

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

Petitioner:

Howard Stanley Dempsey, Jr., Objector,
v.

Respondents:

James R. Udall and Tony Lewis, Proponents,

and

Title Board:

William A. Hobbs, Sharon Eubanks, and Daniel
Dominico

Attorneys for Petitioner:

Scott E. Gessler, #28944
Mario D. Nicolais, II #38589
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202
Telephone: (303) 534-4317
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FILED IN THE
SUPREME COURT

APR 21 2008

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲COURT USE ONLY▲

Case Number:

08S A134

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2007-2008 #78 ("Severance Tax")**

Howard Stanley Dempsey, Jr., a registered elector of Colorado, by and through undersigned counsel, respectfully petitions this Court under C.R.S. § 1-40-107(2), to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2007-2008 #78 ("Severance Tax").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set the title and submission clause for Proposed Initiative 2007-2008 #78 on April 2, 2008. On April 9, 2008, Dempsey filed a Motion for Rehearing under C.R.S. § 1-40-170(1), and the Title Board considered the Motion for Rehearing at its next meeting on April 16, 2008. The Board denied in part the Motion. The Petitioner now seeks review of the Title Board's decision under C.R.S. § 1-40-107(2).

II. Issues Presented

A. Does the initiative violate the single subject requirement by creating an increase in the severance tax on oil and gas production in Colorado, while also creating spending mandates that are not dependent upon or necessarily connected with the severance tax increase, or one another?

B. Is the ballot title and submission clause incomplete, because it fails to identify the percentage of the tax revenues devoted to each new purpose, thereby omitting critical information necessary to allow voters to make an informed choice?

III. Supporting Documentation

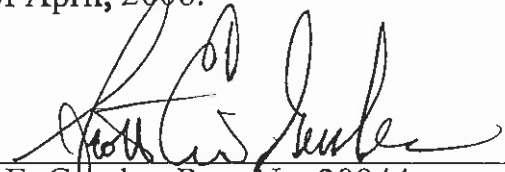
As required by C.R.S. § 1-40-107(2), attached is a certified copy of the Petition with the titles and submission clause of the proposed constitutional amendment, a certified copy of the Motion for Rehearing, and final action by the

Title Board (**collectively Exhibit 1**). The Petitioner has also attached a copy of the transcript of the Motion for Rehearing (**Exhibit 2**).

IV. Relief Requested

The Petitioner respectfully requests this Court to reverse the actions of the Title Board with directions to decline to set a title and return the Proposed Initiative to the Proponents. Alternatively, the Petitioner requests this Court to remand the matter to the Title Board and instruct it to set a complete and accurate Ballot Title and Submission Clause.

Respectfully submitted this 21st day of April, 2008.

By: 
Scott E. Gessler, Reg. No. 28944
Mario D. Nicolais, II., Reg. No. 38589
Hackstaff Gessler LLC
1601 Blake St., Suite 310
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Attorneys for Howard Stanley Dempsey, Jr.

Address of Petitioner:
3110 Alkire St.
Golden, Colorado 80401

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2008, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #78 (“Severance Tax”)** was placed in the United States mail, postage prepaid, to the following:

Ed Ramey, Esq.
Kara Veitch, Esq.
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, Colorado 80202

Attorneys for the Petitioners

Maurice G. Knaizer
Deputy Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Attorney for the Title Board




EXHIBIT
1



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 #78".....

.....

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 18th day of April, 2008.

Handwritten signature of Mike Coffman in cursive script.

SECRETARY OF STATE

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COLORADO TITLE SETTING BOARD

In re Title and Ballot Title and Submission Clause for Initiative 2007-2008 #78

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MOTION FOR REHEARING

On behalf of Howard Stanley Dempsey, Jr. a registered elector of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title, and submission clause for Initiative 2007-2008 #78, set by the Title Board on April 2, 2008.

