elimination of a currently available credit against the severance tax for property taxes paid by oil and gas producers and interest owners, an adjustment in the severance tax rate structure (to a flat rate of 5% when the annual gross income of the taxpayer is at least \$300,000), and reduction of the level of production that qualifies individual low-producing wells for an exemption from the severance tax. The increased revenue stream from the severance tax (and resulting investment income) would then be exempted from state and local spending limits, *i.e.*, "de-Bruced."

The proposed initiative then dedicates the uses for the severance tax revenue. Twenty-two percent of the revenue is dedicated to the Severance Tax Trust Fund established under § 39-29-109, C.R.S. (2007), for the purposes set forth in that section. Another 22% of the revenue is dedicated to the Local Government

Severance Tax Fund established under § 39-29-110, C.R.S. (2007), for the purposes set forth in that section. The remaining 56% of the revenue is dedicated to a new Severance Tax Stabilization Trust Fund (used solely to dampen revenue fluctuations) and allocated from that fund as follows: 60% to fund scholarships for Colorado residents attending state colleges and universities, 15% for 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.

As recited in the legislative declaration in Section 1 of the proposed initiative, the intent and expectation of Proponents is that the revenue allocations described above will preserve current severance tax revenue distribution levels to the existing Severance Tax Trust Fund and Local Government Severance Tax Fund with no alteration in their operation. The enhanced revenue created by increasing the severance tax will go to the new enumerated uses.

A variety of objections were raised at rehearing before the Title Board, some of which were granted and adopted, some of which were denied. Two objections remain. First, Dempsey argues that the proposed initiative contains multiple subjects by virtue of both increasing the severance tax and dedicating the resulting

revenue to different uses (neither directly connected with one another nor with the source of the revenue). Second, Dempsey argues that the use of the term "state colleges and universities" to describe the institutions at which scholarships funded by the measure may be used is misleading.

### **III. SUMMARY OF THE ARGUMENT**

1. Proposed Initiative for 2007-2008 #113 ("Severance Tax") contains a single subject: creation of a single source of revenue and dedication of the uses for that specific revenue. The proposed initiative represents a single policy proposal by Proponents – that increased revenue be generated from the extraction of a non-renewable resource (oil and gas) from the earth in this state and that this revenue be dedicated and reinvested in the manner proposed for the long-term benefit of the people of the state.

2. The term "state colleges and universities" fairly describes the institutions at which Colorado residents may use the scholarships to be funded by the proposed initiative.

### **IV. ARGUMENT**

#### **A. Standard of Review.**

As it has frequently stated, this Court is charged with conducting a sufficient examination of a proposed initiative to determine whether or not the prohibition



against multiple subjects contained within Colo. Const. art. V, § 1(5.5), has been violated. In re Proposed Initiative for 2005-2006 #74, 136 P.3d 237, 238 n.3 (Colo. 2006), *citing* In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 260 (Colo. 1999). In doing so, the Court engages "in all legitimate presumptions in favor of the propriety of the [Title] Board's actions." In re Proposed Initiative for 2005-2006 #74, 136 P.3d at 238 n.4. Further, "[t]he single-subject requirement must be liberally construed ... so as not to impose undue restrictions on the initiative process." In re Proposed Initiative for 1997-1998 #74, 962 P.2d 927, 929 (Colo. 1998). *Accord*, In re Proposed Initiative for 2007-2008 #61, 2008 Colo.LEXIS 454, at \*8 (Colo. May 16, 2008). *See also*, § 1-40-106.5(2), C.R.S. (2007).

In evaluating the language chosen by the Title Board, the Court grants "great deference to the board's broad discretion in the exercise of its drafting authority." In re Proposed Initiative for 1999-2000 #256, 12 P.3d 246, 255 (Colo. 2000). "We will not rewrite the titles ... to achieve the best possible statement of the proposed measure's intent." *Id.* "We will reverse the Board's action in setting the titles only when the language chosen is clearly misleading." *Id.*

**B. The Proposed Initiative Contains a Single Subject.**

"A proposed initiative violates the single subject rule if it relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other." In re Proposed Initiative for 2007-2008 #57, 2008 Colo.LEXIS 496, at \*7 (Colo. May 23, 2008); *accord*, In re Proposed Initiative for 2005-2006 #55, 138 P.3d 273, 277 (Colo. 2006). "The single subject requirement is not violated if the 'matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous.'" In re Proposed Initiative for 2005-2006 #73, 135 P.2d 736, 738 (Colo. 2006), *quoting* In re Amend Tabor #25, 900 P.2d 121, 125 (Colo. 1995).

The two principal evils sought to be inhibited by the single subject requirement are: 1) "the treatment of incongruous subjects in the same measure ... for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits" (sometimes referred to as "log rolling"), and 2) "surreptitious measures" likely to result in "surprise and fraud" being practiced upon the voters. In re Proposed Initiative for 2007-2008 #62, 2008 Colo.LEXIS 455, at \*9-10 (Colo. May 16, 2008); § 1-40-106.5(1)(e), C.R.S. (2007). In the present case, Proponents do not understand Dempsey to be suggesting that there is anything

"surreptitious" in – or "coiled up in the folds" of – this proposed initiative that would pose "the danger of voter surprise and fraud." *Cf.*, In re Proposed Initiative for 2007-2008 # 17, 172 P.3d 871, 875 (Colo. 2007). Rather, the objection appears to be that Proponents are "log rolling."

