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Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013–2014 #45 **Petitioners:** Robert Bows and Jason Bosch, v. **Respondents:** Don Childears and Barbara M.A. Walker, **and** **Title Board:** Suzanne Staiert, Jason Gelender, and Daniel Domenico.	▲ **COURT USE ONLY** ▲
Attorneys for Respondent Don Childears: Name(s): Jason R. Dunn, #33011 Michael D. Hoke, #41034 Address: BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone Number: 303.223.1100 FAX Number: 303.223.1111 E-mail: jdunn@bhfs.com	Supreme Court Case Number: 2013SA231
OPENING BRIEF OF RESPONDENT DON CHILDEARS	

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.

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

☐ 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 (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. *Because this matter was set for simultaneous briefing, Respondent has provided, under a separate heading, a statement of the standard of review for the issue raised in the Petition for Review.*

☑ 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/ Michael D. Hoke
Michael D. Hoke

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CONSTITUTIONAL PROVISIONS

Don Childears ("Respondent"), registered elector of the State of Colorado, through his undersigned counsel, respectfully submits the following Opening Brief in opposition to the Petition for Review of Final Action of the Title Setting Board Concerning Proposed Initiative 2013–2014 No. 45 ("Petition for Review") filed by Petitioners Robert Bows and Jason Bosch ("Petitioners" or "Proponents").

STATEMENT OF ISSUES PRESENTED FOR REVIEW

While the Petition for Review purports to raise seven separate issues for review, only one issue is ripe for this Court's review: whether the Title Board erred in determining that Initiative 2013–2014 #45 ("Initiative" or "Measure") violates the single-subject requirement for citizen initiatives.

STATEMENT OF THE CASE

A. NATURE OF THE MEASURE

1. The Measure would create a state bank and would also separately create a mechanism for the state to enjoy revenue and issue multi-year debt exempt from TABOR restrictions.

If adopted, the Measure would add a new section 22 to article X of the Colorado Constitution that would establish a state-owned bank, would exempt the bank from constitutional limitations on issuance of multi-year debt, would allow the bank to transfer unlimited funds to the state general fund, and exempt those transfers from all legal limitations. As a result, the Measure significantly transforms the state finance system in numerous, unconnected ways.

More specifically, subsection (4) of the Measure would grant the bank all of the powers and authority of any state-chartered bank, including the power to issue bonds to capitalize the bank. (Measure at 1–2.) However, bonds issued by the state bank would differ from bonds issued by a private bank in a significant way: they would represent pledges of the state's credit without direct voter approval, because debts and obligations of the bank—including any bonds issued (and presumably any deposits held in the bank of any nature) —would necessarily be "backed by the full faith and credit of the state of Colorado" (*id.* at 2).[1] The only apparent constraint contained in the Measure is that bond issuances would purportedly be limited to situations in which the bank's board deems it necessary to establish "adequate capitalization" for the bank. (*Id.*) But the Measure's definition of "adequate capitalization," reveals that the limitation is illusory: the bank is not adequately capitalized if it does not have "the reserve requirements necessary to create loans that enable the *state of Colorado*" (and not just the bank) to promote the general welfare. (*Id.* at 1 (emphasis added).) Accordingly, the bank would be

[1] Importantly, this means that the proposed bank would not qualify as an "enterprise" under article X, section 20 of the Colorado Constitution ("TABOR"). Enterprises under TABOR must be "authorized to issue its own revenue bonds . . . ." Colo. Const. art. X, § 20(1)(d). Revenue bonds are bonds backed solely by a specific revenue source; bonds issued by the bank could not be backed solely by any particular revenue source because, under the Measure, they would always be backed by the full faith and credit of the state.

authorized to issue bonds in any amount and at any time it deems the State of Colorado in need of financial support.

Likewise, subsection (4) would authorize the bank to lend money, including state-subsidized loans issued at no interest, to fund any project or entity deemed to advance the general welfare. Specifically, loans could be issued:

> to promote sustainable development, commerce, industry, and agriculture in the state and to promote home ownership, maintenance and construction of needed infrastructure, education, public health and safety, and other purposes that support the general welfare of the citizens of the state of Colorado.

