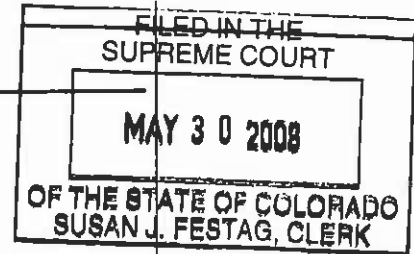


SUPREME COURT, STATE OF COLORADO
2 E. 14th Ave. #400
Denver, Colorado 80203-2115



Appellant: Douglas Bruce,

v.

Appellee: State Title-Setting Board, William Hobbs and Dan
Cartin, members

Real Parties in Interest: Proponents Nicole S. Hanlen and
Lynda K. Neff

COURT USE ONLY

DOUGLAS BRUCE, Appellant
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

085A187

APPEAL FROM TITLE-SETTING BOARD

Appellant hereby appeals the title-setting board ("board") decisions in related initiative cases #125 and #126 on the grounds that the titles and ballot titles ("titles") are unfair, misleading, inaccurate, and incomplete, and that the texts of each proposed initiative petition contain more than one subject.

Submitted,

Douglas Bruce
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

Certificate of Service

I hereby certify that on May 30, 2008, I mailed, postage paid, copies of this Appeal to the board attorney and to the attorney of record for proponents, addressed as follows:

Maurice Knaizer
Dep. Attorney General
1525 Sherman St. 5th floor
Denver CO 80203

Blain D. Myhre
Isaacson Rosenbaum P.C.
633 17th Street #2200
Denver CO 80202



A handwritten signature in cursive script, appearing to read "Blain D. Myhre", is written over a horizontal line.



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **MIKE COFFMAN**, 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 "2007-2008 #125".....

..... **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 30th day of May, 2008.

A handwritten signature in black ink that reads "Mike Coffman".

SECRETARY OF STATE

RECEIVED

FINAL

MAY 09 2008

ELECTIONS

#125

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

SECTION 1. Section 17 (1) and (4) of article X of the constitution of the state of Colorado are amended, and the said section 17 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

Section 17. Education - funding. (1) Purpose. In state fiscal year 2001-2002 through state fiscal year 2010-2011, the statewide base per pupil funding, as defined by the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, on the effective date of this section, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at least by the rate of inflation plus an additional one percentage point. ~~In state fiscal year 2011-2012, and each fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at a rate set by the general assembly that is at least equal to the rate of inflation.~~

(4) State education fund created. (a) There is hereby created in the department of the treasury the state education fund. Beginning on the effective date of this measure, all state revenues collected from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall be deposited in the state education fund. Revenues generated from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall not be subject to the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution. All interest earned on monies in the state education fund shall be deposited in the state education fund and shall be used before any principal is depleted. Monies remaining in the state education fund at the end of any fiscal year shall remain in the fund and not revert to the general fund.

(b) In state fiscal year 2001-2002, and each fiscal year thereafter, the general assembly may annually appropriate monies from the state education fund. Monies in the state education fund may only be used ~~to comply with subsection (1) of this section and~~ FOR PUBLIC EDUCATION FROM PRESCHOOL THROUGH THE TWELFTH GRADE, FOR CATEGORICAL PROGRAMS, for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.

(c) IN ADDITION TO THE AMOUNT DEPOSITED INTO THE STATE EDUCATION FUND PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), FOR THE 2010-11 STATE FISCAL

YEAR AND EACH STATE FISCAL YEAR THEREAFTER, THE FUND SHALL CONSIST OF REVENUES SPECIFIED IN SECTION 20 (10) OF ARTICLE X OF THIS CONSTITUTION.

(6) State education fund savings account created. (a) THERE IS HEREBY CREATED IN THE STATE EDUCATION FUND THE STATE EDUCATION FUND SAVINGS ACCOUNT. THE ACCOUNT SHALL CONSIST OF THE MONEYS CREDITED TO THE ACCOUNT PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6). THE MONEYS IN THE ACCOUNT SHALL BE USED ONLY AS SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (6). ALL INTEREST EARNED ON MONEYS IN THE ACCOUNT SHALL BE DEPOSITED IN THE ACCOUNT. MONEYS REMAINING IN THE ACCOUNT AT THE END OF ANY STATE FISCAL YEAR SHALL REMAIN IN THE ACCOUNT AND SHALL NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.

