

SUPREME COURT, STATE OF COLORADO
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Denver, Colorado 80203

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ORIGINAL PROCEEDING PURSUANT TO
§1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR
2007-2008 #113 ("Severance Taxes")

Petitioner:

Howard Stanley Dempsey, Jr., Objector,
v.

Respondents:

Michael A. Bowman, and David Theobald,
Proponents,

and

Title Board:

William A. Hobbs, Sharon Eubanks, and Daniel
Dominico

Attorneys for Petitioner:

Scott E. Gessler, #28944
Mario D. Nicolais, II #38589
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202
Telephone: (303) 534-4317
Fax: (303) 534-4309
E-mail: sgressler@hackstaffgessler.com
mnicolais@hackstaffgessler.com

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Case Number: 08SA198

ANSWER BRIEF OF THE PETITIONER

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I. STATEMENT OF THE ISSUES

Petitioner Howard Stanley Dempsey (“Dempsey”) adopts the statement of the issues set forth in his *Opening Brief*, with the following addition:

Proponents unify their tax and spending provisions under the them theme of “recapturing lost wealth for public good.” Does the theme “recapturing lost wealth for public good” constitute an impermissibly broad theme that violates the single subject requirement?

II. STATEMENT OF THE CASE

Dempsey adopts the Statement of the Case set forth in his *Opening Brief*.

III. SUMMARY OF THE ARGUMENT

The current title for Initiative No. 113 misleadingly uses the term “college,” even though the measure excludes junior colleges. The Title Board itself has been misled regarding what institutions are included as colleges. In addition, the Title Board’s attempt to argue that the definition of “college” does not include junior colleges fails. Finally, the title can be easily modified to remove the misleading term “college.”

The initiative also violates the single subject requirement because the theme “recapturing lost wealth for public good” is too broad. Such broad themes impermissibly allow multiple subjects to be categorized under the same initiative, rather than being passed on their own merits. This theme encompasses two separate subjects within the initiative: (1) recovery of lost wealth by the state; and

(2) provide funds for specific and disparate programs. Combining the two subjects in one initiative violates the single subject requirement.

Even if the Court accepts the broad theme “recapturing wealth for the public good,” higher education scholarships are not sufficiently connected to the subject of recapturing the lost value of extracted minerals for the public good as a whole. Unlike free public education provided to all residents for primary and secondary education, individual scholarships benefit only individual recipients and not the public as a whole. The state as a whole, therefore, does not benefit the recaptured value of the extracted minerals, oil and gas.

Finally, spending mandates on disparate subjects are not “strongly linked” to the tax on extraction of minerals, oil and gas. The Title Board argues that because revenue from a specific source may be deposited in the state’s general funds, and the general funds may, subsequently, be spent on disparate programs, the initiative may also dedicate funds from a specific source to disparate programs. But the authority cited by the Title Board does not support this conclusion. The authority cited includes only one specific program to receive funds and has only one subject, “to provide funds” to that program. In contrast, the proposed initiative seeks (1) to disburse funds to multiple programs and, (2) to recapture the wealth lost from extraction of minerals, oil and gas.

IV. ARGUMENT

A. The title misleadingly uses the term “colleges,” even though the initiative excludes junior colleges.

The phrase “state universities and colleges” is not synonymous with “state institutions of higher education.” By using the term “college” in the title, the Title Board created a misleading title likely to cause voter surprise. In fact, the Title Board itself has been misled.

The Title Board asserts that the initiative provides scholarships for students attending “local community colleges” such as Aims College and Colorado Mountain College.¹ Factually, the Title Board is simply wrong. Aims College and Colorado Mountain College are junior college districts, organized under Article 72 of Title 23.² And Colorado law specifically contemplates that junior colleges operate within junior college districts.³ Indeed, Colorado Mountain College describes itself as a “junior college”⁴ and Aims Community College describes itself as a “junior college district.”⁵ Neither college is included in the initiative’s definition of “state institutions of higher education,” which specifically excludes

¹ *Opening Br. of Title Bd.* at 13-14.

² C.R.S. § 23-72-121.5 (2007).

³ C.R.S. § 23-71-103 (2007).

⁴ See **Exhibit A**, p. 3.

⁵ See **Exhibit B**, p. 1.