Dempsey's argument, as Proponents understand it, is that a single measure may not both increase a tax and allocate the revenues from that tax. Alternatively, Dempsey appears to argue that the revenue may only be dedicated to a single use or category of directly related uses, and that those uses must be related to the tax.

On the first point, Proponents do wish to emphasize that their purpose is not simply to impose a tax upon the oil and gas industry for the sake of imposing a tax upon the oil and gas industry. As stated in their legislative declaration in Section 1 of the proposed initiative, their purpose is to generate additional revenue to provide funding for specified public purposes. Read in context with the existing legislative declaration in § 39-29-101, C.R.S. (2007) – to which Proponents' additional recital would be added – the purpose of this proposed initiative is to "recapture a [greater] portion" of the irretrievably "lost wealth" caused by the private extraction and sale of a specific non-renewable natural resource of the state and invest the resulting revenue in public purposes for the long term public good of the state. The capture

and dedication, or reinvestment, of this specific category of "lost wealth" for the public good of the state is the purpose, *and subject*, of this proposed initiative.

Second, Proponents note that the severance tax is an excise tax, not a fee. § 39-29-101(1), C.R.S. (2007). As such, it is to be expected that its revenues may be used for "general expenses of government" not necessarily related in any way to the activity being taxed. *Cf.*, Bloom v. City of Fort Collins, 784 P.2d 304, 307-08 (Colo. 1989). It would be no more logical to confine these revenues to uses "connected" with the tax itself than to confine sales tax revenues to uses "connected" with retail sales activities or property tax revenues to uses "connected" with the property being taxed. Having said that, Proponents do note that the entire point of the exercise is capture a portion of the state's wealth lost through the extraction and sale of this specific non-renewable natural resource and dedicate that wealth back to the public good of the state from whence it came.

The crux of Dempsey's argument, Proponent's suspect, is his concern with the variety of uses to which the increased severance revenue is being dedicated. It is this, Proponents suspect, that Dempsey views as "log rolling" – *e.g.*, enlisting support from advocates of scholarships to support funding for wildlife habit and vice versa, all under the debatable presumption that neither could stand on its own merits.

In fact, what Proponents have done is make a policy choice. They have selected a group of specific uses wholly consistent with the stated purposes for enactment and enhancement of Colorado's severance tax and have proposed to dedicate specified percentages of the resulting revenue to those uses. These uses represent Proponents' considered judgment as to how best to invest this recaptured wealth for the long term good of the state. Each of these uses has a "proper connection" to the underlying purpose of Colorado's severance tax as recited in § 39-29-101, C.R.S. (2007). None of the uses are "incongruous" in that context. Cf., In re Parental Rights, 913 P.2d 1127, 1136 (Colo. 1996) (Mullarkey, J., concurring in part and dissenting in part). "We have never held that just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement." In re Proposed Initiative for 1999-2000 #256, 12 P.3d at 254.

The General Assembly has further stated its intent that the Title Board, in considering the single subject requirement, "should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for those bills." § 1-40-106.5(3), C.R.S. (2007); In re Public Rights in Waters II, 898 P.2d 1076, 1078 (Colo. 1995). In this regard, this Court has held that the single subject

requirement of Colo. Const. art. V, § 21 "should be liberally and reasonably interpreted, so as to avert the evils against which it is aimed, and at the same time avoid unnecessarily obstructing legislation." In re Breene, 24 P. 3 (Colo. 1890). "The general assembly may, within reason, make the title of a bill as comprehensive as it chooses, and thus cover legislation relating to many minor but associated matters." Id., 24 P. at 4. The only requirement is that "the matters contained in the bill are directly germane to the subject expressed in the title." Catron v. Board of County Comm'rs, 18 Colo. 553, 558 (Colo. 1893). The Court of Appeals had no difficulty upholding a single bill authorizing lease purchase agreements for a correctional facility and a university academic facility, noting that "[b]oth projects are properly connected because they involve capital construction and the same type of financing procedures: lease-purchase agreements. Hence they have a unifying or common objective." Colorado Criminal Justice Reform Coalition v. Ortiz, 121 P.3d 288, 291 (Colo. App. 2005). *Cf.*, In re Amend Tabor #32, 908 P.2d 125 (Colo. 1995), holding the establishment of a tax credit applicable to an array of unrelated state and local taxes to constitute a single subject – "All six taxes are connected to the same tax credit and are bound by the same limitations." Id. at 129. There are points where "it would strain logic" to conclude that the matters encompassed in a bill "are necessarily or properly

connected to each other" – *see, e.g.*, the massive "financial impact" bill at issue in In re Interrogatory re House Bill No. 1353, 738 P.2d 371 (Colo. 1987) – though that is a far cry from the severance tax provision at issue here, dealing solely with the enhancement and dedication of severance tax revenue.