(b) FOR THE 2009-10 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (6), TEN PERCENT OF THE TOTAL AMOUNT THAT IS DEPOSITED IN THE STATE EDUCATION FUND PURSUANT TO PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION SHALL BE CREDITED TO THE STATE EDUCATION FUND SAVINGS ACCOUNT.

(c) THE GENERAL ASSEMBLY SHALL ONLY APPROPRIATE MONEYS FROM THE STATE EDUCATION FUND SAVINGS ACCOUNT BY THE ENACTMENT OF A BILL APPROVED BY A TWO-THIRDS MAJORITY VOTE OF ALL THE MEMBERS ELECTED TO EACH HOUSE OF THE GENERAL ASSEMBLY. THE MONEYS IN THE ACCOUNT MAY BE APPROPRIATED FOR THE SAME PURPOSES FOR WHICH THE MONEYS IN THE STATE EDUCATION FUND MAY BE APPROPRIATED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION AND SHALL NOT BE APPROPRIATED FOR ANY OTHER PURPOSE.

(d) IF MONEYS THAT WOULD OTHERWISE BE CREDITED TO THE STATE EDUCATION FUND SAVINGS ACCOUNT PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6) WOULD CAUSE THE BALANCE OF MONEYS IN THE ACCOUNT TO EXCEED AN AMOUNT EQUAL TO EIGHT PERCENT OF THE TOTAL AMOUNT APPROPRIATED IN THE PREVIOUS STATE FISCAL YEAR BY THE GENERAL ASSEMBLY FROM THE GENERAL FUND AND FROM THE STATE EDUCATION FUND, THE MONEYS SHALL NOT BE CREDITED TO THE ACCOUNT. MONEYS THAT WOULD OTHERWISE BE CREDITED TO THE ACCOUNT FROM THE STATE EDUCATION FUND SHALL REMAIN IN THE STATE EDUCATION FUND.

(7) Transfers from the general fund. (a) SUBJECT TO THE LIMITATIONS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (7), FOR THE 2009-10 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY MAY TRANSFER MONEYS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND. TRANSFERS OF MONEYS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND PURSUANT TO THIS SUBSECTION (7) SHALL NOT BE SUBJECT TO ANY STATUTORY

LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR OTHERWISE AFFECT SUCH LIMITATION.

(b) THE GENERAL ASSEMBLY MAY MAKE A TRANSFER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) ONLY IF, FOR THE APPLICABLE STATE FISCAL YEAR, THE MAXIMUM PERCENTAGE OF STATE SALES AND USE TAXES CONSTITUTING SALES AND USE TAXES ATTRIBUTABLE TO SALES OR USE OF VEHICLES AND RELATED ITEMS THAT IS REQUIRED, PURSUANT TO LAW, TO BE TRANSFERRED ANNUALLY TO THE HIGHWAY USERS TAX FUND, CREDITED TO THE STATE HIGHWAY FUND, AND EXPENDED BY THE DEPARTMENT OF TRANSPORTATION FOR THE IMPLEMENTATION OF THE STRATEGIC TRANSPORTATION PROJECT INVESTMENT PROGRAM IS SO TRANSFERRED, CREDITED, AND EXPENDED.

SECTION 2. Section 20 of article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

Section 20. The Taxpayer's Bill of Rights. (10) State revenue for public education exception. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR THE 2010-11 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, ANY REVENUE THAT THE STATE WOULD OTHERWISE BE REQUIRED TO REFUND PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE TRANSFERRED INSTEAD TO THE STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX OF THIS CONSTITUTION. SUCH TRANSFERS SHALL BE FROM ANY FUNDS SPECIFIED BY LAW.