(Measure at 1.) The Measure does not require the bank to seek repayment of any such loans; rather, the bank would remain free to issue "loans" to promote the general welfare of the state, and then later forgive those loans. In fact, the Measure expressly forbids any limitations on the bank's expenditures and management of its revenue "except upon sound financial and public policy considerations," which the Measure defines to mean "considerations focused on the public interest, particularly those of the state of Colorado . . . ." (*Id.* at 1 & 2.) Thus, if the bank board were to determine that forgiving loans favored the public interest, it could do so. The bank would therefore be empowered to make essentially any expenditures on behalf of the state, which would not appear on the state's balance sheet.

The Measure also sets forth the governance mechanism for the bank, which, notably, states that the bank shall be entirely self-regulated. (*Id.* at 3.) Despite being captioned as a "state bank", the state actually has no control over the bank's operations. And yet the bank is authorized to claim various state funds as "capitalization".[2] (*Id.*) The Measure then directs that specifically allocated funds and funds that are normally held by financial institutions must be transferred to the bank. The Measure does not require the bank to pay any interest on such deposits, however, and it appears there would be no financial incentive for the bank to do so.

Finally, subsection (9) of the Measure would authorize the bank to transfer funds to the state general fund and exempts all transferred funds from any legal limitations, including revenue and spending limits under TABOR. To make clear the Proponents intent that such funds be unrestricted, the Measure expressly states that "[s]uch funds may be used to enable the state to expand, maintain, or restore essential services and facilities . . . ." (Measure at 3.) If the bank were operated profitably, rather than used to move expenditures off the state balance sheet, the

[2] In banking, the term "capital" is used in several different ways, but in general is a safety net of sufficiently liquid assets held to protect depositors against unexpected losses. For private banks, capital includes shareholder equity and retained earnings as well as bad-debt or loan-loss reserves, among other things. Under the Measure, "adequate capitalization" is defined to mean the reserves required to issue particular loans.

bank could provide the state with a regular revenue stream that would not be subject to TABOR limitations and could allow the state to grow without restriction, rather than refunding excess revenues to the taxpayers.

B. THE MEASURE IS SUBSTANTIVELY IDENTICAL TO A PREVIOUS MEASURE REJECTED BY THE TITLE BOARD ON SINGLE-SUBJECT GROUNDS.

1. The Title Board found that Initiative 2013–2014 No. 39 failed to satisfy the single-subject requirement.

Proponent Bows, along with another individual, Earl Staelin,[3] also filed Initiative 2013–2014 No. 39 (attached as Exhibit A). Initiative No. 39 was identical in several material respects to Initiative No. 45 at issue here. Like this Measure, Initiative No. 39 would have authorized the bank to issue bonds backed by the full faith and credit of the state, and would have allowed the bank to transfer funds to the state general fund that would then have been exempt from TABOR and other legal limitations. Because the Title Board referred to its prior discussions relating to Initiative No. 39 in its disposition of the instant Measure, it is useful to consider the Title Board's deliberations on that initiative.

2. The May 15, 2013 Rehearing on Initiative 2013–2014 No. 39

During a rehearing on Initiative No. 39, counsel for Respondent Childears and others argued that the proposed measure contained multiple separate subjects,

[3] Mr. Staelin is appearing as counsel for the Proponents in this action.

as demonstrated by its implicit override of: (1) major portions of TABOR; (2) the prohibition against incurring multi-year obligations or debt without voter approval in article XI, section 3 of the Colorado Constitution; and (3) the balanced budget requirement in article X, section 16. Respondent Childears also argued that the measure would implicitly repeal article XI, section 1, which prohibits the state and local entities from pledging their credit in aid of any person, company or corporation, to the extent that section applies to the state.[4] Respondents argued that none of these additional aspects of the measure were necessarily or properly connected to the Petitioners' stated purpose of establishing a state-owned bank, and that each therefore constituted a separate subject.