The subject of this proposed initiative is the enhancement of a particular source of tax revenue and the dedication of specific uses for that revenue. The specified uses are all disclosed in the title, and each is properly connected to the purposes underlying the severance tax. Unless Dempsey means to argue that Proponents should be limited to a single proposed use or thematically narrow interconnected group of uses for all of the revenue they seek to generate, there will always be room to allege that the policy decisions and choices made amount to "log rolling." If that becomes the standard, policy choices will become severely restricted or impossible – in both the initiative and legislative contexts – except through a strained, unrealistic, single-interest, repetitive, and needlessly combative all-or-nothing process. Respectfully, this cannot have been the intended effect of the single subject requirement.

This proposed initiative contains a single subject: the enhancement of severance tax revenue and the dedication of specific uses for that revenue. The proposed uses are all properly connected to the purpose for the severance tax itself

– the capture and dedication, for the long term public good of the state, of the "lost wealth" represented by the extraction and sale of this important non-renewable resource. The manner of the revenue enhancement and the selection of proposed uses are all disclosed in the title. There is nothing remotely surreptitious. The Title Board's decision on this point should be affirmed.

**C. The Title is Not Misleading.**

The only other point raised by Dempsey involves the use of the phrase "state colleges and universities" in the title, as a shorthand for the institutions of higher education at which the funded scholarships may be used by Colorado residents.

The text of the initiative itself provides that these scholarships may be used at "state institutions of higher education" – a term precisely defined by § 23-18-102(10)(a), C.R.S. (2007) – and the local district colleges identified in § 23-72-121.5, C.R.S. (2007). Dempsey's argument appears to be that the terms "state colleges and universities" is misleading as the textual definition would include "occupational educational programs" and exclude "certain colleges," *i.e.*, a "junior college that is part of a junior college district" organized pursuant to Title 23, Article 71, C.R.S. (2007).

With regard to the inclusion of the "occupational educational programs," it should be noted that these must be through a "public postsecondary institution"



governed by the State Board for Community Colleges and Occupational Education. § 23-18-102(10)(a)(X), C.R.S. (2007). As a "public postsecondary institution," Proponents submit that such institution would be viewed in the vernacular as within the ambit of "state colleges and universities." With regard to the exclusion, in the adopted statutory definition, of junior colleges that are part of junior college districts receiving direct grant funding, Proponents submit that the absence of this definitional detail from the title is no more misleading than the omission of a full recitation of the factors to be considered by the Colorado Commission on Higher Education in the establishment of eligibility criteria – *i.e.*, every "Colorado resident" will not automatically be eligible for a scholarship.

"The Board need not and often cannot describe every feature of a proposed initiative in a title or ballot title and submission clause and simultaneously heed the mandate that such documents be concise." In re Proposed Initiative for 1997-1998 # 62, 961 P.2d 1077, 1083 (Colo. 1998). "To require such would be to transform what the General Assembly intended – a relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters – into an item-by-item paraphrase of the proposed constitutional amendment or statutory provision." Id. Accord, In re Proposed Initiative for 2007-2008 #57, 2008 Colo.LEXIS 496, at \*11-12.

The Title Board adopted the best phrase possible consistent with its mandate to be concise. Proponents cannot think of a better one. The title clearly and accurately states that 60% of the revenue allocated to the new Severance Tax Stabilization Trust Fund will be "used to fund scholarships for Colorado residents attending state colleges and universities." That statement is brief, clear, and wholly accurate. Further refinement, and concomitant complication of the title, would be no more appropriate than mandating inclusion of a complete definition of "committed area" would have been in In re Proposed Initiative for 1999-2000 #256, 12 P.3d at 256. This title is not misleading.

## V. CONCLUSION

Proponents respectfully request the Court to affirm the actions of the Title Board.

Respectfully submitted this 12th day of June, 2008.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748  
633 17th Street, Suite 2200  
Denver, Colorado 80202

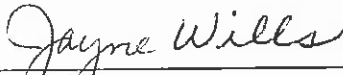
ATTORNEYS FOR RESPONDENTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of June, 2008, a true and correct copy of the foregoing **OPENING BRIEF OF RESPONDENT-PROONENTS** was served via hand delivery to the following addressees:

Scott E. Gessler, Esq.  
Mario D. Nicolais, II, Esq.  
Hackstaff Gessler LLC  
1601 Blake Street, Suite 310  
Denver, CO 80202

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 6th Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Jayne Wills

RECEIVED

MAY 09 2008

ELECTIONS  
SECRETARY OF STATE

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

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:

Michael A. Bowman  
28455 County Road HH, PO Box 482  
Wray, CO 80758  
[mike@echogreen.org](mailto:mike@echogreen.org)  
(303) 570-9277 cell

David Theobald  
113 West Olive St.  
Fort Collins, CO 80521  
(970) 491-5122  
[davetheo8@gmail.com](mailto: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](mailto:eramey@ir-law.com)

## Ballot Title Setting Board

### Proposed Initiative 2007-2008 #113<sup>1</sup>

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

---

<sup>1</sup> 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.*