The Petitioner claims that the proposed initiative violates Colorado's single subject requirement contained in C.R.S. § 1-40-106.5 because it contains the following separate subjects:


1. An increase in the severance tax on oil and gas production in Colorado; and
2. Spending mandates that are not dependent upon or necessarily connected with the severance tax increase, or one another.

The Petitioner also alleges that the title set by the Board is misleading, inaccurate, and incomplete for the following reasons:

1. The title is misleading because it substantially understates the size of the tax increase in the first year that the initiative goes into effect.
2. The title is misleading because it inaccurately states that the initiative exempts revenues from tax and related investment income from state and local government spending limits. Specifically, the initiative creates a new section C.R.S. § 39-39-105(3), which refers to subsection 1, paragraph c of that section. In fact, C.R.S. § 39-39-105(1) and C.R.S. § 39-39-105(1)(c) do not exist.
3. The title fails to identify the percentage of the tax revenues devoted to each new purpose, thereby omitting critical information necessary to allow voters to make an informed choice.

Respectfully submitted this 9th day of April, 2008.

By:



Scott E. Gessler, Reg. No. 28944

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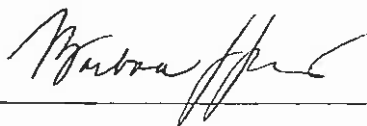
Attorney for Howard Stanley Dempsey, Jr.

Address of Petitioner:
3110 Alkire St.
Golden, Colorado 80401

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Ed Ramey, Esq.
Kara Veitch, Esq.
Isaacson Rosenbaum P.C.
633 17th Street
Suite 2200
Denver, Colorado 80202



Proposed Initiative 2007-2008
Final Text
#78

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

SECTION 1. 39-29-101 (3), Colorado Revised Statutes, is amended to read:

39-29-101. Legislative declaration. (3) It additionally is the intent of the general assembly that a portion of the revenues derived from such a severance tax be used by the state for public purposes, that a portion be held by the state in a perpetual trust fund, and that a portion be made available to local governments to offset the impact created by nonrenewable resource development, AND THAT A PORTION BE MADE AVAILABLE FOR HIGHER EDUCATION CAPITAL CONSTRUCTION.

SECTION 2. 39-29-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-102. Definitions. (4.3) "HIGHER EDUCATION CAPITAL CONSTRUCTION" MEANS ANY OF THE FOLLOWING ACTIVITIES FOR THE BENEFIT OF STATE INSTITUTIONS OF HIGHER EDUCATION AS DEFINED BY SECTION 23-18-102 (10) (A), C.R.S.:

- (a) PURCHASE OF LAND, REGARDLESS OF THE VALUE THEREOF;
- (b) PURCHASE, CONSTRUCTION, OR DEMOLITION OF BUILDINGS OR OTHER PHYSICAL FACILITIES, OR REMODELING OR RENOVATION OF EXISTING BUILDINGS OR OTHER PHYSICAL FACILITIES;
- (c) SITE IMPROVEMENT OR DEVELOPMENT;
- (d) PURCHASE AND INSTALLATION OF THE FIXED AND MOVABLE EQUIPMENT NECESSARY FOR THE OPERATION OF NEW, REMODELED, OR RENOVATED BUILDINGS AND OTHER PHYSICAL FACILITIES AND FOR THE CONDUCT OF PROGRAMS HOUSED THEREIN UPON COMPLETION OF THE NEW CONSTRUCTION, REMODELING, OR RENOVATION;
- (e) PURCHASE OF THE SERVICES OF ARCHITECTS, ENGINEERS, AND OTHER CONSULTANTS TO PREPARE PLANS, PROGRAM DOCUMENTS, LIFE-CYCLE COST STUDIES, ENERGY ANALYSES, AND OTHER STUDIES ASSOCIATED WITH ANY HIGHER EDUCATION CAPITAL CONSTRUCTION PROJECT AND TO SUPERVISE CONSTRUCTION OR EXECUTION OF SUCH CAPITAL CONSTRUCTION PROJECTS; AND
- (f) ANY ITEM OF INSTRUCTIONAL OR SCIENTIFIC EQUIPMENT IF THE COST WILL EXCEED FIFTY THOUSAND DOLLARS.

