

Colorado Supreme Court  
2 East 14th Avenue  
Denver, CO 80203

Original Proceeding Pursuant to § 1-40-107(2),  
C.R.S. (2012)  
Appeal from the Ballot Title Board

▲ COURT USE ONLY ▲

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative 2013-  
2014 #45

Supreme Court Case No.:  
2013SA231

**Petitioners:**

Robert Bows and Jason Bosch;  
v.

**Respondents:**

Barbara M. A. Walker and Don Childears;

**and**

**Title Board:**

Suzanne Staiert, Dan Domenico, and Jason  
Gelender.

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**ANSWER BRIEF OF RESPONDENT BARBARA M. A. WALKER**

**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:

The brief complies with C.A.R. 28(g).

Choose one:

- It contains \_\_\_\_\_ words.
- It does not exceed 30 pages.

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For the party raising the issue:

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, 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.

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/ Thomas M. Rogers III*

\_\_\_\_\_  
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*Attorney for Respondent Barbara M. A. Walker*

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## **SUMMARY OF THE ARGUMENT**

Initiative 45 is an attempt to circumvent multiple limitations on governmental powers set forth in various parts of the Colorado Constitution under the guise of establishing a state-owned bank. The stated purpose of the Initiative to be presented for voter approval is the establishment of a state-owned bank to hold public monies. However, the Petitioners have conceded that there is a second purpose of the Initiative—to create additional state revenues and exempt these revenues from the limitations on the growth of the government set forth in Art. X, § 20 of the Colorado Constitution (“TABOR”), as well as provide the state with the ability to issue bonds at any time and in any amounts the state deems necessary without a statewide vote as required by TABOR. The Petitioners have set forth this second purpose in Section (9) of the Initiative, but fail to show how the establishment and operations of a state-owned bank is necessarily interconnected with or dependent on its ability to transfer unlimited funds to the state’s general fund.

The proposed language of the Initiative contains multiple and distinct subjects, in violation of the single subject rule, which will likely create voter confusion and fraud. Colo. Const. art. V, § 1(5.5). The Initiative would ostensibly present to the voters the question of whether the state deposits would be better and

more safely managed by a state-owned bank governed by elected public officials. In reality, it poses the danger of voter surprise by surreptitiously creating a broad change in governmental powers currently subject to multiple limitations set forth in various parts of the Colorado Constitution. The single subject requirement is intended to prevent such surprises and to ensure that each proposal for change is considered on its own merits.

The Title Board correctly found that it lacked jurisdiction to set a title for the Initiative, as it contains multiple incongruous subjects, unnecessary and unrelated to its central purpose of establishing a state-owned bank.

### **ARGUMENT**

**The Board properly declined to set the title for Initiative 45 because the proposed measure violates the single subject requirement of Art. V, § 1(5.5) of the Colorado Constitution.**

The Title Board does not have authority to set the title for any initiative where the proposed “measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject . . . .” *See* Colo. Const. art. V, § 1(5.5); C.R.S. § 1-40-106.5(1). Petitioners admit that the proposed Initiative contains two purposes—establishment of a state-owned bank and

creation of an additional revenue stream exempt from TABOR's revenue and spending limitations for the State of Colorado.<sup>1</sup>

As set forth in Ms. Walker's Opening Brief, Initiative 45 violates the single subject requirement by containing multiple purposes which are not necessarily or properly connected to the Initiative's main purpose—establishment of a state-owned bank. The Initiative clearly sets forth its main purpose:

The state of Colorado desires to establish a state-owned bank in order to strengthen its economy and protect it from the cyclical ups and downs caused by the private banks and financiers who control money creation and credit regulation processes in the United States.<sup>2</sup>

According to the Initiative, the state bank would hold the state's deposits and be run by elected officials who would make decisions based on sound banking practices, defined as "practices generally followed by public non-profit banks, such as the Bank of North Dakota, that are operated in the public interest, as opposed to the speculative and fraudulent practices of private for-profit banks, which are operated solely on the interests of a small group of financiers."<sup>3</sup>

In their Opening Brief, Petitioners admit that the establishment of a state-owned bank is in fact a scheme to circumvent multiple constitutional provisions in

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<sup>1</sup> Pet'rs' Am. Opening Br., at 9.

<sup>2</sup> Initiative 45, attached as Ex. A to Ms. Walker's Opening Br., at Section (1)(a).