Respondent Childears further argued that the intent of the proponents of Initiative No. 39 to include these aspects as separate subjects within the measure could be inferred from changes the measure made to a similar measure the proponents submitted the previous year.[5] For example, Initiative No. 39 included an explicit statement that the bank's powers "shall include the power to undertake multi-year obligations," whereas the previous initiative did not. Similarly,

[4] *See generally* audio recording of May 15, 2013 Title Board meeting on motions for rehearing ("Initiative 39 Rehearing Audio"), a true and correct copy of which is attached hereto as Exhibit B, at 00:01:12–00:28:23.

[5] Ex. B, Initiative 39 Rehearing Audio, at 00:26:12–00:27:24.

Initiative No. 39 explicitly authorized the proposed bank to transfer revenues to the state general fund and exempted those transfers from all legal limitations, including TABOR spending limitations; the proponents' previous measure did not.[6]

Following these arguments, Deputy Secretary of State Suzanne Staiert invited responses from the proponents of Initiative No. 39, particularly with respect to Respondent Childears' argument that the measure would authorize the state to pledge its credit in aid of persons, companies, or corporations.[7] The proponents never addressed that argument. Nor did they ever address the argument that the measure would allow the state to circumvent balanced budget restrictions. Instead, the proponents proceeded to *admit* that the measure would override the constitutional provision against incurring multi-year obligations without voter approval.[8] They further *admitted* that the measure is intended to exempt the proposed bank, as well as any revenues it generated—including any revenues it

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[6] *Id.*

[7] Ex. B, Initiative 39 Rehearing Audio, at 00:28:24– 00:28:42 ("I'm particularly interested in your response to the pledging credit for private… and TABOR issues.").

[8] Ex. B, Initiative 39 Rehearing Audio, at 00:28:55–00:29:18 (Mr. Staelin: "First, the question of multi-year obligations. The Bank of North Dakota was actually started only when they issued bonds. This is typical of banks so that they would have the funds and capital to be able to lend for the purposes of the bank.").

might transfer to the state general fund—from TABOR restrictions. In fact, Mr. Staelin suggested that it would "completely defeat" the purpose of the bank if the money it transferred to the state general fund were subject to TABOR spending limitations.[9]

Solicitor General Domenico pressed the proponents to explain why the purposes of the bank would be frustrated if the revenues transferred to the state were still subject to TABOR and simply allowed the state to reduce its tax collections. Mr. Staelin admitted that the bank *could* operate subject to TABOR, but responded that it would be "consistent" not to have the bank's income limited by TABOR:

> Mr. Domenico: "Why couldn't you accomplish … the first set of points that you were making, which is that, 'look, we shouldn't be sending all of our money, and essentially letting all these private banks take all the profit from our government money,' but still comply with TABOR, as Mr. Hoke suggested? . . . And it does seem to me you could still have the bank accomplish the goals you were talking about at the beginning without also overriding the kind of growth in the size of government

[9] Ex. B, Initiative 39 Rehearing Audio, at 00:31:26–00:31:46 (Mr. Staelin stating that "to the extent the funds that are transferred to the general fund from the income received by the bank are then available for public purposes, it again would completely defeat the purpose of this bank to say that income has to be limited" by TABOR spending limits).

> and the debt problems that the motions have highlighted."[10]
>
> . . .
>
> Mr. Staelin: "[Y]ou're right: we could have, as we did last year, limit that limitation to the operation of the bank itself. But we still think it's quite consistent with the operation of a state bank to provide that once that income is earned by the bank, it shouldn't be restricted by TABOR. TABOR can be overruled…."[11]

Later in the hearing, Mr. Staelin gave an almost identical answer to a question from Title Board member Jason Gelender:

> Mr. Gelender: "Why is, then, allowing transfers to the general fund sort of necessary for the bank to be effective, in your view?"
>
> Mr. Staelin: "I don't think it's required for it to be necessary to be effective, but it's consistent with the way a bank would function, and that is to be able to use the income of the bank to benefit, in this case, the state of Colorado."[12]

Mr. Gelender expressed significant concerns about the measure's compliance with the single-subject requirement:

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[10] Ex. B, Initiative 39 Rehearing Audio, at 00:31:52–00:33:20. Respondent Childears does not believe that last year's measure would have been free from conflicts with TABOR, but the provision in this year's measure allowing the bank to transfer money to the state general fund free from TABOR restrictions creates additional single-subject concerns.

