

ORIGINAL

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SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

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

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2005-
2006 #74
BEVERLY AUSFAHL AND NICOLE KEMP ,

Petitioners,

v.

JOHN CALDARA AND DENNIS POLHILL,
PROONENTS
AND
WILLIAM A. HOBBS, ALLISON EID AND
SHARON EUBANKS,
TITLE BOARD,

Respondents.

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Case No.: 06SA41

ANSWER BRIEF OF TITLE BOARD

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William A. Hobbs, Allison Eid and Sharon Eubanks, as members of the Title Board (hereinafter "Board"), hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

1. Does proposed initiative #74 (#74) contain a single subject?

STATEMENT OF THE CASE

Beverly Ausfahl and Nicole Kemp (hereinafter "Objectors") accurately set forth the nature of the case, the course of proceedings and the disposition of #74 by the Board. (Opening brief, pp. 1-2). The Objectors' statement of the facts is also accurate.

SUMMARY OF THE ARGUMENT

#74 contains only one subject: setting a time limit of ten years for ballot issues passed by the voters under Colo. Const. article X, § 20 .

ARGUMENT

**THE MEASURE INCLUDES ONLY ONE SUBJECT:
LIMITING THE NUMBER OF YEARS THAT A
BALLOT ISSUE APPROVED BY THE VOTERS CAN
REMAIN IN EFFECT.**

The Objectors contend that the Board should not have set titles because #74 contains at least three subjects, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ...[has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002)(quoting *In re Proposed Initiative “Public Rights in Water II”*, 898 P.2d 1076, 1078-79 (Colo. 1995) (#21). A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (#43).

The Court will not address the merits of a proposed initiative, interpret it or construe its future legal effects. #21, 44 P.3d at 215-16, #43, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. #21, 44 P.3d at 216. The single subject requirement must be liberally construed to avoid the imposition of undue restrictions on initiative proponents. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P. 2d 927, 929 (Colo. 1998).

The Objectors contend that the measure contains at least three subjects: tax, debt and spending. (Objectors' brief, p. 7.) This characterization is incorrect. The measure has only one subject: time limits for ballot issues authorized by article X, § 20. The fact that the proposed measure will apply to all ballot issues does not mean that it includes more than one subject. The unifying purpose is the sunset of all measures ten years after approval by the voters. Its application to different types of measures does not alter the unity of the subject.

The Court's decision in *In re Title, Ballot Title and Submission Clause and Summary With Regard To A Proposed Petition For An Amendment To The Constitution of the State Of Colorado Adding Section 2 To Article VII (Petitions)*,

907 P.2d 586 (Colo. 1996) is instructive. The *Petitions* measure covered procedures for all petitions, irrespective of content. The Court concluded that the broad nature of the measure did not violate the single subject rule. “The constitutional provisions establishing initiative and referendum procedures are commonly associated with each other and reflect a common interest in providing measures by which electors of Colorado may directly amend the constitution.” *Id.* at 591, n.3.

Similarly, a bill affecting two different state entities does not necessarily violate single subject. The Court of Appeals recently rejected a single subject challenge to a bill authorizing the State to enter into lease-purchase agreements to finance construction projects in two different departments. *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288 (Colo. App. 2005). The bill had the subject of giving the state power to enter into lease-purchase agreements. The bill authorized the Department of Corrections to enter into a lease purchase agreement for a high-custody correctional facility. It simultaneously authorized the University of Colorado to enter into a lease purchase agreement for the Health Sciences Center. Even though the legislation covered two lease-purchase agreements by two different agencies, the Court of Appeals concluded that it

contained only one subject: use of lease-purchase agreements to fund capital construction projects of certain state facilities. *Id.* at 291.

Term limits imposed upon on a broad range of offices does not violate the single subject requirement. *Advisory Opinion To The Attorney General-Limited Political Terms In Certain Elective Offices*, 592 So.2d 225 (Fla. 1991). The fact that the proposal affects officeholders in three different branches of government is not, by itself, sufficient to conclude that the measure contains multiple subjects. “The sole subject of the proposed subject [was] limiting the number of consecutive terms that certain elected officers may serve.” *Id.* at 227.

The Objectors’ argument is premised in part on the assumption that tax, debt and spending measures are inherently exclusive. This assumption is incorrect. These matters can be placed in the same measure if they are sufficiently related. For example, both an increase in debt and a tax increase to pay the debt can be included in the same measure. *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994).

In the case at bar, the unifying theme is placing time limits on ballot issues approved by the voters under article X, § 20. The proposal is more limited in its application than the *Petitions* measure. It imposes only one limitation or


requirement on approved measures. It sunsets measures just as the Florida terms limits measure limited tenure office throughout state government.

The cases cited by the objectors are inapposite. In each of the cases, the proponents attempted to amend different parts of article X, § 20 without stating a unifying theme. Thus, proponents of initiative “1996-4” revised much of article X, § 20 under the subject of “limiting government spending”. *In re Proposed Initiative for 1996-4*, 916 P.2d 528, 534-35 (Colo. 1996). In “1997-1998 #30”, the proponents proposed tax reductions and a formula designed to reverse tax and spending increases previously enacted by voters of various districts. The Court could not find a significant connection between these subjects. *In re Proposed Initiative for 1997-1998 #30*, 959 P.2d 822, 826-27 (Colo. 1998). In contrast, #74 does present a unitary subject—prospectively imposing a sunset on all voter-enacted measures.

CONCLUSION

For the above-stated reasons, the Court must approve the Board’s action.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER BRIEF OF TITLE BOARD upon all parties herein by depositing copies of same in the United States mail, Express Mail postage prepaid, at Denver, Colorado, this 20th day of March 2006 addressed as follows:

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