SECTION 3. The introductory portion to 39-29-105 (1) (b), Colorado Revised Statutes, is amended and the said 39-29-105 (1) if 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 OR 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. 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:

- (I) UNDER THREE HUNDRED THOUSAND DOLLARS SHALL BE EXEMPT; AND
- (II) THREE HUNDRED THOUSAND DOLLARS AND OVER SHALL BE FOUR AND EIGHTY-FIVE HUNDREDTHS PERCENT OF THE ENTIRE GROSS INCOME.

SECTION 4. 39-29-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-39-105. Tax on severance of oil and gas. (3) THE PROCEEDS OF THIS TAX AND INVESTMENT INCOME RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION 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 5. 39-29-108 (2), Colorado Revised Statutes, is amended to read:

39-29-108. Allocation of severance tax revenues – definitions – repeal. (2) (a) 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.

(b) OF THE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c):

(I) TWENTY-SEVEN PERCENT OF SUCH REVENUES SHALL BE CREDITED TO THE HIGHER EDUCATION CAPITAL CONSTRUCTION TRUST FUND CREATED PURSUANT TO SECTION 39-29-108.6, FOR THE PURPOSES SET FORTH THEREIN;

(II) SEVEN PERCENT OF SUCH REVENUES SHALL BE CREDITED TO THE CAPITAL CONSTRUCTION FUND CREATED PURSUANT TO SECTION 24-75-302, C.R.S., FOR THE PURPOSES SET FORTH THEREIN;

(III) TWENTY-THREE PERCENT OF SUCH REVENUES SHALL BE CREDITED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED PURSUANT TO SECTION 39-29-110, FOR THE PURPOSES SET FORTH THEREIN;

(IV) TWENTY-THREE PERCENT OF SUCH REVENUES SHALL BE CREDITED TO THE SEVERANCE TAX TRUST FUND PURSUANT TO SECTION 39-29-109, FOR THE PURPOSES SET FORTH THEREIN; AND

(V) TWENTY PERCENT OF SUCH REVENUES SHALL BE DISTRIBUTED TO POLITICAL SUBDIVISIONS IN THE MANNER SPECIFIED IN SECTION 39-29-110 (1) (c).

SECTION 6. Article 29 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-108.6. Higher education capital construction trust fund. THERE IS HEREBY CREATED IN THE STATE TREASURY THE HIGHER EDUCATION CAPITAL CONSTRUCTION TRUST FUND. THE PURPOSE OF THE FUND IS TO TRANSFER MONEYS TO STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., FOR HIGHER EDUCATION CAPITAL CONSTRUCTION. THE FUND IS PERPETUAL AND HELD IN TRUST. ALL INCOME FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE HIGHER EDUCATION CAPITAL CONSTRUCTION TRUST FUND SHALL BE CREDITED TO THE FUND AND SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL MONEYS UNEXPENDED OR NOT ENCUMBERED FROM THE HIGHER EDUCATION CAPITAL CONSTRUCTION FUND APPROPRIATION FOR ANY FISCAL YEAR SHALL REVERT TO THE HIGHER EDUCATION CAPITAL CONSTRUCTION FUND AT THE END OF THE PERIOD FOR WHICH SUCH MONEYS ARE APPROPRIATED. INTEREST EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE HIGHER EDUCATION CAPITAL CONSTRUCTION TRUST FUND SHALL BE TRANSFERRED ANNUALLY FOR HIGHER EDUCATION CAPITAL CONSTRUCTION AS DEFINED IN SECTION 39-29-102 (4.3).

