

SUPREME COURT, STATE OF COLORADO  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

FILED IN THE  
SUPREME COURT  
JUN - 3 2008  
OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

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

▲ COURT USE ONLY ▲

Case No.: 08SA177

IN THE MATTER OF THE TITLE, BALLOT  
TITLE AND SUBMISSION CLAUSE FOR 2007-  
2008, #95 ("TAXABLE VALUES AND TAXES  
OF PROPERTY")  
ROBERT M. MOODY, OBJECTOR,  
  
Petitioner,  
  
v.  
  
ERNEST DURAN, JR. AND IRENE GOODELL,  
PROponents; AND WILLIAM A. HOBBS,  
SHARON EUBANKS AND DANIEL  
DOMENICO,  
  
Respondents.

JOHN W. SUTHERS, Attorney General  
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**OPENING BRIEF OF TITLE BOARD**

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William A. Hobbs, Daniel L. Cartin and Daniel Domenico, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their Opening Brief.

### **STATEMENT OF THE ISSUES**

The Board adopts the statement of issues set forth in the Objector's Petition for Review.

### **STATEMENT OF THE CASE**

On April 25, 2008 the proponents filed Proposed Initiative #95 (#95) with the Secretary of State. The Board held a hearing and set the titles on May 7, 2008.

On May 14, 2008, Robert Moody, the Objector, filed a motion for rehearing. He alleged that (1) the titles set for #95 failed to conform to the language required by Colo. Const. art X, § 20(3)(c); (2) the fiscal analysis included erroneous assumptions regarding the effective date of the measure and the first year revenues; and (3) the titles inaccurately stated that residential property taxes will not be impacted.

On May 21, 2008, the Board denied the motion for rehearing. The Objector filed this appeal.

## STATEMENT OF THE FACTS

#95, if enacted, would amend Colo. Const. article X, § 3(1) (b). It deletes the sentence, “All other taxable property shall be valued for assessment at twenty-nine percent of its actual value,” and replaces it with the sentence, “All taxable property other than residential real property shall be valued for assessment at thirty-four percent of its actual value.” It then states that additional revenues, appropriations, or expenditures attributable to the amendment will not be subject to any constitutional or statutory spending limits. The measure would take effect in the first property tax year after the effective date of the amendment.

## SUMMARY OF THE ARGUMENT

The titles set by the Board are fair, clear and accurate. Although the titles do not describe all of the details of the proposed measure, they do include its central features.

## ARGUMENT

### **I. The titles are fair, clear and accurate.**

Section 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles.

It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and

shall, whenever practicable, avoid titles for which the general effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof , together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 256 (Colo. 2000) However, the Board is not required to set out every detail. *In re Title, Ballot Title and Submission Clause #21*, 44 P.3d at 222 (Colo. 2002). In setting titles, the Board may not ascertain the measure’s efficacy, or its practical or legal effects. #256, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. #256, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board’s decision only if the titles are insufficient, unfair

or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

Objector asserts that the titles are defective because (1) they state that residential property taxes cannot be impacted by the measure, and (2) they use overly-technical terms and descriptions. For the following reasons, the Court must reject Objector's arguments.

Colo. Const art. X, § 10 was last amended in 1982. This section divides the state's property tax burden between residential and commercial properties. Forty-five percent of the total amount of state property tax collected is generated from residential property. Fifty-five percent of state property tax collected comes from commercial property. The assessment rate for commercial property is fixed at 29%.

#95 makes one substantive change to this section: it alters the assessment rate for commercial property. It states, "All taxable property other than residential real property shall be valued for assessment at thirty-four (34) percent of its actual value." The measure raises the valuation for assessment from 29% to 34%

The titles use much of the operative language of the measure. They state, in pertinent part, "an amendment to the Colorado constitution concerning an increase

in the valuation for assessment from 29% to 34% of the property's actual value for property tax purposes.”

The Court will uphold the titles set by the Board “where ‘[t]he language used by the Board properly repeats the operative language of the proposed amendment itself and expresses the true intent and meaning of the measure.’” *In re Title, Ballot Title and Submission Clause, and Summary for #25A Concerning Housing Unit Construction Limits*, 954 P.2d 1063, 1065 (Colo. 1998) (quoting *In re Proposed Initiative Concerning “Automobile Insurance Coverage,”* 877 P.3d 853, 857 (Colo. 1994)). In this case, the titles use the operative language of the measure, and the language expresses “the true intent and meaning of the measure.” In addition, the titles inform the readers about the present assessment percentage and the new assessment percentage.

Contrary to Objector's assertion, the titles do not address the impact, if any, on residential tax property taxes. Objector's contention apparently is based on his interpretation of the phrase “other than residential real property.” The Court must reject this argument. This phrase is used in the measure and is repeated in the titles. It is operative language, and the Board properly inserted in the titles. Moreover, when read in context of the entire measure, it does not state that residential property taxes may not be indirectly affected. In the context of the



entire sentence, it merely states that the valuation for assessment of non-residential property is pegged at 34% of its actual value.

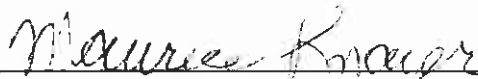
Objector also contends that the language in the titles is vague because it uses overly-technical language and descriptions of property tax formulas. This argument is meritless. The language is not overly-technical. It states that all property which is taxable, other than residential property, must be assessed at 34% of its actual value. It is difficult to argue that the language is obtuse. Similar language has been in the constitution since 1982. Taxpayers have received information about assessed valuation derived from this formulation for 26 years. The only significant difference between existing language and the proposed language is the percentage used to establish assessed valuation. It is impossible to conclude that readers will be confused.

