

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

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

**Petitioners:**

J. GREG SCHNACKE,

v.

**Respondents:**

MEGAN FERLAND and MATT SAMELSON, Proponents

and

**Title Board:**

WILLIAM A. HOBBS, DANIEL DOMINICO, and SHARON EUBANKS.

2007

**For Schnacke:**

Hogan & Hartson LLP  
 Sean R. Gallagher, #16863  
 Jacqueline S. Cooper, #35066  
 1200 17<sup>th</sup> St., Ste. 1500  
 Denver, CO 80202  
 303-899-7300  
 Paid \$75.

over for more counsel

**Counsel for the Title Board:**

John W. Suthers, Attorney General  
 Maurice G. Knaizer, Deputy Attorney General  
 Atty. #05264  
 Public Officials  
 State Services Section  
 303-866-5380  
 no fees - AG

May 21	Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2007-2008 #13 ("Severance Tax on Oil and Gas") filed.		*	Answer Brief DUE: 7-03-07
		June 13		Opening Brief. Filed.
May 22	ORDER - all parties to file SIMULTANEOUS Opening Briefs due on or before June 13, 2007. Simultaneous Answer Briefs are due 20 days after service of opening briefs.		*	Answer Brief DUE: 7-03-07
		June 13		Respondents' Opening Brief. Filed.
			*	Answer Brief DUE: 7-03-07
	FURTHER ORDERED - all briefs shall be filed and served upon opposing parties by hand delivery or through an overnight delivery service.	June 14		AMENDED ORDER - the parties file simultaneous opening briefs on or before June 13, 2007. The parties may file simultaneous answer briefs by June 20, 2007. Pursuant to C.A.R. Rule 31(b) parties must file an original and 10 copies of their briefs.
	* Opening Brief DUE: 6/13/07			FURTHER ORDERED all briefs shall be filed and served upon the opposing parties by hand delivery, or through an overnight delivery service.
June 13	Notice of Filing of Administrative Record. Filed.			
June 13	Answer Brief of Title Board. Filed. (This is really the Opening Brief. Filed by AG)			



**COPY**

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203 303.861.1111</p>	<p>FILED IN THE SUPREME COURT</p> <p>MAY 21 2007</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> <p>▲ COURT USE ONLY ▲</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007)</p> <p><b>Petitioner:</b> J. GREG SCHNACKE v. <b>Respondents:</b> MEGAN FERLAND and MATT SAMELSON, Proponents, and <b>Title Board:</b> WILLIAM A HOBBS, DANIEL DOMINICO, and SHARON EUBANKS</p>	
<p>Attorneys for Petitioner:</p> <p>Sean R. Gallagher, #16863 Jacqueline S. Cooper, #35066 Hogan &amp; Hartson LLP 1200 17<sup>th</sup> Street, Suite 1500 Denver, Colorado 80202 Tel: (303) 899-7300 Fax: (303) 899-7333 <a href="mailto:srgallagher@hhlaw.com">srgallagher@hhlaw.com</a> <a href="mailto:jscooper@hhlaw.com">jscooper@hhlaw.com</a></p>	<p>Case No. 075A154</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #13 ("SEVERANCE TAX ON OIL AND GAS")</b></p>	

J. Greg Schnacke ("Petitioner"), being a registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Ballot Title Setting Board ("Title Board") with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2007-2008 #13 ("Severance Tax on Oil and Gas").

**I. Actions of the Ballot Title Setting Board**

The Title Board conducted its initial public meeting and set a title for Proposed Initiative 2007-2008 #13 on May 2, 2007. The Petitioner filed a Motion for Rehearing on

May 8, 2007 pursuant to C.R.S. § 1-40-107(1). At the rehearing, which was held on May 16, 2007, the Board denied Petitioner's motion. Petitioner hereby seeks review of the final action of the Title Board regarding Proposed Initiative 2007-2008 #13.

