Certification of Word Count: 1,962

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	▲ **COURT USE ONLY** ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE AND SUMMARY FOR 2007-2008 #17 DOUGLAS KEMPER AND STUART SANDERSON, REGISTERED ELECTORS OF THE STATE OF COLORADO, OBJECTORS, Petitioners, v. RICHARD HAMILTON AND PHIL DOE, PROPONENTS AND WILLIAM A. HOBBS, DANIEL CARTIN AND DANIEL DOMENCIO, TITLE BOARD, Respondents.	Case No.: 07SA201
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	

ANSWER BRIEF OF TITLE BOARD

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William A. Hobbs, Daniel Cartin and Daniel Domenico, as members of the Title Board (hereinafter "Board"), hereby submit their Answer Brief. Because the Board has filed an Opening Brief, this Answer Brief will address only those issues raised in Objector's Opening Brief that were not discussed in the Board's Opening Brief.

STATEMENT OF THE ISSUES

The Board hereby incorporates the statement of the issues set forth in its Opening Brief.

STATEMENT OF THE CASE

The Board hereby incorporates the statement of the case set forth in its Opening Brief.

STATEMENT OF THE FACTS

The Board hereby incorporates the statement of the facts set forth in its Opening Brief.

SUMMARY OF THE ARGUMENT

The Objectors do not set forth any arguments that warrant reversal of the Title Board's decision. The measure relates to one subject: the establishment of the Department of Environmental Conservation. The details of the measure relate

to the creation of the new department. The term "conservation stewardship" is not a catch phrase.

ARGUMENT

I. The measure contains only one subject.

The Objectors first contend that the exemption of the proposed Department from requirements of Colo. Const. art. X, § 20 is a separate subject because the exemption "has no necessary connection to the formation of the Department." (Objectors' Brief, p.10) To the contrary, the creation of a new department or division is closely linked with the means by which it is funded.

This Court recently noted the close relationship between a substantive bill and a provision within the bill appropriating money and delineating expenditures. *Colorado General Assembly v. Owens,* 136 P.3d 262 (Colo. 2006). In 2002, the General Assembly enacted a law creating an Eligible Facilities Education Task Force. The bill appropriated $10,000 to compensate members of the legislature who served on the panel. The Governor vetoed the appropriation. In declaring the veto invalid, this Court found that the bill "is a single subject substantive bill that creates and partially funds a new program." *Id.* at 274.

Contrary to the Objectors' view, the means by which a department is funded and by which it can expend money are integral to its creation and operation. It is not enough to create a governmental department. A governmental department cannot operate without a structure, including the ability to fund its operations.

Next, the Objectors cite several cases in which this Court found that initiatives that sought to amend several sections of art. X, § 20 violated the single subject requirement. (Objectors' Brief, pp. 11-12.) *In re Title, Ballot Title and Submission Clause and Summary for 1997-98 #30,* 959 P.2d 822 (Colo. 1998); *In re Proposed Initiative 1996-4*, 916 P.2d 528 (Colo. 1996); *In re Amend TABOR #25*, 900 P.2d 121 (Colo. 1995). The Court's holdings in those cases were based on the conclusion that art. X, § 20, which was passed prior to the implementation of the single subject requirement, itself contained multiple subjects. *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237 (Colo. 2006).

These cases are inapposite to #17. This proposal does not amend disparate sections art. X, § 20. Article X, § 20 remains untouched. The measure merely seeks to exempt one state agency from the limitations of art. X, § 20. The funding and expenditure limits are all connected to the operation of the new department. See *Havens v. Board of County Comm'rs of the County of Archuleta*, 924 P.2d 517

(Colo. 1996). Therefore, they are directly related to the single subject: the creation of the Department of Environmental Conservation.

Objectors next argue that the proposal would effectively amend art. X, § 20 by creating a new exemption from its restrictions. At present, government enterprises are not subject to its restrictions. Objectors contend that this measure creates another exemption, thereby effectively amending art. X, § 20. (Objectors' brief, p. 13.) This assertion is incorrect. Colo. Const. art. X, § 20(1) provides that "[o]ther limits on district revenue, spending, and debt may be weakened by future voter approval." The intent of art. X, § 20 is to increase voter participation in government actions, particularly those involving revenues, spending and taxation. *Havens* 924 P.2d at 522. Art. X, § 20 does not preclude voters from creating a new department and exempting that department from inclusion in tax, spending or debt restrictions. Thus, #17 does not amend art. X, § 20. #17 is consistent with the underlying intent of art. X, § 20.