“a junior college that is part of a junior college district organized pursuant to article of [title 23].”⁶

It is impossible for the Title Board to argue that the title is not misleading, when the Title Board itself has been misled.

In its *Answer Brief*, the Title Board changes tack, arguing that the term “college” does not include “junior college.” This approach quickly fails. First, even the Board’s cited definition of “college” does not support this argument. According to the board, a college means “an independent institution of higher learning offering a course of general studies and usu. preprofessional training leading to a bachelor’s degree.” The Title Board ignores the term “usu.” (which denotes “usually”) and instead attempts to substitute “always.”

Second, the Title Board makes selective and misleading use of the dictionary. The term “college” also includes “an institution offering instruction usu. in a professional, vocational, or technical field.”⁷ This describes a junior college.

Third, the Title Board argues that the “common” meaning of college excludes “junior college.” This seems at odds with the opinions of over 11,000 students in Colorado who, according to the Title Board, mistakenly believe that

⁶ C.R.S. § 23-18-102(10)(b) (2007).

⁷ Webster’s Third New Int’l Dictionary 445 (1st ed. 2002).

they attend a college. This is exactly the type of “voter surprise” that the Supreme Court has prohibited in the past.⁸

By contrast, the Proponents argue that the Title Board is not required to list every detail of the measure, and that the term “colleges and universities” is the best the Title Board can do.⁹ Dempsey does not ask that the Title Board add detail. Rather, he asks that the Board eliminate the misleading term “college.” And an easy solution – one suggested by Dempsey during the motion for rehearing – is to mimic the language of the initiative by using the term “state institutions of higher education.” This is not unduly cumbersome, and most importantly it does not mislead Colorado voters.

B. The theme “recapturing lost wealth for public good” is too broad and violates the single subject rule.

This Court has stated that themes that are “too general and too broad” cannot be applied to unite separate and discrete subjects into a single subject.¹⁰

⁸ *In re Title, Ballot Title, & Submission Clause for 2007-2008 No. 57*, No. 08SA91, slip op. at 10 (Colo. 2008) (*In re No. 57*).

⁹ *Opening Br. of Respondent-Proponents* at 13-14.

¹⁰ *In re Title, Ballot Title, Submission Clause & Summary for “Pub. Rights in Waters II”*, 898 P.2d 1076, 1080 (Colo. 1995); *In re Title, Ballot Title, & Submission Clause for 2007-2008, No. 17*, 172 P.3d 871, 875-76 (Colo. 2007).

Themes such as “water,”¹¹ “monetary impact,”¹² “non-emergency government services,”¹³ “environmental conservation”¹⁴ and “conservation stewardship”¹⁵ have each been rejected topics too broad to link discrete subjects. In each case this Court prohibited “grouping distinct purposes under a broad theme ... [to] satisfy the single subject requirement.”¹⁶ That prohibition promotes the goal of barring “disconnected or incongruous measures” from passing in the same legislative act.¹⁷

In *Public Waters II*, this Court addressed an initiative that combined water conservation district elections and public trust water rights provisions. The Court found the broad theme “water ... too general and too broad to constitute a single

¹¹ *In re Title, Ballot Title, Submission Clause & Summary for “Pub. Rights in Waters II”*, 898 P.2d 1076, 1080 (Colo. 1995).

¹² *In re House Bill No. 1353*, 738 P.2d 371, 373 (Colo. 1987) (interpreting the single subject requirement for bills).

¹³ *In re Title and Ballot Title & Submission Clause for 2005-2006 No. 55*, 138 P.3d 273, 282 (Colo. 2006).

¹⁴ *In re Title, Ballot Title & Submission Clause for 2007-2008, No. 17*, 172 P.3d 871, 875-76 (Colo. 2007).

¹⁵ *In re Title, Ballot Title & Submission Clause for 2007-2008, No. 17*, 172 P.3d 871, 875-76 (Colo. 2007).

¹⁶ *In re Title and Ballot Title & Submission Clause for 2005-2006, No. 55*, 138 P.3d 273, 278 (Colo. 2006).

¹⁷ *In re Title and Ballot Title & Submission Clause for 2005-2006, No. 55*, 138 P.3d 273, 278 (Colo. 2006).

subject.”¹⁸ Specifically, the Court stated that it could find “no unifying or common objective”¹⁹ between the water district elections and the policy regarding public trust water rights.