The Court will not reverse the Board's titles merely because better titles could have been drafted. *In re Title, Ballot Title and Submission Clause, and Summary, "Trespass-Streams with Flowing Water,"* 910 P.2d 21, 26 (Colo. 1996). Thus, the Court will not substitute its judgment (or that of the Objector) so long as the titles fairly summarize the content of the measure.

## CONCLUSION

For the above-stated reasons, the Court must affirm the Board's action.

JOHN W. SUTHERS  
Attorney General

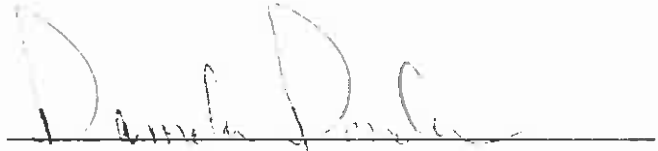
  
MAURICE G. KNAIZER, 05264\*  
Deputy Attorney General  
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same overnight by DHL at Denver, Colorado, this 3<sup>rd</sup> day of June 2008 addressed as follows:

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Proposed Initiative  
Text #95  
Final

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

Section 3(1)(b) of article X of the constitution of the state of Colorado is amended, and the said section 3 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**Section 3. Uniform taxation - exemptions.** (1)(b) Residential real property, which shall include all residential dwelling units and the land, as defined by law, on which such units are located, and mobile home parks, but shall not include hotels and motels, shall be valued for assessment at twenty-one percent of its actual value. For the property tax year commencing January 1, 1985, the general assembly shall determine the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property. For each subsequent year, the general assembly shall again determine the percentage of the aggregate statewide valuation for assessment which is attributable to each class of taxable property, after adding in the increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production. For each year in which there is a change in the level of value used in determining actual value, the general assembly shall adjust the ratio of valuation for assessment for residential real property which is set forth in this paragraph (b) as is necessary to insure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain the same as it was in the year immediately preceding the year in which such change occurs. Such adjusted ratio shall be the ratio of valuation for assessment for residential real property for those years for which such new level of value is used. In determining the adjustment to be made in the ratio of valuation for assessment for residential real property, the aggregate statewide valuation for assessment that is attributable to residential real property shall be calculated as if the full actual value of all owner-occupied primary residences that are partially exempt from taxation pursuant to section 3.5 of this article was subject to taxation. ~~All other taxable property shall be valued for assessment at twenty-nine percent of its actual value.~~ ALL TAXABLE PROPERTY OTHER THAN RESIDENTIAL REAL PROPERTY SHALL BE VALUED FOR ASSESSMENT AT THIRTY-FOUR (34) PERCENT OF ITS ACTUAL VALUE. However, the valuation for assessment for producing mines, as defined by law, and lands or leaseholds producing oil or gas, as defined by law, shall be a portion of the actual annual or actual average annual production therefrom, based upon the value of the unprocessed material, according to procedures prescribed by law for different types of minerals. Non-producing unpatented mining claims, which are possessory interests in real property by virtue of leases from the United States of America, shall be exempt from property taxation.

(3) ANY ADDITIONAL REVENUES, APPROPRIATIONS, OR EXPENDITURES ATTRIBUTABLE TO THE INCREASE IN THE VALUATION FOR ASSESSMENT OF NON-RESIDENTIAL PROPERTY FROM TWENTY-NINE TO THIRTY-FOUR PERCENT SHALL NOT BE SUBJECT TO THE LIMITATIONS OF SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, OR ANY OTHER REVENUE OR SPENDING LIMITATION EXISTING IN CURRENT LAW OR SUBSEQUENTLY ENACTED BY THE GENERAL ASSEMBLY.

(4) THE INCREASE IN VALUATION FOR ASSESSMENT OF NON-RESIDENTIAL PROPERTY SPECIFIED IN SUBSECTION 1(B) SHALL TAKE EFFECT IN THE FIRST PROPERTY TAX YEAR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT.

**Ballot Title Setting Board**

**Proposed Initiative 2007-2008 #95<sup>1</sup>**

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

Local taxes shall be increased \$577.3 million annually in the statewide aggregate on non-residential property by an amendment to the Colorado constitution concerning an increase in the valuation for assessment of all taxable property other than residential real property from 29% to 34% of the property's actual value for property tax purposes, and, in connection therewith, exempting additional revenues, appropriations, or expenditures resulting from the increase in valuation for assessment from all constitutional or statutory revenue or spending limitations.

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

Shall local taxes be increased \$577.3 million annually in the statewide aggregate on non-residential property by an amendment to the Colorado constitution concerning an increase in the valuation for assessment of all taxable property other than residential real property from 29% to 34% of the property's actual value for property tax purposes, and, in connection therewith, exempting additional revenues, appropriations, or expenditures resulting from the increase in valuation for assessment from all constitutional or statutory revenue or spending limitations?

*Hearing May 7, 2008:*

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

*Hearing adjourned 4:17 p.m.*

*Hearing May 21, 2008:*

*Motion for Rehearing denied.*

*Hearing adjourned 2:30 p.m.*

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<sup>1</sup> Unofficially captioned "Taxable Values and Taxes of Property" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.