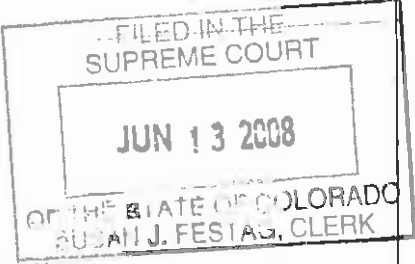


CERTIFICATION OF WORD COUNT: 1,615

<b>SUPREME COURT, STATE OF COLORADO</b> 2 E. 14 <sup>th</sup> Avenue, Suite 400 Denver, CO 80203		
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board		
<b>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007- 2008, #126 ("Education Funding")</b>  <b>Petitioner:</b>  DOUGLAS BRUCE, Objector  v.  <b>Respondents:</b>  NICOLE S. HANLEN and LYNDA K. NEFF, Proponents  <b>Title Board:</b>  WILLIAM A. HOBBS and DANIEL L. CARTIN		<b>▲ COURT USE ONLY ▲</b>
Attorney for Respondents: Blain D. Myhre Isaacson Rosenbaum P.C. 633 17 <sup>th</sup> Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 292-5656 FAX Number: (303) 292-3152 E-mail: bmyhre@ir-law.com Atty. Reg. #: 23329	Case Number: 08 SA 191	
<b>RESPONDENTS' ANSWER BRIEF</b>		

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	The title language is fair, accurate, and complete .....	1
III.	The measure satisfies the single-subject requirement .....	7
IV.	Conclusion .....	8

## TABLE OF AUTHORITIES

### Cases

<i>In re Ballot Title 1999-2000 #227 &amp; 228,</i> 3 P.3d 1 (Colo. 2000).....	5
<i>In re Initiative 1999-2000 # 258(A),</i> 4 P.3d 1094 (Colo. 2000).....	5
<i>In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito,</i> 873 P.2d 733 (Colo. 1994).....	3
<i>In re Proposed Initiative 1997-1998 #62,</i> 961 P.2d 1077 (Colo. 1998).....	2
<i>In re Proposed Initiative Concerning “State Personnel System”,</i> 691 P.2d 1121 (Colo. 1984).....	1
<i>In re Proposed Initiative on “Trespass - Streams with Flowing Water,”</i> 910 P.2d 21 (Colo. 1996).....	2, 3, 4
<i>In re Proposed Initiative on School Pilot Program,</i> 874 P.2d 1066 (Colo. 1994).....	1
<i>In the Matter of the Title, Ballot Title, and Submission Clause for 2007-08 #57,</i> No. 08SA91 (May 23, 2008) .....	1, 2

### Constitutional Provisions

Colorado Constitution, Article X, Section 20.....	3, 4
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## I. Introduction

In his “Opening Brief,” Petitioner Douglas Bruce (“Bruce”) first addresses alleged factual errors in the Title Board’s Opening Brief. But the focus of this Court’s review is instead on the Title Board’s decision setting the title. This brief therefore will focus on that. Contrary to Bruce’s arguments, the Title Board’s decision was proper and should be affirmed.

## II. The title language is fair, accurate, and complete.

This Court, in its limited review of Title Board decisions, will not reverse the actions of the Title Board if improvements could be made to an otherwise legally sufficient title. *In re Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1070 (Colo. 1994). The Title Board is not required to describe every nuance and feature of the proposed measure. *In re Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121, 1124 (Colo. 1984). This Court does not demand that the Title Board draft the best possible titles, and grants great deference to the Title Board in the exercise of its drafting authority. *In the Matter of the Title, Ballot Title, and Submission Clause for 2007-08 #57*, No. 08SA91, Slip op. at 10, (May 23, 2008). The titles are intended to be a “relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters,” rather than “an item-by-item paraphrase of the proposed constitutional

amendment or statutory provision.” *Id.* at 11, quoting *In re Proposed Initiative 1997-1998 #62*, 961 P.2d 1077, 1083 (Colo. 1998).

Bruce argues that the term “to Colorado taxpayers” should be included in the title because it is “vital to understand what the measure does.” He also argues that the phrase “Taxpayer’s Bill of Rights” must be included. *See* Bruce’s Opening Brief at 4-5. But neither phrase is necessary to make the title fair, accurate, and complete. Therefore, the Board did not err in excluding those phrases.

First, Bruce requested that the term “to Colorado taxpayers” be inserted after the word “refund.” The relevant title language is 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 be transferred instead to the state education fund.” This title language accurately explains that under the measure excess revenue that the state would otherwise be required to refund is instead transferred to the state education fund. The word “refund” is readily understood by voters to be a return of money to them as taxpayers. *See In re Proposed Initiative on “Trespass - Streams with Flowing Water,”* 910 P.2d 21, 23 (Colo. 1996) (the goal of the title setting process is “to ensure that persons reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment”). Only where titles clause are clearly vague, misleading, or confusing will a decision

of the Title Board be overturned. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 739-40 (Colo. 1994). Since the phrase “to Colorado taxpayers” is not necessary to make this title language fair, accurate, and complete, it was not error for the Board to exclude it from the title.