Like the initiative in *Public Waters II*, this initiative attempts to include multiple subjects under a broad theme: “recapturing lost wealth for the public good.” By creating such a broad theme, the proponents then claim each of the specific uses is “wholly consistent with the stated purposes.”²⁰ But the disparate uses are consistent *only* because the broad theme is nearly all-inclusive. For example, the “public good” includes not only these specific uses – it also includes every other government service imaginable.

Initiative #113 combines multiple subjects the same way as in *Public Waters II*: The multiple subjects of the current initiative are: (1) recovery of lost wealth by the state from mineral, oil and gas extraction; and (2) a public policy choice to support specific programs. This is similar to *Public Waters II*, which combined: (1) creation of elections for water conservancy districts; and (2) a public policy choice regarding public trust water rights. In both cases, the

¹⁸ *In re Title, Ballot Title, Submission Clause & Summary for “Pub. Rights in Waters II”*, 898 P.2d 1076, 1080 (Colo. 1995).

¹⁹ *In re Title, Ballot Title, Submission Clause & Summary for “Pub. Rights in Waters II”*, 898 P.2d 1076, 1080 (Colo. 1995).

²⁰ *Opening Br. of Respondents-Proponents*, pg. 9.

initiatives encompass separate subjects that should be passed by voters on their own merits.

The Court has recently reaffirmed its position against use of such broad themes in several cases including *In re 2005-2006 No. 55*, which barred using the theme “restricting non-emergency government services” to combine (1) termination of services to individuals not lawfully present in the state with (2) denial of administrative services to the same individuals²¹ Likewise, in *In re 2007-2008 No. 17* the Court barred pairing (1) a public trust standard and (2) reorganization of natural resource and environmental programs, under the themes “environmental conservation” or “ conservation stewardship.”²²

C. Higher education scholarships are not directly connected to the subject of recapturing the lost value of extracted minerals for the public good as a whole.

Funding individual scholarships to institutions of higher education is not related to taxation of oil and gas. The Title Board argues: (1) the state loses value in general when resources are removed from the land; (2) the value extends to the state as a whole; and, (3) it is appropriate to fund college scholarships because state colleges and universities are part of the state as a whole.²³ Not only does this

²¹ *In re Title and Ballot Title & Submission Clause for 2005-2006, No. 55*, 138 P.3d 273, 278 (Colo. 2006).

²² *In re Title, Ballot Title & Submission Clause for 2007-2008, No. 17*, 172 P.3d 871, 875-76 (Colo. 2007).

²³ *See Opening Br. of Title Bd.*, pg. 11.

argument take broad leaps of legally unsupported logic to demonstrate an impermissibly broad theme, but it also fails to demonstrate how individual scholarships benefit the public as a whole.

The Title Board attempts to bridge this gap by citing cases from other jurisdictions drawing a “nexus between a funding source and the allocation of funds for *education*.”²⁴ But “education” is not the same as “higher education,” because education includes mandatory primary and secondary education provided for free to all state residents.

For example, the Florida Supreme Court found a nexus between funding from slot machines and “public education funding statewide,”²⁵ citing a prior decision linking funding to “free public schools.”²⁶ A distinction must be drawn between free public education for every child in the state, and higher education scholarships given to only specific individuals. One is a public good available to all, and benefitting all. The other is granted only to a limited, chosen few. In this initiative, only select scholarship recipients receive a benefit.

²⁴ See *Opening Br. of Title Bd.*, pg. 11 (emphasis added).

²⁵ *In re Advisory Op. to Att’y Gen. re Authorizes Miami-Dade & Broward County Voters to Approve Slot Mach. in Parimutuel Facilities*, 880 So.2d 522, 522 (Fla. 2004).

²⁶ *In re Advisory Op. to Att’y Gen. re Authorizes Miami-Dade & Broward County Voters to Approve Slot Mach. in Parimutuel Facilities*, 880 So.2d 522, 522 (Fla.2004) (quoting *Floridians Against Casino Takeover v. Let's Help Fla.*, 363 So.2d 337, 338 (Fla. 1978)).

