

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203</p>	<p>DATE FILED: November 5, 2013 6:07 PM</p>
<p>ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2)</p> <p>Petitioners: Robert Bows and Jason Bosch, Proponents</p> <p>v.</p> <p>Respondents: Title Board: Suzanne Staiert, Jason Gelender, and Daniel Domenico</p> <p>v.</p> <p>Respondents: Don Childears, Objector Barbara M.A. Walker, Objector</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for the Petitioners:</p> <p>Earl H. Staelin Onsager, Staelin, & Guyerson, LLC 1873 S. Bellaire St., Suite 1401 Denver CO 80222303-512-1123 Fax 303-512-1129 Email: estaelin@osglaw.com</p>	<p>Supreme Court Case Number: 2013SA231</p>
<p style="text-align: center;">ANSWER BRIEF OF PETITIONERS BOB BOWS AND JASON BOSCH</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

X The brief complies with C.A.R. 28(g) because it does not exceed 18 pages.

X The brief complies with C.A.R. 28(k).

For the party raising the issue:

X It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R._____, p._____), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

_____ It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

X I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Earl H. Staelin

Earl H. Staelin

Attorney for Proponents Bob Bows and
Jason Bosch

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SUMMARY OF ARGUMENT

Initiative #45 complies with the single subject rule because its provisions are all necessary in order for the bank to function as a bank and to achieve its purposes as a bank for the state of Colorado.

The provision that funds transferred from the bank to the general fund shall not be limited as to revenue and expenditures under other provisions of law, such as TABOR, Colo. Const. art. X, §20 (7) and (8), are necessary in order for the bank to operate as private banks operate in Colorado, and as a d/b/a of the state of Colorado.

The provision that the income and expenditures of the bank shall not be subject to limitation as to revenue and expenditures under other provisions of law is essential for the bank to meet its purposes as a lending institution and to operate with the same powers as any private bank.

The provision that authorizes the bank to issue multi-state obligations solely to establish adequate capitalization to support lending by the bank is likewise necessary to ensure that the bank can begin lending operations for the purposes expressed in the measure.

The provisions of TABOR that might restrict the operation of the bank do not apply because the bank once approved by voters will earn income in a manner and in amounts that were never envisioned by TABOR and that may eventually render TABOR unnecessary or obsolete.

ARGUMENT

The Opening Brief of the Title Board limits the defense of its refusal to set title to one issue: whether the measure's provision that funds transferred by the bank to the general fund are not subject to the revenue and expenditure limits imposed by Colo. Const. art. X, §20 constitutes a second subject. Thus, the Title Board does not support any of the other objections that Objectors Childears and Walker raise in their Opening Briefs.

Proponents agree with the Title Board that the standard of review is that the single subject issue is a legal issue that should be decided *de novo*, relying upon the same case authority cited by Proponents in their Amended Opening Brief. The case is also one of first impression regarding the Proponents' claim that the restrictions of Colo. Const. art. X, §20 do not apply to Initiative #45 because the entire focus of TABOR is upon new taxes or other fees whereas Initiative #45 raises funds through interest earned upon loans of state funds without any new tax,

fee, re-assessment, or extension of a tax paid by taxpayers. This issue also requires *de novo* review.

Proponents agree with the Title Board's apparent determination in its Opening Brief that none of the measure's provisions which it did not challenge involves a second subject. Proponents have dealt with most of those issues in their Opening Brief, but will answer the positions presented in the Opening Briefs of Childears and Walker on those issues below.

As argued in Proponents' Opening Brief, the restrictions of TABOR, Colo. Const. art. X, §20 should not apply to Initiative #45 because the entire focus of Const. art. X, §20 is upon restricting the growth of government as the result of new or increased taxes and fees to be paid by taxpayers to the state, whereas Initiative #45 raises all of its new revenue without any new or increased tax or charge to the taxpayers, but solely through interest on loans for purposes serving the public interest enabled by moneys and funds of the state set aside as capitalization. The term "revenue" is not defined in TABOR but should be construed in accordance with the express terms of TABOR, which limits its focus to revenues derived solely from new or increased taxes and fees, and not revenue from interest earned wholly from loans that does not involve any new or increased taxes or fees.