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The proponents are:

James R. Udall
512 Handy Drive
Carbondale, CO 81623

Tony Lewis
3807 Silver Plume Circle
Boulder, CO 80305

All information on matters related to the initiative can be sent to Matt Samelson at msamelson@dkfoundation.org and 720.932.1544 and Tony Lewis at tlewis@dkfoundation.org and 720.932.1544

Ballot Title Setting Board

Proposed Initiative 2007-2008 #78¹

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

State taxes shall be increased \$206.9 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, modifying the existing severance tax on oil and gas extracted in the state by reducing the rate of the tax, exempting gross income below a specified dollar amount from the tax, and eliminating both an exemption for wells with minimal production and a credit against the tax based on property taxes paid by producers; exempting revenues from the tax and related investment income from state and local government spending limits; creating the higher education capital construction trust fund to be used to fund capital construction projects at state institutions of higher education; and requiring specified percentages of the tax revenues to be credited to (1) the state severance tax trust fund, (2) the local government severance tax fund, (3) the capital construction trust fund, and (4) the higher education capital construction trust fund.

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

Shall state taxes be increased \$206.9 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, modifying the existing severance tax on oil and gas extracted in the state by reducing the rate of the tax, exempting gross income below a specified dollar amount from the tax, and eliminating both an exemption for wells with minimal production and a credit against the tax based on property taxes paid by producers; exempting revenues from the tax and related investment income from state and local government spending limits; creating the higher education capital construction trust fund to be used to fund capital construction projects at state institutions of higher education; and requiring specified percentages of the tax revenues to be credited to (1) the state severance tax trust fund, (2) the local government severance tax fund, (3) the capital construction trust fund, and (4) the higher education capital construction trust fund?

Hearing April 2, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:43 a.m.

¹ Unofficially captioned "Severance Tax" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Hearing April 16, 2008:

Motion for Rehearing granted in part to the extent Board allowed technical correction in text of measure; denied in all other respects. (In section 4, changed "39-39-105" to "39-29-105".)

Hearing adjourned 11:46 a.m.



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Secretary of State's Rehearing
Before the Colorado Title Setting Board
Blue Spruce Conference Room
1700 Broadway, Suite 270
Denver, Colorado
11:25 a.m.
Wednesday, April 16, 2008

Re: Title and Ballot Title and Submission Clause
for Initiative 2007-2008 #78

Title Board Appearances:

William A. Hobbs, Deputy Secretary of
State appearing on behalf of Secretary of
State Mike Coffman

Daniel Dominico, Esq., Solicitor General

Sharon Eubanks, Deputy Director of the Office of
Legislative Legal Services

Scott E. Gessler, Esq., appearing for Howard Stanley
Dempsey, Jr.

Ed Ramey, Esq., appearing on behalf of the proponents



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1 (The CD starts at 2:40:21.)

2 CHAIRMAN: Let's resume the meeting then if
3 we could. The next agenda item is No. 2007-2008 No.
4 78, Severance Tax, which is before us on a motion for
5 rehearing. The time 11:25 a.m.

6 Mr. Gessler, I believe this is your motion
7 for rehearing. If you'd like to introduce yourself
8 please and tell us what you'd like for us to know
9 about the motion for rehearing. We do have the
10 benefit of the motion.

11 MR. GESSLER: Thank you. My name is Scott
12 Gessler. And I represent Howard Stanley Dempsey, who
13 has filed a motion for rehearing. If I may make a
14 suggestion to the Board to expedite the process.

15 I think many of these issues we've
16 discussed -- if I may just proceed in a sequence, I
17 think it will help out. With respect to the fiscal
18 note, despite our efforts, we are going to be
19 withdrawing that for this particular item, the fiscal
20 challenge with respect to the size of the tax
21 increase. The others will remain.

22 And if I may just go directly to the single
23 subject. The Board has considered this multiple
24 times, this exact same issue and, in fact, has
25 considered it earlier today with respect to No. 88.

1 I'll simply make a brief statement for the
2 record here that I've prepared. The issue in No. 88 I
3 think placed the separate subject argument in starker
4 relief. It basically showed a single revenue stream
5 with multiple spending mandates. That one had quite a
6 few. This one still has more than one, we would
7 argue, so it still violates the single subject.

