

Certification of Word Count: 1,091

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

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

FILED IN THE  
SUPREME COURT

MAR 31 2006

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IN THE MATTER OF THE TITLE, BALLOT TITLE,  
AND SUBMISSION CLAUSE FOR 2005-2006, #73

Case No. 06SA42

**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

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**PETITIONERS' REPLY BRIEF**

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Beverly Ausfahl and Nicole Kemp ("Petitioners"), through their undersigned counsel, respectfully submit the following Reply Brief:

## I. ARGUMENT

### A. Single Subject.

There is no dispute that the primary subject of Proposed Initiative for 2005-2006 #73 is the enactment of a constitutional restriction upon the ability of state and local districts to provide any form of economic or business benefit to individuals or entities who contributed more than \$500 to an issue committee that supported a successful district ballot issue subject to Colo. Const. art. X, § 20.

However, section (2)(B) of the initiative then states: "Pass-through contributions to issue committees through other individuals or entities are expressly prohibited and are included in the limitations of (2)(A)." The Title Board offers a narrowing interpretation of this provision as "not extend[ing] beyond the limited universe of ballot issue elections authorized by Colo. Const. art. X, § 20" – and indeed as limited within that universe to persons contributing more than \$500 with an expectation of receiving a benefit from the district. Ans. Br. at 5. The effect of the Title Board's narrowing interpretation is to erase a second subject by constructively erasing the textual words "are expressly prohibited and."

But that is not what the text of the initiative says. And it has not been the practice of this Court to adopt interpretations that selectively disregard statutory (in this case constitutional) language or render it completely superfluous. *Cf.*, Spahmer v. Gullette, 113 P.3d 158, 162 (Colo. 2005); Colorado Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist., 109 P.3d 585, 597 (Colo. 2005). *With* the language, under any interpretation, there is a separate and distinct subject. And the impact is direct, not incidental.

As discussed at pp. 5-8 of Petitioners' Opening Brief, the third subject of Proposed Initiative for 2005-2006 #73 is the retroactive invalidation of elections and accompanying mandatory refunds of all collected revenues – *not* due to a defect or violation of any sort whatsoever in the conduct of the election, but *solely* as a result of a *subsequent* and perhaps wholly unrelated contracting or hiring decision involving a person or entity who happened to have made a completely legal and proper contribution to an issue committee during the election.

Petitioners do not argue that invalidating an election – and even mandating the refund of revenues – would constitute a separate subject if the invalidation and refund resulted from a defect or impropriety in the conduct of the election itself. That would raise issues analogous to the cases cited by the Title Board, *e.g.*, Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994); City of Denver v. Hayes, 63 P. 311

(Colo. 1900). Ans. Br. at 6-9. Nor would Petitioners argue that denying a contractual or employment benefit to (or recovering such benefit from) a person or entity who had made a contribution in excess of a specified level in connection with a district election would constitute a separate subject in the context of discouraging the making or acceptance of such contributions. Either of these scenarios would, as the Title Board notes, constitute enforcement mechanisms related to a principal subject – perhaps unwise or invalid on other grounds, but not a separate subject within the meaning of Colo. Const. art. V, § 1(5.5).

But that is not what this initiative does. Proposed Initiative for 2005-2006 #73 invalidates properly conducted and concluded public *elections* – perhaps many years hence – in order to constrain *subsequent district contracting or employment actions* that may have nothing whatsoever to do with anything remotely connected with or funded as a result of the election. It deprives *all* Colo. Const. art. X, § 20 elections of finality for reasons wholly unrelated to the conduct of the election. It seeks to restrict administrative contracting and hiring decisions made by *government officials* by voiding legislative actions taken by *voters* prior to, unrelated to, and with no conceivable way of knowing or predicting, those future administrative decisions. These are separate subjects far more than those posed by the indirect impact of local revenue replacement obligations upon independent

state programs discussed in In re Proposed Initiatives for 1997-1998 # 84 and #85, 961 P.2d 456, 460-61 (Colo. 1998). The effect, by design or otherwise, is to undercut the validity of Colo. Const. art. X, § 20 elections for reasons having nothing to do with the legality, propriety, or conduct of the elections.

**B. Ballot Title Disclosure.**

The Title Board submits that the phrase "tax or debt campaign" is sufficient to apprise the voters that it includes all ballot issues subject to Colo. Const. art. X, § 20. Scooping mill levy and valuation adjustments and tax policy changes into this assumption may be a matter of degree, but scooping in elections dealing with relief from spending limits is not. Determining how much of its available resources a district has the authority to spend would not be viewed by most voters as incorporated within the phrase "tax or debt campaign."

The Title Board argues that the omission from the title of the pooling and, presumably, pass-through restrictions are non-critical because non-central to the measure. The former may again be a matter of degree, though implicating a disguised lower contribution threshold. The latter depends very much upon whether one accepts the reconstruction of the meaning of the pass-through restriction offered by the Title Board in its "single-subject" defense of this provision. If we take the language of the initiative as it is written, and refrain from

crafting narrowing constructions at odds with the language used, the pass-through restriction is not only a separate subject, it is a wholly non-disclosed separate subject.

Finally, the Title Board argues that the massively important potential refund obligation can be presumed to be implicit from the phrase "voiding the subject election" in the title. This is not necessarily the case. *Cf.*, Butler v. Bd. of Supervisors, 46 Iowa 326, 1877 Iowa Sup. LEXIS 92 (Iowa 1877), in which the Iowa Supreme Court: (a) invalidated an election, but (b) declined to order the refund of revenues already spent. *Id.* at 327. Even were an invalidation necessarily to imply a refund, the potential magnitude and duration of the refund exposure to every district conducting an election under Colo. Const. art. X, § 20 is a consequence that should be made patently clear and explicit to the voters.

## II. CONCLUSION

Petitioners renew their request that the Court reverse the actions of the Title Board and direct the Board to strike the title, ballot title, and submission clause and return Proposed Initiative for 2005-2006 #73 to its proponents.



Respectfully submitted this 31st day of March, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31st day of March, 2006, a true and correct copy of the foregoing **PETITIONERS' REPLY BRIEF** was forwarded, as listed, to the following addressees:

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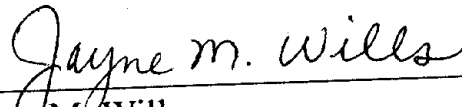
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\_\_\_\_\_  
Jayne M. Wills

**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.