Colo. Const. art. X, §20(7)(a) allows the upward adjustment of spending limits for “revenue changes approved by voters after 1991.” If approved, Initiative #45 might be deemed to create “revenue changes” thus approved by voters. Therefore, transfers of funds from the bank to the general fund should not be restricted at all by the revenue and expenditure limits set forth in Colo. Const. art. X, §20(7) and (8).

For the above reasons, the provisions of Colo. Const. art. X, §20(1): “its preferred interpretation shall reasonably restrain most the growth of government” and “other limits on district revenue, spending, and debt may be weakened only by future voter approval” should be deemed not to apply because they make no sense in the context of its remaining provisions focused exclusively upon the perceived negative effects of new or increased taxes and fees.

Moreover, Colo. Const. art X, §20(1), does not say government must be reduced. Therefore, even if the Court were to conclude that Const. art. X, §20(1) does apply to Initiative #45, art. X, §20(1) does not say that government should not grow, or that it should be reduced, and the term “restrain” is preceded by “reasonably”. Therefore, in order for “reasonable” growth to take place, when funds are advanced by the bank to the general fund the revenue and expenditures

arising therefrom should not be restricted by Const. art. X, §20 at least to the extent the increase is necessary to restore an adequate earlier level of funding or more appropriately to “reasonably” fund basic needs such as higher education, for example, in which Colorado has slipped to an embarrassing rank of 48 out of 50 states. In addition, Const. art. X, §20 provides for “inflation plus the percentage change in state population,” thus allowing for increases in services that do not result in per capita growth. It is not “reasonable” to restrain growth to the point where Colorado can no longer meet its citizens’ basic needs---for a clean environment, health and mental health, adequate housing, education, law enforcement, corrections and rehabilitation, judicial system, parks and recreation, and other needs, especially when it could establish the means to much more effectively meet such needs by creating a state-owned bank through a citizens’ initiative without the addition or increase of a single tax or fee levied upon its taxpayers.

An overly broad interpretation of the TABOR restriction on growth would also infringe upon Const. art. II which states:

In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare:

§1 Vestment of Political Power.

All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

An interpretation of TABOR that would prevent the bank from enabling the state to restore a healthy economy and to meet basic needs should be rejected as contrary to Const. art. II, §1.

Because the bank is a d/b/a of the state, the bank and the state are not different corporate or legal entities, as would be the case with privately owned holding companies and their subsidiaries, making the argument for an exemption from restrictions on funds transferred by the bank to the general fund stronger. The measure provides that the state-owned bank will have at a minimum the same powers as private banks. That would include exempting the funds it pays into the general fund of the state, i.e. a portion of its surplus, from arbitrary limits as to revenue or expenditures.

Objectors Walker and Childears raise several additional “single subject” objections to Initiative #45:

1. Respondents Childears and Walker object to the provision that exempts the bank’s income from the revenue and expenditure limitations of TABOR. Proponents have already addressed this issue in their Amended Opening

Brief. As pointed out in that brief, no private bank is subject to limits on its income or expenditures, except in accordance with sound financial principles. Such a restriction would prevent the state-owned bank from functioning as any other bank and would seriously hinder its ability to make loans to fulfill its purposes as a bank. In 2012 the Title Board approved 2011-2012 Initiative #95 and set a title. That measure would also have established a state-owned bank and contained the same provision as Initiative #45 exempting funds of the bank from the revenue and expenditure limits of TABOR. The Title Board thus overruled the Objectors' objections to that provision under the single subject rule. As pointed out above, the Title Board has not objected to the same provision in Initiative #45 in its Opening Brief herein.

2. Childears and Walker also object to the provision authorizing the bank to enter into multi-year obligations solely for the purpose of establishing adequate capitalization for the bank. As Proponents explained in their Amended Opening Brief, in order to lend money the bank must have adequate capitalization, which this provision authorizes. Initiative #39 for 2013-2014 contained a provision authorizing multi-year obligations. However, the provision did not state or limit its purpose. At the hearings on #39 proponents stated that it was for capitalization.

Mr. Domenico and Mr. Gelender objected to the proposal on the ground that the money raised by the bonds might be used directly to fund the government.