D. Spending mandates on disparate subjects are not “strongly linked” to the tax on oil and gas.

The Title Board also argues that a “strong” link exists between the tax and the money for which revenues are allocated.²⁷ To make this argument, the Board first argues that revenue from a specific tax can be put toward general fund purposes. The Board then reasons that because general funds can be spent on any specific purpose, that the initiative can also mandate specific purposes. This inferential leap defeats the purpose of the single subject rule, and is not supported by the Board’s cited precedent.

The Title Board points to *In re Hunter’s Estate*²⁸ to argue that a tax “imposed upon a narrow subject and allocated to a fund with a different purpose does not violate the single subject rule.”²⁹ But that case must be differentiated. First, the bill in that case raised funds for a single specific purpose – payment of old age pensions and assistance of aged, indigent persons.³⁰ By contrast, the Proponents wish to raise funds for several disparate programs, including higher education scholarships, transportation, and renewable energy projects.

²⁷ *Opening Br. of Title Bd.* at 8.

²⁸ *In re Hunter’s Estate*, 49 P.2d 1009 (Colo. 1935).

²⁹ *See Opening Br. of Title Bd.*, p. 5.

³⁰ *In re Hunter’s Estate*, 49 P.2d 1009, 1010 (Colo. 1935).

Second, and most importantly, *In re Hunter's Estate* stated that the single subject of the bill was “to provide funds.”³¹ While it is questionable whether such a broad theme would hold under current jurisprudence, it is clear that the current initiative includes both the subject “to provide funds” for specific programs and an additional subject. The Title Board’s own brief states that “the purpose of this proposed initiative is to ‘recapture a [greater] portion’ of the irretrievably ‘lost wealth’ caused by the private extraction and sale of a specific non-renewable natural resource of the state.”³² As with the Proponent’s subject “public good,” the subject “to recapture lost wealth” is impermissibly broad and elastic.

V. CONCLUSION

The Court should determine that the Title Board did not have jurisdiction to set a title due to the violation of single subject requirements. Alternatively, the Court should remand the matter to the Title Board to correct misleading language.

³¹ *In re Hunter's Estate*, 49 P.2d 1009, 1012 (Colo. 1935).

³² *See Opening Br. of Respondents-Proponents*, p. 7.

Respectfully submitted this 19th day of June, 2008.

By: 

Scott E. Gessler, Reg. No. 28944

Mario D. Nicolais, II., Reg. No. 38589

Hackstaff Gessler LLC

1601 Blake St., Suite 310

Denver, Colorado 80202

(303) 534-4317

(303) 534-4309 (fax)

sgessler@hackstaffgessler.com

mnicolais@hackstaffgessler.com

Attorneys for Howard Stanley Dempsey, Jr.

CERTIFICATE OF SERVICE


I hereby certify that on this 19th day of June, 2008, a true and correct copy of the foregoing **ANSWER BRIEF OF THE PETITIONER** was served via hand delivery, to the following:

Ed Ramey, Esq.
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, Colorado 80202

Attorneys for the Petitioners

Maurice G. Knaizer
Deputy Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Attorney for the Title Board





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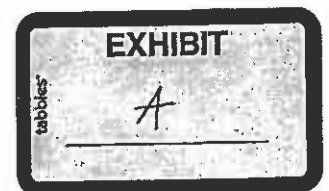
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- What are CMC's entrance requirements?
- Does CMC offer tutoring or special help?
- When is the deadline for applying for financial aid?
- Do I have to take placement tests?
- What degrees does CMC offer?
- What is the difference between an Associate degree and a Bachelors degree?
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- Do I have to finish my Associate Degree before transferring?
- How many credits do I need to be considered a full-time student?
- What is the average class size at CMC?
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How do I apply to CMC? When should I apply ?

- First, complete a CMC Application for Admission. If you are already in our six-county district, you can pick one up at any local high school or at any of the fourteen CMC locations. If you are contacting us from out of the region, you can receive one by either calling the Admissions Office at 1-800-621-8559 or by downloading an application from our Admissions web page.

There are no application fees or deadlines. You may apply at any time but we encourage early application.

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What are CMC's entrance requirements?

- CMC is an open-enrollment institution, meaning that any student, regardless of preparation levels or previous academic experience, will be given the opportunity to study and learn in a college environment. Enrollment into Core courses and many other academic courses, however, do require proof of adequate skill levels.

Recent ACT and SAT scores are not required for admission but we do request them since they can help us advise you appropriately when available. Likewise, application essays and reference letters, while not required, are appreciated.

