

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>JUN - 2 2008</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTA, CLERK</p> <p>▲ COURT USE ONLY ▲</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007)</p> <p>Appeal from the Ballot Title Setting Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #83 ("FEES ON ENERGY EMISSIONS")</p> <p>TERRANCE G. ROSS,</p> <p>Petitioner,</p> <p>v.</p> <p>J. THOMAS MCKINNON AND SAMUEL P. WEAVER, PROPONENTS, AND WILLIAM A. HOBBS, SHARON EUBANKS AND DANIEL D. DOMENICO, TITLE BOARD,</p> <p>Respondents.</p>	<p>Case No.: 08SA138</p>
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<p>ANSWER BRIEF OF TITLE BOARD</p>	

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William A. Hobbs, Sharon Eubanks and Daniel Domenico, in their capacities as members of the Title Board (“Board”), hereby submit their Answer Brief.

ARGUMENT

I. The Measure Contains A Single Subject. The Measure Does Not Require Regulation Of New Programs Or Emissions Standards.

Petitioner argues that the measure, in addition to establishing a tax on the consumption of electricity or natural gas to be used to reduce certain forms of pollution, has four additional subjects: (1) implementation of a carbon sequestration program (Petitioner’s Opening Br. pp.11-14); (2) regulation of carbon as a pollutant (Petitioner’s Opening Brief (p.15-18)); (3) transfer of authority to regulate and oversee the implementation of a carbon sequestration program from the Colorado Air Quality Control Commission to other agencies (Petitioner’s Opening Brief, pp. 18-22) and (4) repeal of the long-standing tenet that future general assemblies cannot be prohibited from repealing or amending legislation, (Petitioner’s Opening Brief, pp. 22-24.) Petitioner’s argument is without merit.

The Court must base its single subject analysis on the plain language of the measure. *In re Title, Ballot Title and Submission Clause for 2007-2008 #61*, 2008

WL 2081774 (Colo. May 16, 2008) *3. #83 creates the Clean Energy Progress Fund and imposes a tax to provide money for the fund. It then provides an allocation formula for the fund. “A minimum of five percent of the revenues shall be used to implement carbon sequestration.” #83, section 6(c). Petitioner argues that this provision contains three purposes: establishment a carbon sequestration, regulation of carbon and transfer of authority to promulgate emission control regulations from the Colorado Department of Health and Environment to other agencies. Nothing in #83 remotely authorizes or requires regulation of carbon or the implementation of a carbon sequestration program by the State. It merely authorizes the expenditure of money by the State. The State can use the money to fund existing state programs. Alternatively, it may grant funds to private entities which have existing carbon sequestration programs.

Assuming that the measure does establish a carbon sequestration program, regulates carbon and transfers authority over carbon emissions to a different agency, #83 still contains only one subject. Courts in other states have rejected arguments similar to those proffered by Petitioner. The case of *California Association of Retail Tobacconists v. State*, 109 Cal. App. 4th 792, 135 Cal. Rptr. 2d 224 (2003) offers guidance. California voters enacted a tobacco tax intended to produce revenues for the promotion, support and improvement of early child

development. In addition to imposing a tax, the measure created a state commission. The revenue also financed the creation of parenting programs and related services. *Id.* 109 Cal. App. 4th at 804, 135 Cal. Rptr.2d at 234. Tobacco retailers argued that the measure violated the single subject rule “because it combines two unrelated disparate subjects without a narrow unifying theme: it combines a tax on tobacco products designed to reduce consumption with the creation of a multitude of unrelated child development spending programs ‘that are so loose in purpose and design as to lack any cohesion.’” *Id.* 109 Cal. App. 4th at 809-10, 135 Cal. Rptr.2d at 238. The California Court rejected the argument:

The various provisions of the Act are reasonably germane to each other and to that purpose because there is evidence the health of the demographic group is harmed by tobacco consumption and the Act increases tobacco taxes to discourage consumption on children while raising revenue to fund improvement of the health and welfare of young children. Increasing the tax on tobacco products and partially directing the increased revenues to areas in which smoking has had significant negative effects is a coherent effort to achieve the stated objective of discouraging tobacco consumption and reducing its harmful effects on young children.

Id. 109 Cal. App.4th at 811-12, 135 Cal.Rptr.2d at 239. *Cf. Washington Ass’n of Neighborhood Stores v. State*, 70 P.3d 359, 370-71(Wash. 2003).