## **II. Issues Presented**

1. Does the initiative violate the single subject requirement set forth in Colo. Const. Art. V. § 21 by both imposing a new tax on oil and gas extraction and requiring the revenues from that tax to be spent on programs unrelated to the subject of the tax?

2. Does the title fail to inform voters of the measure's true meaning and intent because it does not accurately disclose the final, full fiscal year dollar increase that will result from the new tax as required by Colo. Const. Art X § 20?

## **III. Supporting Documentation**

As required by C.R.S. § 1-40-107(2), a certified copy of the Petition, with the titles and submission clause of the proposed initiative, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted with this Petition.

## **IV. Relief Requested**

Petitioner respectfully requests that this Court reverse the actions of the Title Board with directions to decline to set a title and to return the Proposed Initiative to the proponents.

Respectfully submitted this 21st day of May, 2007.

HOGAN & HARTSON LLP

By:

  
Sean R. Gallagher, #16863

Jacqueline S. Cooper, #35066

ATTORNEYS FOR PETITIONER

Addresses for Petitioner:

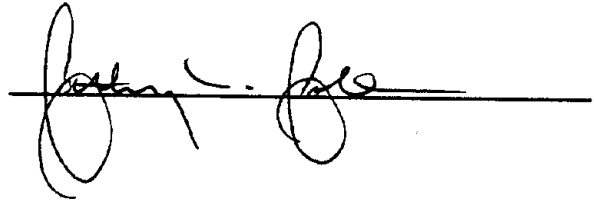
J. Greg Schnacke  
1776 Lincoln Street, Suite 1313  
Denver, Colorado 80203

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of May, 2007, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #13 ("SEVERANCE TAX ON OIL AND GAS")** was placed in the United States mail, postage prepaid, to the following:

Megan Ferland  
1120 Lincoln Street  
Denver, CO 80203

Matt Samelson  
1159 Adams Street  
Denver, CO 80210

A handwritten signature in black ink, appearing to read "James C. Baker", is written over a solid horizontal line.



# 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, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #13".....

..... **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 18<sup>th</sup> day of May, 2007.

A handwritten signature in black ink, appearing to read 'Mike Coffman', is written over a horizontal line.

SECRETARY OF STATE

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APR 20 2007

gwo 11:10 pm

**Final Language for Proposed Initiative, Ballot Proposal #13**

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

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

Article X of the Constitution of the State of Colorado is hereby amended BY THE ADDITION OF A NEW SECTION to read:

**SECTION 22. SEVERANCE TAX ON OIL AND GAS.** (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND THAT NONRENEWABLE NATURAL RESOURCES OF OIL AND GAS ARE A PART OF COLORADO'S TREASURE AND LEGACY AND, WHEN REMOVED FROM THE EARTH, THE VALUE OF SUCH RESOURCES TO THE STATE OF COLORADO IS IRRETRIEVABLY LOST; AND THAT IT IS APPROPRIATE AND FITTING THAT THE STATE ASSESS A TAX UPON INCOME DERIVED FROM THE EXTRACTION AND SALE OF SUCH NONRENEWABLE RESOURCES AND DEDICATE THE REVENUES COLLECTED FOR THE BENEFIT AND WELFARE OF THE PEOPLE OF COLORADO.

(2) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR ALL OR ANY PART OF EACH TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1, 2008, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE. THE TAX FOR OIL AND GAS SHALL BE AT THE FOLLOWING RATES OF THE GROSS INCOME:

(A) UNDER THREE HUNDRED THOUSAND DOLLARS SHALL BE EXEMPT; AND

(B) THREE HUNDRED THOUSAND DOLLARS AND OVER SHALL BE FIVE PERCENT OF THE ENTIRE GROSS INCOME OR AT SUCH GREATER RATE AS MAY BE DETERMINED BY THE GENERAL ASSEMBLY.

(3) THERE SHALL NOT BE ALLOWED AS A CREDIT AGAINST THE TAX CREATED BY THIS SECTION ANY AMOUNT BASED ON AD VALOREM TAXES ASSESSED ON THE VALUE OF REAL OR PERSONAL PROPERTY.