Proponents:

**Nicole S. Hanlen
1206 E. 101st Avenue
Thornton, CO 80229**

**Lynda K. Neff
71 Newark Street
Aurora, CO 80012**

RECEIVED

MAY 09 2008

ELECTIONS
SECRETARY OF STATE

May 9, 2008

via HAND DELIVERY

Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

Re: Initiative 2007-2008 #125
Initiative 2007-2008 #126

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-2008 #125 and Initiative 2007-2008 #126 which our office is filing on behalf of the Proponents for each measure.

Sincerely,



Amy Knight
Legal Assistant to Blain D. Myhre

aak
enclosure
1830508_1.doc

To the State Title Board:

MOTION FOR REHEARING

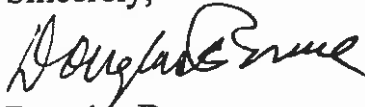
I am a registered Colorado elector. Per C.R.S. 1-40-107 (1), the last sentence, I hereby move for a rehearing on May 30 on petitions 125 and 126 regarding education funding and other subjects.

The grounds for the rehearing are:

1. The attorney general designee has a conflict of interest and should be disqualified from participating in board proceedings on this case.
2. Neither petition is a single subject as required by statutory and constitutional provisions.
3. Neither petition has been given a title that fairly and accurately expresses the true meaning and main and essential features of the text.

In view of the distance between my home and the title board, and based on scheduling conflicts, I request that I be allowed to restate my position by telephone at the rehearing.

Sincerely,



Douglas Bruce
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

RECEIVED

MAY 21 2008

ELECTIONS
SECRETARY OF STATE

From: Douglas Bruce [taxcutter@msn.com]
Sent: Thursday, May 29, 2008 1:07 PM
To: Cesiah Gomez
Cc: taxcutter@email.msn.com
Subject: Re: Title Board Rehearing 05-29-08 and 05-30-08

Please call before 1:30 p.m. to confirm receipt, and distribution to the Title Board.

Additional grounds for my rehearing motions on #125 and #126 (education funding)-

1. On line three of the title, after "to refund," add "to Colorado taxpayers."
2. Before "transferred," insert "permanently."
3. Conform the 2/3 vote requirement wording in both petitions to the actual language of the text, and to each other..
4. I still object to the linkage to transportation funding, and the elimination of state refunds, as being a second and a third subject.
5. On #126, the word "undefined" should appear in front of "Colorado personal income."

I object that the Title Board is still in the 19th century dawn of technology and declined to allow testimony by speakerphone.

Douglas Bruce
Box 26018
Colo. Spgs. CO 80936
(719) 550-0010
taxcutter@msn.com

5/30/2008

In the Matter of Initiative 2007-08 #125 (Education Funding), Nicole S. Hanlen and
Lynda K. Neff, Proponents

MOTION FOR REHEARING

On behalf of the proponents, the undersigned moves for rehearing as follows:

1. On May 21, 2008, the Title Board met and adopted a title for Initiative #125. The Board correctly found that the title met the single-subject requirement. The title set, however, is inaccurate, misleading, and confusing, and should be modified.
2. First, the phrase “requiring that any revenue that the state would otherwise be required to refund pursuant to the constitutional limit on state fiscal year spending (Taxpayer’s Bill of Rights) be transferred instead to the state education fund,” is misleading and confusing. That phrase, particularly the use of the terms “refund” and “Taxpayer’s Bill of Rights,” may well mislead voters into erroneously believing that their state income tax refunds may be diverted to the state education fund—something the measure does not do. In addition, the reference to the Taxpayer’s Bill of Rights is unprecedented in Colorado ballot titles. To the best of proponents’ knowledge, never before has the Title Board used the term “Taxpayer’s Bill of Rights” (or “TABOR”) in setting a title. Instead, the Board has either referred to the specific constitutional provision (article X, section 20) or referred generally to revenue and spending limits. *See* Ballot Title for Amendment 35 (2004 election) (“section 20 of article X of the Colorado Constitution); Ballot Title for Amendment 33 (2003 election) (“exempting net proceeds and license fees from . . . all restrictions on spending, revenues, and appropriations”); Ballot Title for Amendment 26 (2001 election) (“exempting the authority from constitutional revenue and spending limitations”); Ballot Title for Amendment 23 (2000 election) (“exempting appropriations . . . from constitutional and statutory limitations”). The phrase used in the title for #125 not only departs from past Title Board practice, but also creates the danger that voters will be misled into erroneously believing the “Taxpayer’s Bill of Rights” is something other than article X, section 20 of the state constitution.
3. Moreover, the term “Taxpayer’s Bill of Rights” is an impermissible “catch phrase.” A “catch phrase” consists of words that could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment. *In the Matter of the Title, Ballot Title and Submission Clause and Summary for 1999-2000 #227 and #228*, 3 P.3d 1, 6 (Colo. 2000). The use of catch phrases should be carefully avoided by the Title Board. *In the Matter of the Title, Ballot Title and Submission Clause and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). “This rule recognizes that the particular words chosen by the Title Board should