The titles, when read as a whole, clearly disclose that the charges are indeed taxes. The first phrase uses the terminology required by Colo. Const. art. X, § 20, the section of the Colorado Constitution limiting taxes. The remainder of the titles clearly informs the reader that citizens will not receive a direct service. The titles state that the revenues will “be spent on the following purposes: (1) energy efficiency, (2) renewable energy, (3) carbon sequestration, (4) pollution reduction, (5) workforce training, (6) technology commercialization, (7) public education, and (8) curricula development; establishing and funding a clean energy progress task force to develop strategies for a clean energy portfolio; and funding a senior advisor to the governor on climate change.” The titles clearly convey the idea that the revenues will be used for general government services.

Petitioner also claims that the titles do not disclose the broad impact of the measure. (Petitioner’s Opening Brief, pp. 26-30). Petitioner’s argument is based in part on the assumption that the measure requires the implementation of a carbon sequestration program by the State and the establishment of a regulatory structure. Petitioner also asserts that the measure limits the General Assembly’s power to alter statutes. As noted, these contentions inaccurately interpret the content of the measure.

The Court approved titles for a similar measure proposed in 1982. *In re Mineral Production Tax Initiative*, 644 P.2d 20 (Colo. 1982). The measure would have imposed a tax on the production of metallic minerals and mineral fuels. A portion of the revenues would have been distributed local governments, a portion would have been appropriated for education, energy conservation, renewable resources and other purposes, and the remainder would have allocated to a perpetual trust fund. Opponents of the measure argued that the titles and summary did not fairly reflect the measure. The titles paralleled the language of the amendment. *Id.* at 25. The Court found that the titles and summary were adequate. *Id.*

The titles set for #83 fairly summarize the measure. The titles describe the key portions of the measure.

Finally, Petitioner asserts that terms “climate change” and “pollution” are catch phrases. Catch phrases are words that work to a proposal’s favor without contributing to voter understanding. Petitioner must show that the terms will be used to form a slogan in a manner that will ultimately prejudice the voters. *In re Title, Ballot Title and Submission Clause for 1999-2000 #258(A)*, 4 P.3d 1094, 1100 (Colo. 2000).

Petitioner has failed to show that either term is a catch phrase. He cites one article discussing “climate change.” The article does not discuss the impact of the term in the context of Colorado’s political environment.

Petitioner’s argument with respect to the term “pollution” is even more attenuated. He states that “few voters would immediately view themselves as polluters.” Instead, the “term will provoke the incorrect assumptions that the Initiative seeks to impose a CO2 fee on emissions from business and industry.” (Petitioner’s Opening Brief, p. 31).

Petitioner’s argument is not that the term will be used as slogan; rather, he contends that the term is unclear. Assuming that Petitioner’s argument about the clarity of the word “pollution” is accurate, it does not support the contention that the word is catch phrase. Vague terms are not inherently catch phrases.

CONCLUSION

For the reasons stated in the Board’s briefs, the Court must affirm the Board’s action.

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CERTIFICATE OF SERVICE

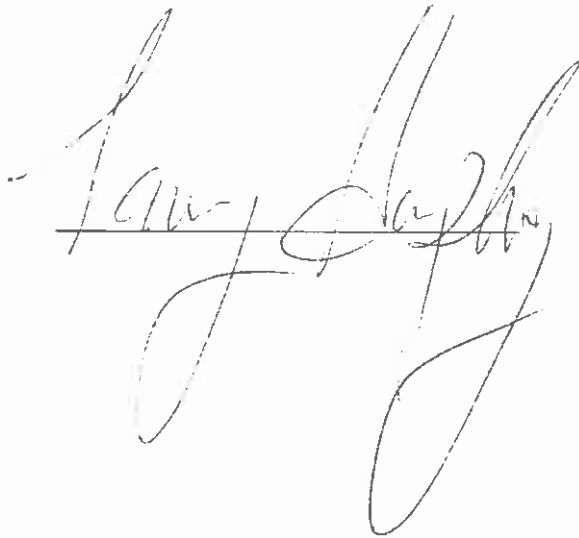
This is to certify that I have served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by Express

Mail, at Denver, Colorado, this 2nd day of June, 2008 addressed as follows:

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