Objectors also contend that the exemption from tax and spending restrictions would have the effect of altering the State's tax and spending restrictions. (Objectors' Brief, pp. 13-14.) This Court has "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.

It is enough that the provisions of the proposal are connected." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000). As long as the impact is a "logical incident" of the proposal, it is part of a single subject. *In re Proposed Initiative for 1999-2000 #258(A) ("English Language Education in Public Schools")*, 4 P.3d 1094, 1098 (Colo. 2000).

The removal of various departments and divisions from the tax and spending restrictions may have an effect upon the state's base figures in years subsequent to the passage of the measure. If so, it is nothing more than an unavoidable and "logical incident" of the measure. It is an effect that art. X, § 20 itself recognizes. The state may create government enterprises, and it may remove a designation as a government enterprise. Any "[q]ualification or disqualification as an enterprise shall change district bases and future year limits." Colo. const. art. X, § 20(7) (d).

The Objectors also contend that the provision allowing the executive committee of Legislative Council to move additional boards and divisions to the new department creates constitutes logrolling. (Objectors' Brief, p. 14.) Objectors theorize that this provision will allow the State to circumvent tax and spending restrictions by transferring additional boards and divisions to the department, thereby taking advantage of the exemption from art. X, § 20. The Court must reject this argument. The argument assumes that the measure gives the committee

unbridled authority to transfer any and all state entities. In fact, the measure only permits transfer of agencies that can engage in "stewardship and trust capacities in the public's interest in state or in otherwise state or federally managed public lands, public resources, waters and wildlife." Section 3(2)(m) of #17.

The authority granted to the committee does not constitute a separate subject. #17 limits the committee's authority to transferring divisions or agencies that participate in the management of public lands, public resources, waters and wildlife. It cannot transfer departments, such as the Department of Health Care Policy and Finance, that have duties unrelated to the environment.

Objectors also contend that the proposal alters existing environmental laws in ways that are unconnected to the creation of the new department. (Objectors' Brief, pp. 22-24.) The examples that they cite actually show little, if any change, to existing standards. The legislative declaration for the Water Quality Control Act states that the policy of the state is maximization of beneficial uses of water, the development of waters, and the achievement of the maximum practical degree of water quality. Section 25-8-102(1), C.R.S. (2006). Before any action is taken, consideration must "be given to the economic reasonableness of such action." Section 25-8-102(5), C.R.S. (2006). The Water Quality Control Division must consider economic factors when deciding whether to issue a variance. Section 25-

8-205(6), C.R.S. (2006). The same analysis applies to the air quality control issues under § 25-7-102(1) and -109, C.R.S. (2006). The statutes do not preclude the agencies from giving greater weight to conservation considerations in case of a conflict between conservation and economic concerns.

#17 is not inconsistent with the language of existing law. It does not preclude consideration of economic factors. It states that in case of a conflict between environmental considerations and economic factors, the environmental considerations must prevail. Section 7(1) of Initiative #17.

Moreover, even if provisions in the measure do amend existing law, the provisions are related to the creation of the new department. Again, operational and evaluative standards to be employed by the department are integral to its creation and existence.

II. "Conservation Stewardship" is not a catch phrase.

Objectors contend that the phrase "conservation stewardship" is a catch phrase. (Objectors' Brief, pp. 27-28.) History contradicts their argument. In 1996, the voters were presented with Amendment 16, which proposed to amend the power and responsibilities of the State Land Board. The measure used the phrase "sound stewardship", and the Title Board incorporated the phrase into the title. The title provided, in pertinent part: "providing for the establishment of a long-term

stewardship trust of up to 300,000 acres of land; requiring the board to take other actions to protect the long-term productivity and *sound stewardship* of the lands held by the board, including the incentives in agricultural leases which promote *sound stewardship*". (Emphasis added.) Legislative Council of the Colorado General Assembly, *An Analysis of 1996 Ballot Proposals* (Research Publication No. 415, 1996) 33 (attached hereto).

There is no evidence that the words "sound stewardship" created any bias or prejudice. Likewise, there is no evidence that "conservation stewardship" will be used as a slogan or will prejudice the voters.