(4) ALL REVENUES RECEIVED BY OPERATION OF THIS SECTION SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND FROM THE SPENDING LIMITS CONTAINED WITHIN SECTION 20 OF ARTICLE X, OR WITHIN ANY OTHER LAW, UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(5) THE REVENUES, INTEREST INCOME, AND INTEREST GENERATED BY OPERATION OF THIS SECTION SHALL BE APPROPRIATED ANNUALLY IN THE FOLLOWING PROPORTIONS:

(a) TWENTY-FIVE PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED AND DIRECTLY DISTRIBUTED TO COUNTIES AND MUNICIPALITIES SOCIALLY OR ECONOMICALLY IMPACTED BY THE DEVELOPMENT, PROCESSING, TRANSPORTATION, OR ENERGY CONVERSION OF THE NONRENEWABLE NATURAL RESOURCES OF OIL AND GAS.

(b) SEVENTY-FIVE PERCENT OF SUCH REVENUES CREATED BY THIS SECTION SHALL BE APPROPRIATED AS MAY BE DETERMINED BY THE GENERAL ASSEMBLY.

(6) SECTION 39-29-105 COLORADO REVISED STATUTES IS HEREBY REPEALED.



(7) THE GENERAL ASSEMBLY MAY ENACT AN EXEMPTION FOR OIL AND GAS WELLS OF MINIMAL PRODUCTION LEVELS.

(8) THE GENERAL ASSEMBLY IS DIRECTED TO MAKE SUCH CONFORMING AMENDMENTS AND ADDITIONAL ENACTMENTS TO THE COLORADO REVISED STATUTES AS MAY BE NECESSARY AND APPROPRIATE TO REALIZE THE PURPOSES OF THIS SECTION. TO THE EXTENT CONSISTENT WITH THE PURPOSES HEREOF, ALL PROVISIONS OF ARTICLE 29 OF TITLE 39 OF THE COLORADO REVISED STATUTES NOT SPECIFICALLY REPEALED HEREIN SHALL REMAIN EFFECTIVE UNLESS AND UNTIL REPEALED OR MODIFIED BY THE GENERAL ASSEMBLY.

(9) THIS SECTION IS EFFECTIVE JANUARY 1, 2008.

Mike Coffman  
Secretary of State  
1700 Broadway, Suite 270  
Denver, Colorado 80290

**RECEIVED**  
APR 20 2007  
ELECTIONS / LICENSING  
SECRETARY OF STATE

Secretary of State Coffman,

Enclosed are two proposed initiatives with the original typewritten drafts submitted for a review and comment hearing, the amended drafts with changes highlighted and the original typewritten drafts which has the final language for printing of the proposed initiatives.

The proponents for both initiatives are:

Matt Samelson  
1159 South Adams Street  
Denver, CO 80210  
720.932.1544  
303.534.5785 (fax)  
[samelsonmatt@hotmail.com](mailto:samelsonmatt@hotmail.com)

Megan Ferland  
1120 Lincoln Street, Suite 125  
Denver, CO 80203  
303.839.1580  
303.839.1354 (fax)  
[megan@coloradokids.org](mailto:megan@coloradokids.org)

If there are any questions or concerns, please feel free to contact either of us.

Much appreciated,

  
Matt Samelson

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MAY 08 2007

ELECTIONS / LICENSING  
SECRETARY OF STATE

BALLOT TITLE BOARD  
STATE OF COLORADO

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MOTION FOR REHEARING

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IN RE PROPOSED INITIATIVE 2007-2008 #13

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J. Greg Schnacke ("Petitioner"), who is a registered elector of the State of Colorado, respectfully submits this Motion for Rehearing, pursuant to C.R.S. § 1-40-107(1). Petitioner moves for a rehearing of the title, ballot title, and summary for regarding Proposed Initiative 2007-2008 #13, which were set by the Title Board ("Board") on May 2, 2007, and state as follows:

