

ORIGINAL

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

ORIGINAL PROCEEDING PURSUANT TO  
§ 1-40-107(2), 1 C.R.S. (2005)  
Appeal from the Ballot Title Setting Board

**Petitioners:**  
BEVERLY AUSFAHL and NICOLE KEMP,  
Objectors,

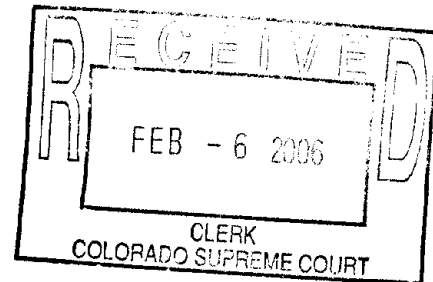
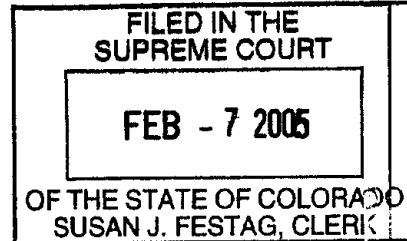
v.

**Respondents:**  
JON CALDARA and DENNIS POLHILL,  
Proponents,

and

**Title Board:**  
WILLIAM A. HOBBS, ALLISON EID, and  
DANIEL L. CARTIN

Attorneys for Petitioners:  
Edward T. Ramey, #6748  
Isaacson Rosenbaum P.C.  
633 17th Street, Suite 2200  
Denver, Colorado 80202  
Phone Number: 303-292-5656  
Fax Number: 303-292-3152  
E-mail: [eramey@ir-law.com](mailto:eramey@ir-law.com)



▲ COURT USE ONLY ▲

Case No.:

06SA42

**PETITION FOR REVIEW OF FINAL ACTION OF  
BALLOT TITLE SETTING BOARD  
CONCERNING PROPOSED INITIATIVE 2005-2006 #73  
("ISSUE COMMITTEE CONTRIBUTIONS")**

Beverly Ausfahl and Nicole Kemp ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), 1 C.R.S. (2005), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #73 ("Issue Committee Contributions").

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

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #73 on January 18, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on January 25, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on February 1, 2006. At the rehearing, the Board denied Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #73 pursuant to § 1-40-107(2), C.R.S. (2005).

### **II. Issues Presented**

1) Does proposed Initiative 2005-2006 #73 contain multiple subjects in violation of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2005), thereby depriving the Title Board of jurisdiction to set a title?

2) Does the title set by the Title Board for proposed Initiative 2005-2006 #73 fairly express the true meaning and intent of the proposed constitutional amendment?

### **III. Supporting Documentation**

As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

### **IV. Relief Requested**

Petitioners respectfully request this Court to 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 6th day of February, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

Addresses of Petitioners:

Beverly Ausfahl  
603 East 7th Avenue  
Denver, CO 80203

Nicole Kemp  
3332 West Moncrieff Place  
Denver, CO 80211

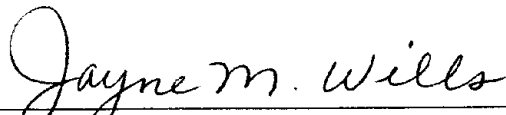
**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of February, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 # 73 ("ISSUE COMMITTEE CONTRIBUTIONS")** was placed in the United States mail, postage prepaid, to the following:

Jon Caldara  
14142 Denver West Parkway  
Golden, CO 80401

Dennis Polhill  
49 South Lookout Mountain Road  
Golden, CO 80401

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5th Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Jayne M. Wills



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **GINETTE DENNIS**, 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 "2005-2006 #73"...

..... **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 6th day of February, 2006.

*GINETTE DENNIS*

SECRETARY OF STATE

#73 Final Copy

RECEIVE

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

ARTICLE X, SECTION 20 (TAXPAYER'S BILL OF RIGHTS) OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW SUBSECTION TO READ:

City of Steam  
via  
copy  
wcc  
JAN 06 2006  
ELECTIONS/LICENSIN  
SECRETARY OF STAT

(10) SYSTEM TO END PAY-TO-PLAY. (1) THIS SECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL REASONABLY DISCOURAGE THE PRACTICE KNOWN AS PAY-TO-PLAY, WHERE INDIVIDUALS AND ENTITIES CONTRIBUTE TO A TAX OR DEBT ELECTION CAMPAIGN WITH THE EXPECTATION OF OR PREREQUISITE OF RECEIVING, A REWARD, EITHER FINANCIAL OR OTHERWISE.