8 It basically provides money to the current
9 stakeholders or current recipients and also adds yet
10 another one, in this instance the higher education
11 subject.

12 And we'd argue that that is part of log
13 rolling, coalition building. And that it contains two
14 separate subjects. I won't go into it in detail, as
15 the Board has heard these arguments.

16 CHAIRMAN: And we could consider the --

17 MR. GESSLER: I have a sense of exactly where
18 the Board is going to (inaudible) come out on this
19 particular issue.

20 CHAIRMAN: I think it's fine for us to
21 consider the prior discussion incorporated into this
22 motion for rehearing. I think that's fine. I
23 appreciate the simplifying of the discussion today.

24 MR. GESSLER: Thank you. I'd like to go to
25 in the next priority to dispose of these arguments, if

1 possible. Item No. 3 with respect to the petition for
2 the misleading, inaccurate, and incomplete title.

3 Item No. 3 is in fact that the title fails to
4 identify the percentages of the tax revenue devoted to
5 each one of the new (inaudible) purposes. We have had
6 this discussion before the Board on this exact same
7 issue with respect to a prior severance tax
8 initiative.

9 Again, I know the Board declined to change
10 the title based on this. But I would simply state
11 again that these ballots do two critical things. They
12 impose taxes -- yes, I do like the word impose, but
13 they impose taxes and take money from certain people
14 and they give money to other people.

15 And the manner in which they give that
16 additional money is critical information and
17 particularly when it's going to what we consider
18 separate subjects for separate purposes, that will
19 have an impact on how people view this. And it may
20 impact how they vote on it as well. So for that
21 reason we think that the title (inaudible).

22 And then with that I think the only new issue
23 that the Board has not heard has to do with item No. 2
24 with respect to the misleading title.

25 Essentially, the initiative adds a new

1 section. That new section is titled 39-39-105(3),
2 which refers to and in it subsection (1)(c) of
3 39-39-105, 39-39-105(1) and (1)(c) currently there is
4 no statute 39-39-105.

5 So when this particular 39-39-105(3) refers
6 to other portions of it, those other portions simply
7 don't exist. As a result, the colloquially-known
8 de-brucing provisions of this are not in effect. And
9 for that reason the title is (inaudible).

10 CHAIRMAN: Let me ask you about that
11 particular one. It looks like with Section 4 of the
12 measure it says that 39-29-105 is amended by the
13 addition of a new subsection.

14 And then it proceeds to lay out new
15 Subsection 3, but it then says 39-39-105, which I'm
16 guessing is probably a typographical error.

17 MR. GESSLER: And it may be that. I am
18 certain the proponents will speak to that issue. I
19 guess what I'm grounding my analysis in is the plain
20 language of 39-39-105, which refers to Paragraph C of
21 Subsection 1 of this section.

22 So referentially within 39-39-105 it refers
23 to 39-39-105. It doesn't refer to a 39-29-105 even
24 though based on the language of this initiative
25 39-39-105 should be placed apparently within

1 39-29-105.

2 So I do understand that disparity. And
3 that's why the analysis on this protest here is based
4 upon the plain language within 39-39-105. It refers
5 to this section.

6 MR. DOMINICO: But if it was labeled there
7 39-29-105, you'd have no objection to it?

8 MR. GESSLER: That's correct.

9 CHAIRMAN: Okay.

10 MR. GESSLER: Well, I should say, wouldn't
11 have this objection.

12 CHAIRMAN: Right. No objection. Right.
13 Exactly. I understand. And, Mr. Gessler, you know
14 that, I mean, the Board has some limited authority to
15 allow technical corrections to the language of the
16 measures at the request of proponents.

17 Now would you object if the proponents were
18 to ask for a correction to the section number? Would
19 you object to that?

20 MR. GESSLER: Yes, I would. And my
21 understanding is that the authority to make those
22 corrections is prior to substantive discussion about
23 the titles. Once that discussion begins, the Board
24 has to (inaudible).

