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SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2006) Appeal from Ballot
Title Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2007-
2008 #13

J. GREG SCHNACKE ,

Petitioner,

v.

MEGAN FERLAND AND MATT SAMELSON,
PROponents

AND

WILLIAM A. HOBBS, DANIEL DOMENICO
AND SHARON EUBANKS, TITLE BOARD,

Respondents.

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Case No.: 07SA154

ANSWER BRIEF OF TITLE BOARD

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The Title Board, by and through undersigned counsel hereby submits its Answer Brief.

THE TITLES DO NOT CONTAIN MULTIPLE SUBJECTS.

The Petitioner contends that Initiative 2007-2008 #13 (#13) has two purposes: (1) “to increase the tax burden on oil and gas producers” for the ostensible purpose of “curtail[ing] oil and gas production in the state,” and (2) to raise revenues for “uses that are completely unrelated to the primary purpose of the tax.” (Petitioner’s Opening Brief at p. 8).

Contrary to the Petitioner’s contention, the purpose of the tax is not to curtail oil and gas production. Instead, the intent of the measure is to assess a tax on those who profit from oil and gas production in order both to offset costs imposed upon state and local governments by such production and to replace revenue which may be lost as a result of the extractions. Oil and gas production often entails additional costs. More workers often bring more children into schools, thereby increasing the costs of financing schools by both state and local governments. More people likely will require more police and fire protection. More people often results in greater usage of the county and state courts.

The connection between mineral extraction and government costs has long been recognized by both the state and federal governments. Federal law allows

private companies to lease federal lands and extract minerals. A portion of the revenue derived from extraction of minerals located on federal lands is distributed to each state in which the minerals are located. 30 U.S.C. 191 (2007 Supp.). Each state may use the funds “as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by the development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service.” *Id.*

Colorado receives the federal leasing money “for the benefit of public schools and political subdivisions of this state and for other purposes in accordance with provisions of sections 34-63-102 and 34-63-103.” Section 34-63-101, C.R.S. (2006). The money is placed into the mineral leasing fund “for use by state agencies, public schools, and political subdivisions for planning, construction, and maintenance of public facilities and for public services.” Section 34-63-102(1)(a), C.R.S. (2006). Priority must “be given to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased” under federal law. Section 34-63-102(1)(b), C.R.S. (2006). The money is distributed to counties from which federal leasing money is derived, the state public school fund, the local government mineral impact fund and the Colorado water conservation board construction fund.

Section 34-63-102(3), C.R.S. (2006). Thus, the General Assembly has viewed collection of funds from mineral leasing to be closely related to distribution of such revenues for a broad range of purposes.

Colorado's existing severance tax is used to fund a variety of projects. Some of the revenue from the severance tax is placed in the local government severance fund. Eighty-five percent of the money in the fund must "be distributed to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article and used for the planning, construction, and maintenance of public facilities and for the provision of public services." Section 39-29-110(1)(b)(I), C.R.S. (2006).

The severance tax revenues are also be used to compensate for effect of future lost revenues caused by the depletion of resources and to develop alternate revenue sources. The severance tax fund compensates those political subdivisions that lose property tax revenue resulting from the deduction of severance taxes paid in the determination of the valuation for assessment of producing mines. *Id.* Some of the fund may be used to construct domestic wastewater plants. Section 39-29-110(1)(b)(II)(A), C.R.S. (2006). If the national science foundation awards the national deep underground science and engineering laboratory to Colorado, the

legislature has authorized appropriations to pay for a visitor's center, educational resources and administrative offices related to the laboratory. Section 39-29-109(1), C.R.S. (2006).

The revenues in this measure are dedicated to matters that are relevant to the impact of the extraction of oil and gas. The revenues go to political subdivisions socially and economically impacted by the extraction of oil and gas. The remainder goes to the state to offset future revenue lost by the extraction.

THE TITLE COMPLIES WITH COLO. CONST. ART. X, § 20(3)(c).

The Petitioner also complains that the Title Board erred by adopting the estimate of the tax increase contained in the analysis of the Office of State Planning and Budgeting. In particular, he contends that the analysis ignores the fact that #14 affects both oil and natural gas, and that it does not consider the elimination of the *ad valorem* tax credit. For the following reasons, the Court must reject this argument.

As the Court itself has acknowledged, estimating the amount of the tax increase where a number of variables exist is a "complex task." *Bickel v. City of Boulder*, 885 P.2d 215, 236 (Colo.1994). "[A]ll that is required by Amendment 1 is a good faith estimate of the dollar increase." *Id.* "[T]he Board typically is not

required to formulate definitive estimates of the fiscal impact of a proposed measure because many of the variables affecting the fiscal effects of a proposed measure are unknown.” *In re Title, Ballot Title and Submission Clause, and Summary for a Petition on Campaign and Political Finance*, 877 P.2d 311, 315 (Colo. 1994). The Board has considerable discretion in determining the fiscal impact. *In re Title, Ballot Title and Submission Clause, and Summary Concerning “W.A.T.E.R.”*, 831 P.2d 1301, 1306 (Colo. 1992). The Board has no independent fact gathering ability. *In re Title, Ballot Title and Submission Clause, and Summary Concerning “Fair Fishing”*, 877 P.2d 1355, 1363 (Colo. 1994). It is dependent upon information presented to it by state agencies and witnesses. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1073 (Colo. 1994).

The Office of State Planning and Budgeting provided the only estimate of the tax increase. Initially, it explained that estimating the tax increase is difficult because oil and gas production are subject to two unpredictable variables. First, production decisions are based upon matters that are extremely difficult to predict, including output price, interest rates, technological advances and environmental laws. Second, the repeal of the *ad valorem* tax credit may not result in increased revenue because oil and gas corporations may alter their structures to avoid paying

any severance taxes. These caveats did not enter into the formulation of the tax increase estimate. Instead, the Office of State Planning and Budgeting calculated the increase by using the component analysis based upon existing knowledge to establish the percentage increase in oil and gas tax revenue above the current forecast.

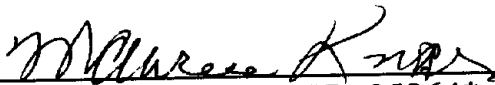
Petitioner's argument is flawed because it assumes that the disclaimers were part of the calculation of the tax increase. The two disclaimers were not a part of the calculation. The Office of State Planning and Budgeting offered the disclaimers only to explain why its estimate may be imprecise.

More importantly, the estimate of the tax increase in the title actually establishes the ceiling for the increase. If the tax increase exceeds the estimate, "then the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess." Colo. Const. art. X, § 20(3)(c). The voters cannot be misled by an imprecise estimate because the estimate becomes a hard cap. Thus, if voters are given the opportunity to vote on this measure, they will be voting to set a tax increase of *not more than* \$244.6 million.

CONCLUSION

For the reasons stated in the Board's Opening Brief and this brief, the Court must approve the titles.

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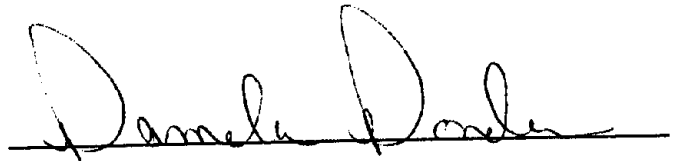

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same in the United States mail, Express Mail, at Denver, Colorado, this 20th day of June, 2007 addressed as follows:

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A handwritten signature in cursive script, appearing to read "Pamela D. Dwyer", is written over a horizontal line.