[11] Ex. B, Initiative 39 Rehearing Audio, at 00:34:21–00:35:17.

[12] Ex. B, Initiative 39 Rehearing Audio, at 00:42:11–00:42:44.

Mr. Gelender: "It sounds almost like what you're saying is that the single purpose is to make government bigger, and/or maybe to make government have more money to provide services. I mean, providing government services takes money, so presumably that's what we're talking about here—making more money for government. And when I look at the measure, and the text of the measure, it's not at all clear from that text that that's a purpose. I mean the purpose is, we're going to establish a bank. And there's nothing in here specifically that talks about overriding all of these long-standing provisions we have. As we pointed out, we have essentially a balanced-budget amendment, a prohibition on general obligation debt, which has been around I think since the Constitution was adopted, if not, for at least pretty close to that long. And I mean, these are things that have been part of our law for a long, long time. And without even mentioning them specifically, we're authorizing basically to override them all.

. . .

"I'm having a really hard time figuring out why things like allowing essentially unlimited debt to be incurred by this bank, allowing unlimited transfers to the general fund, and essentially saying 'all these limitations that we have on sort of the size and spending of state government don't matter anymore' are necessarily and properly connected to establishing a bank. They may make the bank stronger, they may not, they may help. But I don't think they're necessary."[13]

[13] Ex. B, Initiative 39 Rehearing Audio, at 00:49:12–00:51:46.

In response, Mr. Bows argued that the single purpose of the measure was "public control over its own money, which it doesn't have right now."[14]

After brief rebuttals by the objectors, the Title Board considered whether Initiative No. 39 complied with the single-subject requirement. Mr. Domenico argued that the challenged aspects of the measure could be "potentially a great surprise" to voters.[15] He then argued that the measure contained multiple subjects. Mr. Gelender agreed without qualification:

> Mr. Domenico: "It seems quite clear to me that in fact the state can use this to create multi-year obligations that might be in the name of the bank but are effectively debts of the state. It would allow spending of the government's—of whatever money the government brings in without any limitation. What seem like clear statements in Sections 3 and 8 of the measure—those strike me as multiple subjects that aren't necessarily tied to the purpose of consolidating state money into a state-owned bank."
>
> Mr. Gelender: "I agree with all of that essentially and don't really have anything else to add."[16]

The Title Board then voted 2–1 to grant the motions for rehearing on the ground that the measure contained multiple subjects. It further decided that all other arguments raised in the motions were moot as a result.[17]

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[14] Ex. B, Initiative 39 Rehearing Audio, at 00:51:49–00:52:00.

[15] Ex. B, Initiative 39 Rehearing Audio, at 01:05:41–01:06:05.

[16] Ex. B, Initiative 39 Rehearing Audio, at 01:06:23–01:07:12.

C. THE TITLE BOARD HERE REJECTED INITIATIVE NO. 45 ON SINGLE-SUBJECT GROUNDS.

1. The August 21, 2013 Hearing

At its August 21 hearing, the Title Board relied on its prior ruling that Initiative No. 39 failed to satisfy the single-subject requirements, and instead focused its discussion on whether the Measure contained any material differences from Initiative No. 39 that would affect the Title Board's single-subject analysis.[18]

Ms. Staiert asked rhetorically whether the Proponents had made any changes to the Measure to address issues raised during the Title Board's consideration of Initiative No. 39. Mr. Gelender did not believe so: "I don't see any changes to the language of the measure that seem to make a difference at this point."[19] Mr. Domenico agreed:

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[17] Ex. B, Initiative 39 Rehearing Audio, at 01:12:23–01:13:16.