25 My understanding is that that's the way the

1 Board has operated in the past based on case law
2 (inaudible) that the ability to make these technical
3 corrections is highly limited and only at the start of
4 the discussion before proponents and opponents had an
5 opportunity (inaudible).

6 CHAIRMAN: And I think you're correct in that
7 the one case that I'm aware of where the Court
8 addressed that issue of the Board allowing a technical
9 correction, the language from the case, and I don't
10 seem to have the year in front of me, but it's a
11 Casino Gaming Measure 649 P.2d 303.

12 The language from the Court did say, or did
13 refer to allowing a correction when it's made at the
14 beginning of a hearing on the title submission clause
15 and summary.

16 However, I know that we have sometimes
17 allowed technical corrections when they're discovered
18 later in the discussions, I think probably even on a
19 motion for rehearing. And I guess I'm wondering how
20 strictly we should apply that language.

21 Is there some reason, some legal or policy
22 reason why -- for example, are people disadvantaged?
23 I mean, if this truly is a typographical and I'm
24 assuming for the moment that it may be, but in the
25 case where there's a true, on its face typographical

1 error, is anyone disadvantaged by a correction other
2 than at the very beginning of the discussion about the
3 titles?

4 MR. GESSLER: Well, I think there are
5 disadvantages as far as the way this is structured and
6 put together. And I would also argue that the
7 particular analysis with respect to the disadvantage
8 doesn't hold weight with respect to other aspects of
9 this.

10 Generally, strict adherence is required to
11 the memorandum, the legislative legal services
12 following that, and coming before the Board. So I
13 guess I would argue that (inaudible) almost a standing
14 argument. That's not the proper viewpoint, but rather
15 the adherence that's necessary for (inaudible).

16 CHAIRMAN: Well, I mean, there's no provision
17 for the Board allowing technical corrections at all, I
18 don't think. I mean, this is something that I can
19 recall after the measure, the language has been
20 submitted to the Secretary of State. I don't recall
21 anything that allows the Board to accept technical
22 corrections, I mean except that the Court has said
23 that that could be done.

24 So I'm just trying to infer how the court
25 would react if they were presented with a slightly

1 different case where the typographical error was
2 caught later in the consideration of a measure.

3 And would there be any reason for the Court
4 to come out any differently if it's truly a
5 typographical error?

6 MR. GESSLER: I don't know if I can speak to
7 exactly how the Court will react on this, but I would
8 certainly argue and I would just continue to argue
9 that even if it's a typographical error, the fact is
10 it has gone through the proponents' analysis. It's
11 gone through your analysis.

12 And it's all set here. And the question
13 becomes will the proponents be allowed to make slight
14 changes under the rubric of typographical errors too
15 late in the process. And I think that does open the
16 door from a policy standpoint to mischief in the
17 process.

18 CHAIRMAN: Well, and just to be a little
19 stubborn here just for the sake of considering one
20 side of this. If the proponents had made that
21 correction before submitting to the Secretary of State
22 so that, and I'm assuming, again, for the sake of
23 argument this really was just a typographical error,
24 but if they had said in Section 4 that 39-29-105 is
25 amended to read and then said 39-29-105 with the new

1 Subsection 3, if they had done that in the version
2 they submitted to the Secretary of State, would it
3 have changed anything in the discussion or the
4 consideration about the measure with respect to single
5 subject or the setting of titles?

6 MR. GESSLER: That I don't know.

7 CHAIRMAN: Okay. Any questions for Mr.
8 Gessler about the motion for rehearing?

9 MR. DOMINICO: No, but I have one question
10 for the proponents.

11 CHAIRMAN: Okay. Well, let's hear from Mr.
12 Ramey, I think, on behalf of the proponents. Thank
13 you, Mr. Gessler. Mr. Gessler, you didn't have
14 anything else, I don't think.