Next, Bruce argues that the Title Board erred by not including the term “Taxpayer’s Bill of Rights” in the title, and that the failure to do so rendered the title “insufficient, unfair or misleading.” *See* Bruce’s Opening Brief at 4-5. But the title language used was fair, accurate, and complete. The language at issue is the same as above—“requiring that any revenue that the state would otherwise be required to refund pursuant to the constitutional limit on state fiscal year spending be transferred instead to the state education fund.” This title language accurately refers to “the constitutional limit on state fiscal year spending” that is contained in article X, section 20 of the Colorado Constitution. The title accurately explains that revenue that would be required to be refunded pursuant to that limit will instead be transferred to the state education fund. *See* Initiative section 20(10). Thus, the title language adequately informs the voters what the measure does. *See In re Proposed Initiative on “Trespass - Streams with Flowing Water,” supra.*

Accordingly, the Title Board did not err in declining to include “Taxpayer’s Bill of Rights” in the title language.

In addition, the inclusion of the phrase “Taxpayer’s Bill of Rights” would have been unprecedented in ballot titles set in Colorado. To Respondents’ knowledge, never before has the term “Taxpayer’s Bill of Rights” (or “TABOR”) appeared in a post-TABOR initiative ballot 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, e.g.*, 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”). These titles from previous elections were fairly and accurately stated. Similarly, the title set here is fair and accurate. *See In re Proposed Initiative on “Trespass - Streams with Flowing Water,” supra.* Therefore, this court should affirm.

Moreover, contrary to Bruce’s position, the terms “Taxpayer’s Bill of Rights” is an impermissible catch phrase, and thus the Board properly excluded it

from the final title. Bruce claims that “is not a ‘catch phrase’ to call a well-known provision by its official title that is stated verbatim in the state constitution in bold print.” Bruce’s Opening Brief at 4. But a self-serving official title can be a catch phrase. And in this case it is. Bruce proves that point in his brief by referring to TABOR as “unquestionably the best-known *and most controversial* of all state constitutional provisions.” *Id.* at 5 (emphasis added). Bruce thus acknowledges the controversy that the “Taxpayer’s Bill of Rights” generates in Colorado elections. It is precisely because of that controversy that “Taxpayer’s Bill of Rights” is a catch phrase.

“‘Catch phrases’ are words that work to a proposal’s favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase.” *In re Initiative 1999-2000 # 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). “Catch phrases may also ‘form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment,’ thus further prejudicing voter understanding of the issues actually presented.” *Id.*, quoting *In re Ballot Title 1999-2000 #227 & 228*, 3 P.3d 1, 6 (Colo. 2000). “Taxpayer’s Bill of Rights” can easily form the basis of a political



slogan against the initiative. While such a slogan may be useful and appropriate in the context of a political campaign to persuade voters, it is not a neutral phrase that is appropriate in the ballot title. Therefore, in addition to being unnecessary to a fair, accurate, and complete title, the phrase is an impermissible catch phrase in a ballot title. The Title Board properly left it out.

Bruce also argues that the term “permanently” should have been included before the word “transferred.” But the title language chosen by the Board was fair, accurate, and complete without it. The addition of “permanently” was not necessary to setting a proper title, and, thus, the Board did not err in leaving it out of the title.

Finally, Bruce asserts that the language used for the two-thirds majority vote requirement is somehow inaccurate. The title language at issue is “requiring either a two-thirds majority vote of each house of the general assembly or . . . .” That language accurately describes the provision of the measure that requires, except in certain circumstances, “a two-thirds majority vote of all the members elected to each house of the general assembly” in order to appropriate moneys from the state education fund savings account. *See* Initiative section 17(6)(c). The title describes the requirement of a “two-thirds majority vote of each house of the general assembly.” The commonly understood meaning of that language is two-thirds of

both houses of the general assembly. The voters will not be confused nor misled by this title language.

In sum, the title language is fair, accurate, and complete. Therefore, this Court should affirm the title.

### **III. The measure satisfies the single-subject requirement.**

Bruce reiterates his argument that the measure contains more than one subject. See Bruce's Opening Brief at 6-7. First, he contends that the "linkage to transportation funding" is impermissible "logrolling." But as explained in Respondents' Opening Brief, at 8-10, the reference to transportation funding is simply a limitation on transfers to the state education fund. The provision at issue, section 17(7)(b) of the measure, thus affects education funding. It is thereby connected with and relates to the single subject of state education funding. The provision has no substantive impact on transportation or transportation funding. *See* Respondents' Opening Brief at 8-10; Opening Brief of Title Board at 7-8. Therefore, Bruce's argument must be rejected.

Finally, Bruce reiterates his argument that the term "categorical problems" creates a separate subject. *See* Bruce's Opening Brief at 7. That argument fails for the reasons stated in Respondents' Opening Brief at 7-8.

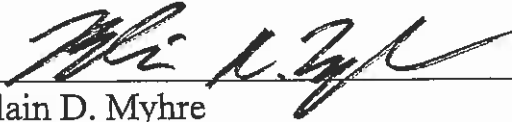
The Title Board properly concluded that Initiative #126 satisfied the single-subject requirement. This Court should affirm that decision.

**IV. Conclusion**

The decision of the Title Board should be affirmed.

Respectfully submitted this 13<sup>th</sup> day of June, 2008.

**ISAACSON ROSENBAUM P.C.**



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June 2008, a true and correct copy of the foregoing **Respondents' Answer Brief** was sent via overnight mail to the following:

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