<sup>3</sup> *Id.*, Section (3)(a).

place to regulate governmental powers: in addition to establishing a state-owned bank, the Initiative seeks to create an additional revenue stream for the state by allowing the bank's income to grow and be exempt from TABOR's revenue limitations and transfer that income to the state general fund at any time without limitation<sup>4</sup>—circumventing TABOR's restrictions on growth of the government. In addition, the Initiative seeks to circumvent TABOR's prohibition on multiple fiscal year obligations without voter approval by allowing the bank to issue bonds at any time without limitations for “adequate capitalization” of the bank.<sup>5</sup> The Initiative defines “adequate capitalization” in a manner that allows the bank to issue bonds at any time such funds are needed by the state<sup>6</sup> and transfer those funds to the state's general fund,<sup>7</sup> thus allowing the state unlimited access to borrowed funds without voter approval, in contravention of TABOR and in contravention of the balanced budget provision of Art. X, § 16 of the Colorado Constitution.

Petitioners do not explain how the ability to transfer unlimited funds, including borrowed funds from bond proceeds, is necessary to the establishment and operation of the bank. The conclusory statement that it is “necessarily

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<sup>4</sup> See Pet'rs' Am. Opening Br., at 14-16.

<sup>5</sup> Ex. A to Ms. Walker's Opening Br., Section (4).

<sup>6</sup> *Id.*, Section (3)(b) (“Adequate capitalization of the bank’ means meeting the reserve requirements necessary to create loans that enable the state of Colorado to meet the objectives listed in subsection (4) of this section.”).

<sup>7</sup> *Id.*, Section (9).



connected to the purpose of the bank to function as an effective bank and agency of the state of Colorado”<sup>8</sup> fails to show *how* such transfers are necessary to the bank’s operations. Petitioners further attempt to establish a connection by arguing that private banks which are sometimes owned by larger holding companies have the ability to transfer funds to their holding companies.<sup>9</sup> It is unclear how practices of some banks—which Petitioners label as “speculative and fraudulent” in the Initiative<sup>10</sup>—have any bearing on the question of whether the ability to transfer unlimited funds to the state general fund is necessary to the proper functioning of a bank.

Additionally, Petitioners’ argument that the additional revenue stream created by the bank to be transferred to the state general fund is not “revenue” under TABOR because revenue provisions of TABOR are limited to new or increased taxes and fees<sup>11</sup> is incorrect. Income from practically all sources—excluding gifts, proceeds from sale of property, federal funds, and several other funding sources not applicable here—is revenue subject to the limitations of TABOR. *See Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008) (“Amendment 1 [TABOR] limits the amount of revenue state and local governments can retain

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<sup>8</sup> Pet’rs’ Am. Opening Br., at 9.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> Ex. A to Ms. Walker’s Opening Br., Section (3)(a).

<sup>11</sup> Pet’rs’ Am. Opening Br., at 15.

from *all* (save, essentially, federal) sources at the end of a fiscal year.”) (emphasis added). Thus, the Initiative’s attempt to transfer the bank’s income to the state’s general fund and exempt such income from both revenue and spending limitations of TABOR is a broad change in governmental powers affecting multiple provisions of TABOR—which the Court has repeatedly held violates the single subject requirement, *see In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 239-42 (Colo. 2006) (discussing precedents where the Court held that initiatives impacting several provisions of TABOR violate the single subject requirement)—and unnecessary to the establishment and operation of a state bank.

The danger of voter confusion and fraud is particularly high here, as the Initiative’s express provisions setting forth its purpose of the establishment of a state-owned bank<sup>12</sup> contain no mention of creation of additional state revenues or the broad change in governmental powers impacting several provisions of TABOR, which the Initiative proposes. Instead, these changes are set forth in Section (9) of the Initiative, which is titled “Proposed Constitutional Amendment for the State of Colorado To Establish a Publicly Owned State Bank” in an impermissible attempt to pass them under the broad theme of establishing a state-

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<sup>12</sup> *Id.*, Section (1).

owned bank. See *In re Title, Ballot Title & Submission Clause, for 2007-2008*, #17, 172 P.3d 871, 875 (Colo. 2007 (the Court will examine “the initiative’s central theme to determine whether it contains a hidden purpose under a broad theme.”). These additional objectives of the Initiative are precisely the kind of “surreptitious provision[s] coiled up in the folds of a complex initiative,” which the single subject requirement is intended to prevent. *Id.*

### **CONCLUSION**

For these reasons, the Board properly found that it lacked jurisdiction to set title for the Initiative because it violates the single subject requirement set forth in the Colorado Constitution. Ms. Walker respectfully requests that this Court affirm the Title Board’s action declining to set title for the Initiative.

DATED: November 4, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2013, I filed a true and correct copy of the foregoing **ANSWER BRIEF OF RESPONDENT BARBARA M. A. WALKER** using the ICCES electronic filing system and served electronic copies to the following:

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