(2)(A) ANY INDIVIDUAL OR ENTITY THAT CONTRIBUTES MORE THAN FIVE HUNDRED DOLLARS, WHETHER CASH OR THE EQUIVALENT, EITHER DIRECTLY OR INDIRECTLY, TO ANY ISSUE COMMITTEE AS DEFINED IN SECTION 2(10) (A) OF ARTICLE XXVIII, OR ANY COMBINATION OF ISSUE COMMITTEES, THAT ADVOCATES IN FAVOR OF A BALLOT ISSUE THAT RAISES A TAX RATE, CONTINUES A TAX THAT WOULD OTHERWISE EXPIRE, CREATES A NEW TAX, OR INCREASES PUBLIC INDEBTEDNESS, OR ANY OTHER BALLOT ISSUE THAT MUST ADHERE TO THIS SECTION, SHALL NOT PROFIT BY RECEIVING A GIFT, BY RECEIVING EMPLOYMENT, BY BEING AWARDED A CONTRACT, OR BY RECEIVING ANY TRANSFER OF TAXPAYER ASSETS OR FUNDS IN EXCHANGE FOR GOODS OR SERVICES FROM THAT DISTRICT FOR WHICH THIS SECTION APPLIES FOR THE PERIOD THE SUBJECT TAX OR PUBLIC INDEBTEDNESS IS IN PLACE.

(B) PASS-THROUGH CONTRIBUTIONS TO ISSUE COMMITTEES THROUGH OTHER INDIVIDUALS OR ENTITIES ARE EXPRESSLY PROHIBITED AND ARE INCLUDED IN THE LIMITATIONS OF (2) (A). THE ORIGINATOR OF THE CONTRIBUTION AS WELL AS ALL INDIVIDUALS OR ENTITIES THAT HANDLED A PASSED-THROUGH CONTRIBUTION ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(C) IF A CONTRIBUTION OF MORE THAN FIVE HUNDRED DOLLARS COMES FROM ANY INDIVIDUAL OR ENTITY THAT POOLS FUNDING FROM OTHER INDIVIDUALS OR ENTITIES, THEN ALL THE INDIVIDUALS AND ENTITIES THAT HAVE CONTRIBUTED MORE THAN FOUR HUNDRED DOLLARS INTO THAT ENTITY THAT POOLS SUCH FUNDING ARE SUBJECT TO THE LIMITATIONS STATED IN (2) (A).

(D) ENFORCEMENT. WHEN A DISTRICT IS FOUND TO HAVE VIOLATED PAY-TO-PLAY STATED IN (2) (A), THE SUBJECT ELECTION IS CONSIDERED VOID. REVENUES COLLECTED PRIOR TO AN UPHELD PAY-TO-PLAY CHALLENGE, SHALL BE REFUNDED TO TAXPAYERS.

**Jon Caldera**  
**13952 Denver West Parkway Ste #400**  
**Golden, CO**  
**303-279-6536**

**David Chandler**  
**7930 Kendall St**  
**Arvada, CO**  
**303-424-9897**

RECEIVED

JAN 25 2006

ELECTIONS / LICENSING  
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #73 ("ISSUE COMMITTEE CONTRIBUTIONS")

Beverly Ausfahl and Nicole Kemp ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the actions of the Title Board at the hearing on January 18, 2006, regarding Proposed Initiative 2005-2006 #73 ("Issue Committee Contributions"). Petitioners request a rehearing with regard to the following issues:

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple subjects in violation of Colo. Const. art. V, §1(5.5) and C.R.S. §1-40-106.5. Specifically, the Initiative (a) amends Colo. Const. art. X, §20 to prevent certain persons from receiving gifts, employment, contract awards, or transfers of taxpayer assets or funds from districts that have passed various forms of ballot issues; (b) effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to prohibit specified "pass-through" contributions to issue committees; (c) further effectively amends Colo. Const. art. XXVIII (though purportedly by amendment to Colo. Const. art. X, §20) to restrict a defined practice of "pooling" contributions to issue committees; (d) voids elections otherwise freely and fairly voted upon; and (e) mandates refunds to taxpayers of revenues collected in the event of an upheld challenge to covered contributions.

