

ORIGINAL

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SUPREME COURT, STATE OF COLORADO
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ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE, AND
SUMMARY FOR 2007-2008, #13

Petitioner: J. GREG SCHNACKE

v.

Respondents: MEGAN FERLAND and MATT
SAMELSON, Proponents,
and

Title Board: WILLIAM A HOBBS, DANIEL
DOMINICO, and SHARON EUBANKS

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Case No. 07SA154

PETITIONER'S ANSWER TO PROPONENTS

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State Statutes

C.R.S. § 1-40-107(1)1

J. Greg Schnacke (“Petitioner”), a registered voter in the State of Colorado, through undersigned counsel, respectfully submits this Answer Brief pursuant to C.R.S. section 1-40-107(1) and seeks review of the Title Setting Board’s (“Title Board”) action in setting a title, ballot title, and submission clause for Proposed Initiative 2007-2008 #13 (“Initiative #13”).

ARGUMENT

THE SUBJECT INITIATIVE VIOLATES THE SINGLE SUBJECT RULE BECAUSE IT CONTAINS MULTIPLE, DISTINCT AND SEPARATE PROVISIONS THAT ARE NOT DEPENDANT UPON OR NECESSARILY CONNECT TO EACH OTHER.

The Proponents argue, without support, that Initiative #13 “does not run afoul of any reasonable interpretation of the single subject requirement.”

Respondent’s Opening Brief at 7. Respectfully, Initiative #13 does run afoul of the single subject requirement based on this Court’s interpretation thereof.

It is disingenuous to pretend, as Proponents do, that there is no purpose behind the target (the oil and gas industry) of the new severance tax created by Initiative #13. Proponents imply that the only purpose behind the measure is to create a revenue stream for the beneficiaries of the tax. *See* Respondent’s Opening Brief at 6. However, Initiative #13 clearly encompasses another purpose—namely, to impose an increased tax burden on oil and gas extraction and thereby decrease extraction of natural resources in the state. That purpose is distinct from the

second purpose (distributing income generated from the new tax to certain state programs), and therefore cannot be joined in a single initiative. *See In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006) (holding that initiative that purports to cut state expenditures for illegal immigrants but also affects unrelated administrative spending violates the single subject rule).

Proponents deny there would be any utility in taxing the oil and gas industry as a “hook” to enlist support from various groups who would benefit from the new tax. *See* Respondent’s Opening Brief at 6. Yet that is precisely what Initiative #13 does and what the single subject rule is designed to prevent. *See In re “Public Rights in Waters II,”* 898 P.3d 1076, 1078 (Colo. 1995) (single subject rule seeks to prevent the “evil” of “log rolling,” or combining disparate subjects in the hope of attracting support from various factions that may have different or conflicting interests). To hold that an initiative that both creates a new tax (or enhances tax revenue) and distributes revenues from the tax will never violate the single subject rule leaves politically vulnerable industries open to attack from all sides. The tax initiative cannot be allowed to become a vehicle for punishing unpopular industries merely by finding appealing programs to fund at their expense.

Put simply, Initiative #13 violates the single subject requirement because it contains disparate purposes. While it may be appealing to believe that the power

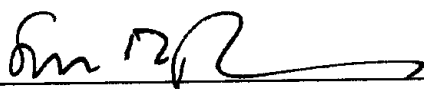
to tax necessarily implies the power to direct spending, this Court's analysis of the single subject rule reveals that the issue is not so simple. Any measure, regarding tax or otherwise, must address *only* a single subject. If a proponent attempts through a proposed initiative to reach out to different groups with different interests and achieve disparate goals, that initiative violates the single subject requirement.

CONCLUSION

For the reasons given above, Petitioner, again, respectfully requests that this Court reverse the action of the Title Board and return this matter to the Title Board with directions to strike the title and summary and return Initiative #13 to the proponents.

Respectfully submitted this 20th day of June, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2007, a true and correct copy of the foregoing **PETITIONER'S ANSWER TO PROPONENTS** was placed in the United States mail, postage prepaid, to the following:

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