15 MR. GESSLER: No, I don't.

16 CHAIRMAN: Okay. Thank you.

17 MR. RAMEY: Mr. Chairman, Edward Ramey on
18 behalf of the proponents. Let me first respond to the
19 -- it is a typographical error. I just (inaudible).

20 Obviously, I would submit that that's a
21 correction that the Board can make. And I would note
22 that the way that the initiative was prepared it does
23 say in Section 4 that 39-29-105 was amended
24 (inaudible) typographical error.

25 It appears in the wording of the amendment.

1 I'm certainly not trying to rename the statute. So it
2 is a typographical error (inaudible) section that
3 should be.

4 The other issues that Mr. Gessler has raised,
5 in the interest of time I'm going to (inaudible)
6 unless you have any specific questions, I won't go
7 into that.

8 MR. DOMINICO: I just have one specific
9 question and it's, do you acknowledge as you did on
10 No. 88 that at least some of the purposes for which
11 this money is being used have no logical connection to
12 one another or to the tax other than that it's part of
13 the coalition you've created that you think you could
14 get to back this?

15 MR. RAMEY: Yes, I mean, this is not, as
16 starkly posed as in No. 88, but there are two primary
17 categories. One is characterized as full harmless
18 provisions or uses being maintained. And the other
19 focuses on higher education issues (inaudible) issues,
20 such as (inaudible).

21 MR. DOMINICO: Right.

22 MR. RAMEY: But to a lesser and less
23 (inaudible) and a response I can go at length.

24 MR. DOMINICO: Right. That's all I have.

25 CHAIRMAN: Well, let's go back to the issue

1 of the section number, I guess. I mean, you're making
2 that request. You know, as you know that that may be
3 challenged if the Board grants that request.

4 It does seem to me that on its face, it's
5 just that it is just a typographical error. I mean,
6 as you pointed out Section 4, the amending clause,
7 says that it's 39-29. And everything about it only
8 makes sense if it's indeed a new Subsection 3 to the
9 existing 39-29-105.

10 I mean, I can support that motion even though
11 there will be some risk that it does seem to push the
12 envelope a little bit with respect to what the Court
13 has expressly said that the Title Board can do.

14 MR. RAMEY: I think that's true, Mr. Hobbs. I
15 do think you identified the policy (inaudible) as
16 well. We're not at a point yet where (inaudible) such
17 a point (inaudible).

18 At this stage, we're still in the
19 (inaudible). For example, we aren't able to go out
20 and percolate (inaudible) after (inaudible).

21 CHAIRMAN: And I would surmise that everybody
22 understood it. I can't speak for everybody. I think
23 I probably understood it. I just didn't notice that
24 it said 39-39. And, again, I don't think anybody -- I
25 would be troubled if somebody was disadvantaged that

1 said that an objection that could have been raised,
2 that the Board acted in a way that could have been
3 different and an objection could have been raised and
4 a motion for a rehearing now is foreclosed, perhaps.

5 But, in fact, it's a good catch and it is
6 raised in a motion for rehearing. And I think it
7 makes some logical sense to try to correct it now at
8 this stage.

9 MR. DOMINICO: Yeah, I mean, if we have the
10 authority to fix typos, this is precisely the sort of
11 thing that it seems to me it should be used for.

12 Now the reason that I think in the one case
13 there is discussion of it being done at the beginning
14 is I can see that if there was a situation where we
15 had assumed that it meant one thing based on a typo,
16 but then later on, later in the rehearing the
17 proponents said, oh, you know what, really, we didn't
18 mean that at all. What we meant was the opposite of
19 that.

20 If, for example, the issue in one of the
21 prior measures where we were confused a little bit
22 about the effective date, if we went and it was an
23 important part of the measure and we went down a road
24 assuming that it was July 1st and then at the
25 rehearing the proponents said, oh, you know that's a

1 typo. It's supposed to be January 1st. Then it might
2 be too late to raise it.