2. The title does not clearly and fairly apprise the voters that the restrictions upon contributions to issue committees set forth in section (2)(A) apply to all ballot issues within the



scope of Colo. Const. art. X, §20 – to include, *e.g.*, relief from spending limits – rather than just those concerning "a tax or debt increase."

3. The title does not clearly and fairly apprise the voters that the Initiative is effectively amending various provisions of Colo. Const. art. XXVIII.

4. The title wholly fails to apprise the voters that the Initiative prohibits "pass-through" contributions to issue committees.

5. It is not clear from the text of the Initiative what a "pass-through" contribution is – *e.g.*, whether or not it must be intended or earmarked by the initial contributor to be directed to the subject issue committee – and it is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

6. It is not clear from the text of the Initiative whether the prohibition upon "pass-through" contributions applies to all issue committees as defined in Colo. Const. art. XXVIII or solely to issue committees supporting ballot issues within the ambit of Colo. Const. art. X, §20. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

7. It is not clear from the text of the Initiative what individuals or entities will be deemed to have "handled" a "pass-through" contribution. It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

8. The text of the Initiative is internally inconsistent in both prohibiting "pass-through" contributions and simultaneously including them within the limitations established by

paragraph (2)(A). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

9. The title wholly fails to apprise the voters regarding the "pooling" restrictions of paragraph (2)(C).

10. It is not clear from the text of the Initiative what it means to "pool[] funding." It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

11. The title fails to disclose that revenues collected prior to an "upheld pay-to-play challenge" must be refunded to the taxpayers.

12. It is not clear from the text of the Initiative how a district can be found to have violated "pay-to-play" restrictions upon contributors to issue committees, and particularly in the context of "pass-through" or "pooling" violations incorporated into paragraph (2)(A) by paragraphs (2)(B) and (2)(C). It is therefore not possible to set a clear and fair title with regard to this provision so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

13. It is not clear from the text of the Initiative what or who may find or uphold a "pay-to-play challenge" or before whom, by whom, or against whom such a challenge may be brought. It is therefore not possible to set a clear and fair title with regard to the "enforcement" provision of the Initiative so that the voters may make an informed choice. In re Proposed Initiative 1999-2000 #37, 977 P.2d 845 (Colo. 1999).

Respectfully submitted this 25th day of January, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Mark G. Grueskin, #14621

Edward T. Ramey, #6748

633 17th Street, Suite 2200

Denver, Colorado 80202

Telephone: (303) 292-5656

Facsimile: (303) 292-3152

ATTORNEYS FOR PETITIONERS

Petitioners' Addresses:

Beverly Ausfahl  
603 East 7th Avenue  
Denver, CO 80203

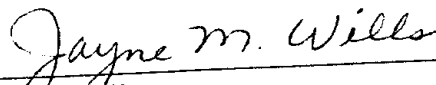
Nicole Kemp  
3332 West Moncrieff Place  
Denver, CO 80211

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25th day of January, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mr. Jon Caldara  
14142 Denver West Parkway  
Golden, CO 80401

Mr. Dennis Polhill  
49 South Lookout Mountain Road  
Golden, CO 80401

  
\_\_\_\_\_  
Jayne M. Wills

**Ballot Title Setting Board**

**Proposed Initiative 2005-2006 #73<sup>1</sup>**

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

An amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition.

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

Shall there be an amendment to the Colorado constitution concerning contributions made to a tax or debt campaign with the expectation of receiving a reward from a governmental entity, and, in connection therewith, prohibiting individuals and entities that make contributions in excess of five hundred dollars to issue committees that advocate a tax or debt increase from receiving employment, an award of a contract, or any transfer of taxpayer assets or funds from that governmental entity, and providing for enforcement of the measure by voiding the subject election when a governmental entity is found to have violated the prohibition?

*Hearing January 18, 2006:  
Single subject approved; staff draft amended; titles set.  
Hearing adjourned 2:24 p.m.*

*Hearing February 1, 2006:  
Motion for Rehearing denied.  
Hearing adjourned 2:51 p.m.*

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<sup>1</sup> Unofficially captioned "Issue Committee Contributions" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.