CONCLUSION

For the above-stated reasons, the Court must affirm the action of the Title Board.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within answer **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, this 3rd day of August 2007 addressed as follows:

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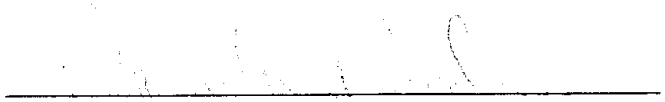

2) The limits on contributions and unexpended campaign funds may infringe on free speech. Contributions to candidates are a legitimate form of participation in the political process. Limiting campaign contributions restricts how and to whom a person may show political support. Contributing to a campaign is a matter of choice. The person or political committee who contributed the funds is not worried about the use of the funds; when contributions are made the donors trust that the money will be used wisely. In addition, limiting a candidate's ability to carry over campaign funds to the next election restricts a candidate's ability to decide when and how to spend the money.

3) The voluntary spending limits under this proposal raise First Amendment issues since the limits may not, in practice, be voluntary at all. A candidate who does not accept the spending limits must disclose this fact in all political messages and will have this non-acceptance indicated on the primary and general election ballots. Further, non-acceptance of voluntary spending limits may give the opposing candidate a financial benefit in the amount of contributions he or she may accept. The involuntary disclosure and the negative connotations from not accepting the spending limits, in addition to the financial consequences, may make the spending limits mandatory, thereby infringing on free speech.

4) The proposed amendment is trying to fix a problem where none exists. Colorado's campaign finance law enacted in 1996 adequately limits the amount of money that can be contributed to candidates, limits how a candidate may distribute unexpended campaign funds, and provides for adequate and timely reporting. This new law should be given a chance to work before making additional changes to the campaign reform law. In addition, the more frequent reporting requirements in the proposed amendment place additional burdens on unpaid volunteers who assist in political campaigns. Voluntary spending limits, the primary issue not addressed in current law, are not necessary because contributions to candidates are already limited.

AMENDMENT 16 — STATE TRUST LANDS

Ballot Title: An amendment to the Colorado Constitution concerning the management of state assets related to the public lands of the state held in trust, and, in connection therewith, providing that the board shall serve as the trustee for the lands granted to or held by the state in public trust; adding to the board's duties the prudent management and exchange of lands held by the board; requiring the board to manage lands held by the board in order to produce reasonable and consistent income over time, and to recognize that economic productivity and sound stewardship of such lands includes protecting and enhancing the beauty, natural values, open space, and wildlife habitat thereof; providing for the establishment of a long-term stewardship trust of up to 300,000 acres of land; requiring the board to take other actions to protect the long-term productivity and sound stewardship of the lands held by the board, including incentives in agricultural leases which promote sound stewardship and sales or leases of conservation easements;

authorizing the board to undertake non-simultaneous exchanges of land authorizing the General Assembly to adopt laws whereby the assets of the schoo fund may be used to assist public schools to provide necessary buildings, land, and equipment; providing opportunities for school districts in which lands held by the board are located to lease, purchase, or otherwise use such lands for schoo building sites; requiring the board, prior to a land transaction for developmen purposes, to determine that the income from the transaction will exceed the fisca impact of the development on local school districts; allowing access by public schools for outdoor education purposes without charge; expanding the state board of land commissioners to five members and requiring a diversity of experience and occupation on the board; reducing the terms of office of the members of the board to four years; directing the board to hire a director and a staff; and providing for personal immunity of the individual board members from liability in certain situations.

The complete text of this proposal can be found on pages 67-70 of this booklet.

The proposed amendment to the Colorado Constitution:

- ✓ changes the Colorado State Board of Land Commissioners' current constitutional duty of maximizing revenue from state trust lands to managing the lands to produce reasonable and consistent income over time;
- ✓ directs the board to manage the trust lands by:
  - setting aside between 295,000 and 300,000 acres of trust land for uses that will protect beauty, natural values, open space, and wildlife habitat;
  - including terms and incentives in agricultural leases that promote long-term agricultural productivity and community stability;
  - developing and using natural resources in a way that conserves their long-term value; and
  - selling or leasing rights to land, known as "conservation easements," to protect open space and maintain environmental quality and wildlife habitat;
- ✓ requires that the board determine that the revenue from developing trust lands for homes or businesses will be greater than the cost of educating new students associated with the development;
- ✓ requires the board to comply with local land use regulations and plans;
- ✓ permits the board to exchange trust land for other land as long as any exchange is completed within two years;
- ✓ restructures the membership and operation of the board by requiring the Governor to appoint a new board by May 1, 1997, increasing the number of members on the board from three to five, requiring that specific areas of expertise be represented on the board, reducing the length of appointed terms from six to four years, limiting