1. The initiative violates the single subject requirement because it contains "at least two distinct and separate purposes which are not dependent upon or connected with each other"—creating a new tax and dedicating the revenues from that tax to certain programs. *In re Proposed Initiative on "Public Rights in Water II"*, 898 P.2d 1076, 1079 (Colo. 1995) ("*Water II*"); *see also* Colo. Const. art. V, § 21. There is no necessary or proper connection between these two purposes, even under the general theme of "tax revenue," and therefore the measure contains more than one subject in violation of Colo. Const. art. V, § 21. *See Water II*, 898 P.2d at 1081 (proposed initiative that adopted the public trust doctrine for the state's waters and imposed certain voting requirements for water conservation districts violated single subject rule even though both purposes related loosely to water).

2. The title fails to inform voters of the measure's true meaning and intent because it fails to disclose the final, full fiscal year dollar increase that will result from the new tax to be established in the Colorado constitution. *See* Colo. Const. art. X, § 20(3)(c).

Respectfully submitted this 8th day of May, 2007.

HOGAN & HARTSON LLP



Sean R. Gallagher, #16863

Jacqueline S. Cooper, #35066

1200 Seventeenth St., Suite 1500

Denver, Colorado 80202

Telephone: 303-899-7300

Facsimile: 303-899-7333

ATTORNEYS FOR PETITIONERS

Petitioners' Addresses:

J. Greg Schnacke  
1776 Lincoln Street, Suite 1313  
Denver, Colorado 80203

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of May, 2007, a true and correct copy of the foregoing Motion For Rehearing was placed in the United States mail, postage prepaid, to the following:

Megan Ferland  
1120 Lincoln Street  
Denver, CO 80203

Matt Samelson  
1159 Adams Street  
Denver, CO 80210

A handwritten signature in black ink, appearing to read "MS", is written over a horizontal line. The signature is stylized and cursive.

## Ballot Title Setting Board

### Proposed Initiative 2007-2008 #13<sup>1</sup>

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

State taxes shall be increased \$244.6 million annually by an amendment to the Colorado constitution concerning the severance tax on the sale of oil and gas extracted in the state, and, in connection therewith, effective January 1, 2008, replacing the existing severance tax with a new severance tax of five percent of the gross income from the sale of oil and gas extracted in the state; permitting the general assembly to increase the rate of the new severance tax without future voter approval; exempting taxpayers with less than \$300,000 of gross income from the tax; permitting the general assembly to enact an exemption for minimal producing oil and gas wells; prohibiting a credit against the tax for property taxes paid; exempting revenues from the tax from state and local government spending limits; requiring 25% of the tax revenues to be distributed to counties and municipalities impacted by the development, processing, transportation, or energy conversion of oil and gas; and allowing the remainder of the tax revenues to be appropriated as determined by the general assembly.

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

Shall state taxes be increased \$244.6 million annually by an amendment to the Colorado constitution concerning the severance tax on the sale of oil and gas extracted in the state, and, in connection therewith, effective January 1, 2008, replacing the existing severance tax with a new severance tax of five percent of the gross income from the sale of oil and gas extracted in the state; permitting the general assembly to increase the rate of the new severance tax without future voter approval; exempting taxpayers with less than \$300,000 of gross income from the tax; permitting the general assembly to enact an exemption for minimal producing oil and gas wells; prohibiting a credit against the tax for property taxes paid; exempting revenues from the tax from state and local government spending limits; requiring 25% of the tax revenues to be distributed to counties and municipalities impacted by the development, processing, transportation, or energy conversion of oil and gas; and allowing the remainder of the tax revenues to be appropriated as determined by the general assembly?

*Hearing May 2, 2007:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 5:10 p.m.*

*Hearing May 16, 2007:*

*Motion for Rehearing denied.*

*Hearing adjourned 10:13 a.m.*

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<sup>1</sup> Unofficially captioned "Imposition and Distribution of Severance Tax on Oil and Gas" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.