3 But in this case, we all assumed it was 29.
4 And, frankly, that part of the measure, I think, is
5 irrelevant. The language there isn't actually part of
6 the operative part of the measure.

7 You're adding a new subsection. So all
8 that's actually being added is the part from the 3,
9 Subsection 3. That title language is already in
10 39-29-105, which has a 1 and a 2 and you're adding a
11 new 3.

12 You're not even adding to the statutes this
13 introductory number or title. That's already in
14 there. So, to me, it's totally irrelevant. It's just
15 a way to identify what you're doing.

16 And the fact that there's a typo in there, I
17 think, is exactly the sort of thing that if we have
18 any authority to change measures, this is what it's
19 supposed to be used for.

20 CHAIRMAN: Well, I guess, I don't know if
21 it's the right time. I think I would go ahead and
22 move that the Board approve the request of the
23 proponents to correct the section number under the
24 amending clause to Section 4 so that it refers to
25 39-29-105 in the caption instead of 39-39-105.

1 MS. EUBANKS: I would second that.

2 CHAIRMAN: Move D and seconded by Ms.
3 Eubanks. Any further discussion?

4 (No audible response.)

5 If not, all those in favor say aye.

6 (Aye responses heard.)

7 All those opposed, no.

8 (No audible response.)

9 That motion carries three to zero. Mr.
10 Ramey, did you have anything else in response to the
11 motion for rehearing?

12 MR. RAMEY: I think, Mr. Hobbs, we fully
13 discussed (inaudible) this initiative and others.

14 CHAIRMAN: Okay. Thank you. Mr. Gessler,
15 anything further?

16 (No audible response.)

17 Thank you. Any discussion by the Board or a
18 motion?

19 MR. DOMINICO: I'm in the same place I am on
20 the single subject that this, while it doesn't have as
21 many disparate purposes that the money is being used
22 for has at least two and that troubles me, but I'm in
23 the same place I am as on 88. So I'm going to vote
24 for it and look forward to getting some guidance.

25 CHAIRMAN: Ms. Eubanks?

1 MS. EUBANKS: I was just going to for the
2 same reasons that were discussed on previous measures
3 that are similar and these same arguments have been
4 made, I would move that we deny the motion for
5 rehearing.

6 CHAIRMAN: I guess maybe let me suggest
7 rewording that just a little bit.

8 MS. EUBANKS: Do we have to do that to
9 reflect the typo?

10 CHAIRMAN: I think so. If you were to say
11 that we grant the motion to the extent that the Board
12 granted the request to amend the text and then deny
13 their motion in all other respects, that would be
14 okay?

15 MS. EUBANKS: Sure.

16 CHAIRMAN: So that's the motion before the
17 Board.

18 MS. EUBANKS: Well, if that's your motion,
19 then I'll second it.

20 CHAIRMAN: Okay. That's my motion and Ms.
21 Eubanks has seconded it. Mr. Dominico?

22 MS. EUBANKS: That's procedurally correct.

23 MR. DOMINICO: I just want to reiterate that
24 I agree with Mr. Gessler that these titles would be
25 much better with the percentage specified, percentages

1 in the title. Even though I think they satisfy our
2 statutory obligation as they are, I think they would
3 be much better.

4 And it would be a low cost, fairly decent
5 benefit to adding them in there. So I just, for the
6 record, say I think they would be better with it.

7 CHAIRMAN: If there's no other discussion,
8 then all those in favor say aye.

9 (Aye responses heard.)

10 All those opposed, no.

11 (No audible response.)

12 That motion carries three to zero. That
13 completes action on No. 78.

14 (The CD concluded at 3:02:04.)

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REPORTER'S CERTIFICATE

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STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

I, Geneva T. Hansen, do hereby certify that I am a Professional Shorthand Reporter and Notary Public within the State of Colorado.

I further certify that the foregoing transcript constitutes a true and correct transcript to the best of my ability to hear and understand the audiotaped recording.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 21st day of April, 2008.

My commission expires 11-18-11


Geneva T. Hansen