Because the purpose of the provision was to provide adequate capitalization, proponents in Initiative #45 changed the provision to clarify and expressly state that the sole purpose of multi-year obligations is to establish adequate capitalization for the bank. As a result, the Title Board no longer objects to the provision under the single subject rule, as evidenced by Mr. Domenico's comments at the hearing of September 4, 2013 (Hearing Sept. 4, 2013, 17/4-16), and the Title Board's Opening Brief, which does not object to the provision for multi-year obligations.

3. The Objectors also object that the measure would override the balanced budget amendment to the Colorado Constitution, Colo. Const. art. X, §16. Objectors did not raise this issue at the hearings on Initiative #45 or object that this would violate the single subject rule. This objection is also without merit. The income of the bank is based upon interest earned on loans by the bank without any new or increased taxes or fees. Thus, it would facilitate balancing the budget using funds paid to the general fund, assuming they are exempt from the revenue and spending limits of TABOR, as proponents assert they should be deemed to be. In

addition, if state infrastructure and other projects are funded through loans by the bank, substantial savings in interest costs would accrue to the state on each such project because the interest would come back to the state via the bank. This too would facilitate balancing the state's budget.

The issuance of multi-year obligations to provide necessary capitalization of the bank would have no effect upon the state's budget, and would be paid back out of interest income from the bank, in about four years, as described in proponents' Amended Opening Brief. Authorization of such bonds would be essential to start the bank and therefore do not constitute a second subject. It is anticipated that the large annual income of the bank would mean that multi-year borrowing to establish adequate capitalization would probably be limited to the early period of the bank's existence because after the bonds were repaid the income of the bank would likely be a sufficient source of adequate capitalization.

4. Objector Childears objects that the measure would violate Colo. Const. art. X, §1, because it would require the state to pledge its credit in aid of private parties. Childears did not raise this issue at the hearings on Initiative #45 or object that this would violate the single subject rule. Childears made this

argument in his Motion for Rehearing on Initiative #95 in 2012. It was rejected by the Title Board which set title for the measure.

This objection is also without merit. The purpose of the bonds would clearly be in aid of the bank and its public purpose. Prompt repayment of the bonds would be assured through the interest earned upon loans by the bank. Based on an expected return by the bank of about 20% on equity per year, the bonds would be expected to be repaid in full within about four years. As already discussed the bonds would fulfill an essential purpose of the bank, which is to ensure that the bank will have adequate capitalization to meet the lending needs of the state for public purposes as defined in the measure. Neither the Title Board nor Objector Walker has raised this issue regarding Initiative #45.

CONCLUSION

For all of the foregoing reasons, Proponents request that the Court reverse the Title Board's denial of the Proponents' Motion for Rehearing and find that the Title Board had jurisdiction to set title for the initiative under the single subject rule.

Dated: November 5, 2013

Respectfully submitted,

/s Earl H. Staelin

Earl H. Staelin

ONSAGER, STAELIN, & GUYERSON, LLC

1873 S. Bellaire St. Suite 1401

Denver, CO 80222

Phone: 303-512-1123

Fax: 303-512-1129

Email: estaelin@osglaw.com

Attorneys for Proponents

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2013, a true and correct copy of Petitioners' ANSWER BRIEF was served via ICCES and by email (with consent) or by HAND DELIVERY OR OVERNIGHT DELIVERY SERVICE to the following:

LeeAnn Morrill
First Assistant Attorney General
Office of the Attorney General
Public Officials Unit
1300 Broadway, 10th Floor
Denver, CO 80203
Attorney for the Title Board

Jason R. Dunn
Michael D. Hoke
Brownstein Hyatt Farber Schreck LLP
410 17th Street, #2200
Denver, Colorado 80202
(303) 223-1100
(303) 223-0914
jdunn@bhfs.com
Attorneys for Don Childears, Objector
Respondent

Hermine Kallman
Thomas M. Rogers, III
Lewis Roca Rothgerber, LLP
1200 17th Street, Suite 3000
Denver, CO 80202
hkallman@lrrlaw.com
Attorneys for Barbara M.A. Walters, Objector
Respondent