Certification of Word Count: 740

SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue, Denver, Colorado 80203 ORIGINAL PROCEEDING PURSUANT TO §1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board	FILED IN THE SUPREME COURT JUN 20 2007 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK ▲ COURT USE ONLY ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2007-2008, #13 **Petitioner**: J. GREG SCHNACKE, v. **Respondents**: MEGAN FERLAND and MATT SAMELSON, Proponents, and **Title Board**: WILLIAM A. HOBBS, DANIEL DOMINICO, and SHARON EUBANKS.	Case No. 07SA154
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: eramey@ir-law.com	
RESPONDENTS' ANSWER BRIEF	

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Megan Ferland and Matt Samelson ("Respondents"), through their undersigned counsel, respectfully submit the following Answer Brief concerning Proposed Initiative for 2007-2008 #13 ("Severance Tax on Oil and Gas").

I. SUMMARY OF THE ARGUMENT

1. By imposing a new tax on gross income from the sale of oil and gas extracted in the state and concurrently dedicating uses for that revenue, proposed Initiative for 2007-2008 #13 does not violate the single subject requirement.

2. The title set for proposed Initiative for 2007-2008 #13 fairly and accurately discloses the estimated dollar amount of the first full fiscal year tax increase generated by the initiative as required by Colo. Const. art. X, §20(3)(c).

II. ARGUMENT

A. Proposed Initiative for 2007-2008 #13 contains a single subject.

Petitioner argues that proposed Initiative for 2007-2008 #13 contains more than one subject because "it seeks both to impose a new tax *and* mandates the manner in which the revenues from the tax must be used." Pt. Op. Br. at 6 (emphasis in the original). In short, Petitioner submits that an initiative (or legislative measure) enacting a tax may only enact a tax, leaving the revenues in free fall; and that an initiative dedicating revenues may only dedicate revenues, presumably from a tax already in effect.

As the Title Board noted in its Opening Brief at 6-7, courts have not endorsed such a proposition. Even were Respondents' motivation "to curtail oil and gas production in the state" (Pt. Op. Br. at 7) – a proposition for which there is absolutely no support in the record – this would not render dedication of the resulting revenues a separate subject. *See, e.g.*, Kennedy Wholesale, Inc. v. State Bd. of Equalization, 806 P.2d 1360, 1365-67 (Cal. 1991), cited by the Title Board in its Opening Brief at 6-7. Virtually every tax involves considerations of what best to tax, and some taxes may indeed be driven as much or more by the tax (rather than revenue) side of the equation, *e.g.*, tobacco taxes, income taxes as a tool of fiscal policy, etc. This does not happen to be the case here. Nor, in any event, should that prevent proponents of a tax from specifying, in the same measure, what they plan to do with the money.

Petitioner has, in fact, taken the more extreme of the two positions posed by these Respondents on pp. 5-6 of their Opening Brief – not only that a source and use of revenue must be related, but that sources and uses may not even be addressed in the same measure. Respectfully, the absence of judicial or legislative support for such a proposition reflects the wholly impractical nature of it.

B. The title for proposed Initiative for 2007-2008 #13 fairly and accurately discloses the estimated dollar amount of the first full fiscal year tax increase generated by the initiative as required by Colo. Const. art. X, §20(3)(c).

As both the Petitioner and Title Board have noted, the estimate of the first full fiscal year tax increase utilized by the Title Board in the mandatory opening phrase of the title comes from the Governor's Office of State Planning and Budgeting. The first objection presented by the Petitioner – that the estimate must be of gross revenues from the new tax alone rather than the actual net tax increase resulting from the measure as a whole – has been addressed by both the Title Board and these Respondents in their Opening Briefs at pp. 9-12 and 7-8, respectively.

The second, and frankly unanticipated, objection is that the estimates by the Office of State Planning and Budgeting are based upon "insufficient information" and cannot be used at all. Pt. Op. Br. at 10-12. The Petitioner declines to offer a better estimate, however, and the Title Board – notwithstanding the predictive difficulties acknowledged by the Office of State Planning and Budgeting – is required by Colo. Const. art. X, §20(3)(c) to go with something. It cannot leave the mandatory estimate blank.

It is certainly possible, perhaps probable, that the estimate will be off the mark. In that event, as with every such TABOR estimate, Colo. Const. art. X,

§20(3)(c) requires a refund of any excess revenue. The best we can do at this stage is to go with the best estimate we have. And that is the estimate that the Title Board has used.

III. CONCLUSION

Respondents again respectfully request the Court to affirm the actions of the Title Board with regard to proposed Initiative for 2007-2008 #13.

Respectfully submitted this 20th day of June, 2007.

ISAACSON ROSENBAUM P.C.

By: _____
Edward T. Ramey, # 6748

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2007, a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was served via hand delivery to the following addressees:

Sean R. Gallagher, Esq.
Jacqueline S. Cooper, Esq.
Hogan & Hartson, LLP
1200 17th Street, Suite 1500
Denver, CO 80202-5835
Attorneys for Petitioner

Maurice G. Knaizer, Esq.
First Assistant Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, CO 80203
Attorneys for Title Board

Jayne Wills

Jayne Wills