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Does CMC offer tutoring or special help?

- Yes. Student support services such as tutoring, exam proctoring and small study groups are available through the Learning Lab at each campus. These services are free to students with documented learning disabilities, students enrolled in developmental or review courses and students who have been referred by their instructors because of below average grades. The Learning Lab also offers assistance in developing personalized educational plans that take into consideration any other special needs you may have.

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When's the deadline for applying for financial aid?

- CMC does not have an official financial aid application deadline but applications received before March 31 will receive priority consideration for the next academic year. You may apply for financial aid at any time, however. We generally tell students that it will take 6-8 weeks to complete the application process, so obviously you must plan ahead if you want your financial aid awards available to you at registration time. Retroactive awards can be made if you are registered and you complete the application process after the semester has begun.

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Do I have to take placement tests?

- In most cases, yes. To help us advise you into classes that best suit your abilities, we offer placement testing in the areas of writing, reading and math. You can also demonstrate your preparation levels in these skill areas with above-average scores on your ACT or SAT exams, by having completed college-level course work in Math or English at a previous college or by being awarded credit in Math or English through the CLEP or AP exam programs. This would excuse you from the corresponding parts of the placement tests.

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What degrees does CMC offer?

- Colorado Mountain College is a junior college and offers two-year degrees called Associate degrees. Our degrees fall into two general categories - academic programs and occupational programs.

Students choose our academic degrees, which we usually refer to as our "transfer" degrees, as preparation for transfer to a four-year school. They serve as the first two years of a four-year college degree.

Our occupational degrees prepare you for entry-level employment in a wide variety of skilled occupations. Through them, you can learn the specialized skills required for today's job market.

Check out the links to our online catalog or talk to an academic advisor to compare the advantages of each.

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What's the difference between an Associate degree and a Bachelors degree?

- An Associate degree is a two-year college degree that typically requires between 60-65 semester credits (or 90-98 quarter credits) to complete. A Bachelors degree is a four-year college program that requires between 120-130 semester credits for completion. Our academic "transfer" Associate programs - the Associate of Arts and Associate of Science degrees - are the first half of your Bachelors degree. Our occupational Associate programs - the Associate in Applied Science degrees - offer career-oriented skills and knowledge which can eliminate the need for a four-year degree before entering the skilled job market.

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Will all my CMC credits transfer to four-year schools?

- With careful course selection and adequate advising, you can be assured that all the credits you take at CMC will transfer. Your advisor should have course equivalency guides to most of the four-year colleges in Colorado which eliminates all the guesswork from course selection. He or she can also give you sound professional advice about transferring out-of-state.

Not all CMC courses are intended to transfer, so if that's a concern to you, it's important to determine the



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How long has Aims been around?

Aims Community College began when electors approved the creation of the Aims Junior College District on January 24, 1967.

During the spring of 1967, the first Board of Trustees was selected and the college's first president, Ed Beaty, arrived in June of that year. The first classes at Aims were held that fall.

How does Aims receive its funding?

"As a local taxing district college, Aims assesses a mill levy on all property within the tax district. Aims is one of only two local district colleges in the state of Colorado.

While Aims does not participate in the Colorado State College Opportunity Fund (COF), it does receive funding from the state through a line item in the annual Long Bill, approved by the Colorado Legislature each year.

Tuition and fees make up approximately 20 percent of the college's budget."

Who qualifies for in-district tuition rates?

The boundaries of the Aims Junior College District align with the boundaries of 12 school districts in Weld County plus small portions of Adams, Larimer, Logan and Morgan counties and the city and county of Broomfield.

Residents of any of the following school districts qualify for in-district tuition rates: Greeley/Evans District 6, RE-1, RE-2, RE-3J, RE-4, RE-5J, RE-7, RE-8, RE-9J, RE-10J, RE-11J and RE-12. To see if you qualify for in-district tuition, contact the Admissions and Records Office at (970) 339-6349.

Who makes decisions at Aims?

Aims is governed by a Board of Trustees consisting of five members elected at public elections for staggered terms of four years each. The Board of Trustees is established and derives its powers from the Constitution of the State of Colorado and the Colorado Revised Statutes. Under law, The Board of Trustees is charged with holding property in the name of the college, hiring the chief executive of the college, establishing organizational, financial and educational policies and adopting the annual budget.