not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion." *Id.* Including the term "Taxpayer's Bill of Rights" puts in place words that can form the basis of a slogan against the initiative, contrary to the supreme court's direction. *See id.* If the term is allowed to stay in the title, the Board will have set a precedent for allowing self-serving catch phrases in future ballot titles. Such catch phrases should be avoided. *See id.* For example, 2007-08 #41 (Amendment 47) is entitled "The Colorado Right to Work Amendment." But the title set for that measure properly does not contain the catch phrase "right to work." If, however, the phrase "Taxpayer's Bill of Rights" is allowed to remain in the title for initiative #125, there would be no justification for excluding the catch phrase "right to work" in the ballot title for Amendment 47 or similar future measures. The supreme court, however, requires the Board to avoid catch phrases when setting titles. Therefore, the catch phrase "Taxpayer's Bill of Rights" should be stricken from the title.

4. The simplest and shortest way to fix this flawed phrase is to rewrite it to read, "requiring that any revenue in excess of the constitutional limit on state fiscal year spending be transferred to the state education fund." This revision remedies the catch-phrase problem and avoids the danger of confusing and misleading the voters.

5. Second, the phrase "for the 2010-11 state fiscal year and each state fiscal year thereafter, creating a state education fund savings account in the state education fund," is both incorrect and redundant. Under the measure, the state education fund savings account would be created immediately, and would be funded beginning in the 2009-10 state fiscal year. *See Proposed Art. IX, Section 17(6).* Thus, the phrase "for the 2010-11 state fiscal year and each state fiscal year thereafter," is inaccurate and should be eliminated. In addition, the phrase "state education fund savings account in the state education fund" is redundant, and should be shortened to "savings account in the state education fund."


6. Finally, the ballot title is simply too long, and its length in itself is likely to make it confusing for voters (and in fact may cause many voters to simply not read it). At 248 words, it is much longer than necessary. Proponents suggest the Board adopt the following revision, which accurately states the title but shortens it to 205 words:

"An amendment to the Colorado constitution concerning the manner in which the state funds public education from preschool through the twelfth grade, and, in connection therewith, requiring that revenue in excess of the constitutional limit on state fiscal year spending be transferred to the state education fund; eliminating the requirement that, for the 2011-12 state fiscal year and each state fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and the total state funding for all categorical programs increase annually by at least the rate of inflation; creating a savings account in the state education fund; requiring that a portion of the state income tax revenue that is deposited in the state education fund be credited to the savings account in certain circumstances; requiring a two-thirds majority vote of the general assembly to use the moneys in the savings account; establishing the purposes for which moneys in the savings account may be spent; establishing a maximum amount that

may be in the savings account in any state fiscal year; and allowing the general assembly to transfer moneys from the general fund to the state education fund, so long as certain obligations for transportation funding are met.”

Respectfully submitted this 28th day of May, 2008.

ISAACSON ROSENBAUM P.C.


Blain D. Myhre
633 17th Street, Suite 2200
Denver, Colorado 80202
Phone: (303) 292-5656
Fax: (303) 292-3152

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2008, a true and correct copy of the foregoing **Motion for Rehearing** was sent via e-mail to the following:

Hon. Douglas Bruce
taxcutter@msn.com

