

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
SHARON L. EUBANKS

Attorneys for Petitioners:

Edward T. Ramey, #6748

Isaacson Rosenbaum P.C.

633 17th Street, Suite 2200

Denver, Colorado 80202

Phone Number: 303-292-5656

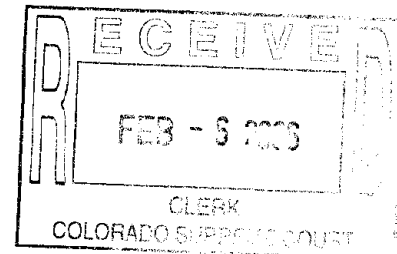
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FILED IN THE
SUPREME COURT

FEB - 7 2005

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK



▲ COURT USE ONLY ▲

Case No.:

06 SA 41

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD
CONCERNING PROPOSED INITIATIVE 2005-2006 #74
("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")**

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 #74 ("Expiration of Voter-Approved TABOR Issues").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #74 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 #74 pursuant to § 1-40-107(2), C.R.S. (2005).

II. Issue Presented

Does proposed Initiative 2005-2006 #74 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?

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

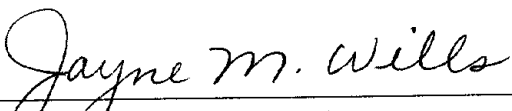
CERTIFICATE OF SERVICE

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 #74 ("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")** 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 #74".

.....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

74. Final
Copy

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

Section 20 of article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

(10) **TERM LIMITS FOR TAXES.** (A) THIS SUBSECTION TAKES EFFECT DECEMBER 31, 2006. THE PREFERRED INTERPRETATION SHALL PREVENT ONE GENERATION'S DECISION TO INCREASE TAX OR DEBT FROM BURDENING FUTURE GENERATIONS WITHOUT FUTURE GENERATIONS' DIRECT VOTING CONSENT.

(B) ANY 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 PASSED AFTER DECEMBER 31 2006 MUST SUNSET, EXPIRE, AND END WITHIN TEN YEARS OF ITS PASSAGE. SUCH BALLOT ISSUE MAY BE RENEWED BY A SUBSEQUENT VOTE OF THE PEOPLE, BUT NOT FOR LONGER THAN 10 YEARS.

RECEIVED

JAN 06 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

Ch.
6:31 a.m.
via email
WCC

Dennis Polhill
49 S. Lookout Mtn Road
Golden, CO

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

RECEIVED

JAN 25 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #74 ("EXPIRATION OF VOTER-APPROVED TABOR ISSUES")

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 #74 ("Expiration of Voter-Approved TABOR Issues"). 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 purports to create an expiration date for "any ballot issue" that "raises a tax rate," "continues a tax that would otherwise expire," "creates a new tax," "increases public indebtedness," or that must otherwise "adhere to this section" (Colo. Const. art. X, §20). At a minimum, this would encompass new and extended taxes, mill levy increases, valuation for assessment ratio increases, tax policy changes, creation or increase of public debt or other financial obligations, and increases of or relief from otherwise applicable spending limits. The Supreme Court has held that, while Colo. Const art. X, §20 is itself a multi-subject provision adopted by initiative prior to adoption of Colo. Const. art. V, §1(5.5), it may not now be repealed or amended by virtue of a multi-subject initiative. In re Proposed Initiative 1996-4, 916 P.2d 528

(Colo. 1996); In re Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X, 900 P.2d 121 (Colo. 1995).

2. The text of the Initiative is inherently unclear as to its reach and purpose, such that the Board is precluded from setting a ballot title. 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

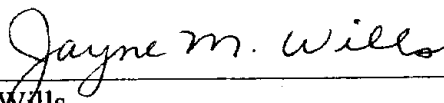
Nicole Kemp
3332 West Moncrieff Place
Denver, CO 80211

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 #74¹

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

An amendment to the Colorado constitution concerning a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people.

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 a limitation on the number of years that a ballot issue approved by the voters under section 20 of article X shall remain in effect, and, in connection therewith, providing that any ballot issue that increases a tax or public indebtedness or takes other action under section 20 of article X that is passed by the voters on or after December 31, 2006, must sunset, expire, and end within ten years of passage of the ballot issue and allowing the ballot issue to be renewed for up to ten years by a subsequent vote of the people?

Hearing January 18, 2006:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:20 p.m.

Hearing February 1, 2006:

Motion for Rehearing denied.

Hearing adjourned 2:28 p.m.

¹ Unofficially captioned "Expiration of Voter-Approved TABOR Issues" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.