

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board</p>	<p>FILED IN THE SUPREME COURT</p> <p>MAR 31 2006</p> <p>OF THE STATE OF COLORADO ▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #74</p> <p>Petitioners: BEVERLY AUSFAHL and NICOLE KEMP, Objectors,</p> <p>v.</p> <p>Respondents: JON CALDARA and DENNIS POLHILL, Proponents, and</p> <p>Title Board: WILLIAM A. HOBBS, ALLISON EID, and SHARON L. EUBANKS</p>	<p>Case No. 06SA41</p>
<p>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</p>	
<p>PETITIONERS' REPLY BRIEF</p>	

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

I. ARGUMENT

The Answer Brief of the Title Board succinctly poses the issue in this proceeding by defining the single subject of Proposed Initiative for 2005-2006 #74 as "term limits for ballot issues authorized by article X, § 20." Ans. Br. at 3. What this means, however, is: (1) term limits for tax measures; (2) term limits for public debt authorizations; and (3) term limits for voter-authorized relief from spending limits. The only thing that these three generically different types of ballot issues have in common is that they are all subject to the multiple-subject Colo. Const. art. X, § 20.

If "term limits" can be imposed by a single initiative upon the full array of ballot issues within the sweep of Colo. Const. art. X, § 20 consistent with the single subject requirement of Colo. Const. art. V, § 1(5.5), the entirety of art. X, § 20 could as readily be repealed by a single initiative. The impacted "subjects" would be the same. This Court has rejected that proposition. *See, e.g., In re Proposed Initiative for 1996-4*, 916 P.2d 528, 532-33 (Colo. 1996).

Referring to the authorities cited by the Title Board:

1) Petitioners do not dispute the proposition that a "single subject" may be "comprehensive" as long as its purposes are connected (e.g., "reforming petition rights and procedures"). Cf., 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, 591 (Colo. 1995). Limiting the duration of unrelated: (a) tax measures; (b) public debt authorizations; and (c) relief from mandatory refunds of available revenues are not connected purposes, however. They have literally nothing in common except the impact upon all of them of the strictures of the multiple-subject Colo. Const. art. X, § 20.

2) Petitioners do not contest the ability of the General Assembly to authorize a single method of financing (lease purchase agreements), albeit for two separate state agencies, in a single bill. See Colorado Criminal Justice Reform Coalition v. Ortiz, 121 P.3d 288, 291-92 (Colo. App. 2005). This bill at least involved a single method of financing rather than three wholly disparate governmental activities (taxing, borrowing, and spending), and the potential for voter confusion was absent.

3) Similarly, Petitioners do not quibble with the Florida Supreme Court's conclusion that the imposition of term limits upon elected officials may be a single

subject notwithstanding application to three separate branches of government. Advisory Opinion to the Attorney General, 592 So.2d 225, 227 (Fla. 1991). The single theme was term limits – here the subjects are: (1) taxes; (2) public debt authorization; and (3) authority to spend rather than refund available revenues.

4) This Court's opinion in Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), is particularly germane. There, the Court held that "the incurrence of a debt and the adoption of taxes *as the means with which to repay that debt* are properly viewed as a single subject when presented together in one ballot issue." Id. at 231 (emphasis added). The tax was exclusively a dedicated mechanism for repayment of the specified debt. In the present proceeding, wholly unrelated taxes and debt authorizations are "sunset" by the same initiative.

This Court has very recently emphasized the importance of avoiding voter confusion in the context of differentiating a "tax increase" from a "tax extension." Bruce v. City of Colorado Springs, ___ P.3d ___, Slip Opinion at 22 (Colo. Feb. 27, 2006). Respectfully, the distinction between taxes, debt, and spending-vs-refund authorization is much greater. While a voter may be quite enamored with the idea of constitutionally "term-limiting" a tax increase – indeed *all* tax increases – the same voter may be more reticent to impose an automatic constitutional limitation upon the ability of state and local government to incur public debt

obligations of various durations. And the voter may have a wholly different preference with regard to authorizing relief from spending limits. The concepts are meshed and confused in the present initiative, and indeed lumped under a single misleading textual headnote "Term limits for taxes."

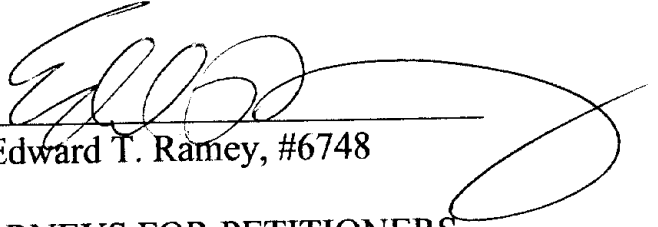
The lumping of at least three distinct and unrelated subjects into this single initiative will have the inevitable effect of both confusing the voter and "logrolling" unrelated and unconnected results from the necessity of a single indivisible vote. This is precisely what the single subject requirement was intended to prevent.

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 #74 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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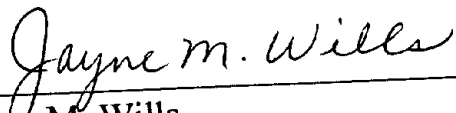
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