[18] Differences between the two measures include: the current Measure added several definitions, one of which purports to set forth the "sole" subject of the Measure. The bank's authority to issue bonds was nominally limited to raise capital for the bank. The Measure changed which state funds might be sequestered as bank capital. And the Measure added a statement making it explicit that the Proponents intend that funds transferred to the general fund would not be subject to TABOR or other legal restrictions. Several other immaterial, administrative details were altered, such as the timing of the Measure's implementation and the structure of the bank's governance.

[19] *See* audio recording of August 21, 2013, Title Board hearing ("August 21 Hearing Audio"), a true and correct copy of which is attached hereto as Exhibit C, at 14:31–15:15 & 20:34–20:53.

> We're essentially in the same place we were before . . . . It seems to me there's two subjects. One is creating a bank to do these things at the beginning of the measure. Basically setting up a bank that would (a) allow the state to take its funds out of the private, for-profit banks, and also allow individuals presumably or businesses to use this bank to deposit their money or invest in through bonds . . . .
>
> But then section 9 again still creates what to me is clearly an additional subject, which is exempting the money that this bank creates from the limitations of TABOR. TABOR is not just about raising taxes; it's about limiting the growth of government. So section 9 is clearly about allowing the funds that the bank creates to enable the state to expand, maintain or restore essential services and facilities, etc., and that that is a different subject than creating a bank. Creating a mechanism for the state to spend more money is a separate subject. TABOR today would be multiple subjects the Supreme Court's made that very clear. And so those two subjects, expanding the government and creating a state owned bank, two me are two separate subjects. I agree with the proponents that there may be sort of one purpose here one underlying motivation, but they go about it through multiple subjects. And that's no less of a problem in this version than the last one."[20]

Mr. Domenico further explained:

> My explanation of why there's a conflict—why this creates a second subject is because it seeks to do two things that are not necessarily related to one another. One is creating a bank where the state could put its money and where the people could put their money. Two is creating a mechanism by which the state budget can grow without

[20] Ex. C, August 21 Hearing Audio, at 20:54–23:28.

> being limited by the current limitations. Each of those is a perfectly fine goal/purpose to have. They're not necessarily related to one another, and they're different subjects.[21]

The Title Board then voted 2–1 to find that it lacked jurisdiction because the Measure violates the single-subject requirement.[22]

2. The September 4, 2013 Rehearing on the Measure

Proponents filed a motion for rehearing with the Title Board, and the rehearing on the motion was held on September 4, 2013. After a lengthy discussion, Mr. Gelender summarized his reasoning for finding the Measure contains multiple subjects:

> The voters have no idea how much this approval is going to potentially cost them because there's no limit whatsoever on what sort of bonds can be issued. It's not just I think the interest revenues of the bank that can be exempted from TABOR. They can essentially seem to take—as was pointed out by counsel for one of the opponents—bond proceeds, any other money, and just ship sort of an unlimited, potentially, amount of money to the general fund to be spent on whatever. And, it's just, I cannot see how that's necessary to the establishment of this bank or, for that matter, to allow the bank to necessarily be effective, and I think it would confuse the people voting on this, who, reading the measure, or probably any title we can set, would be very hard-pressed

[21] Ex. C, August 21 Hearing Audio, at 28:20–29:00.

[22] Ex. C, August 21 Hearing Audio, at 35:30–36:02.

> to know what the potential consequences of what they are voting on are.[23]

The Title Board then once again voted 2–1 to find that the Measure impermissibly contains multiple subjects.

SUMMARY OF ARGUMENT

The Title Board correctly determined that the measure violates the single-subject requirement. In addition to establishing a state bank, the measure would fundamentally alter the state finance system by allowing the state budget to grow without restriction, limited only by the bank's ability to profit from use of all of the state's funds—without voter approval as to any specific amount or scale of growth—and by allowing the state to issue general obligation multi-year debt—again without voter approval as to the amount of debt issued or the other material terms of the debt issue. It would also allow the state to pledge its credit in aid of private parties.

None of these changes to long-standing constitutional provisions is necessarily or properly connected to the creation of a state bank. As the Proponents themselves have *admitted*, a state bank could be created without permitting unrestricted transfers to the general fund to be exempt from TABOR limitations.

[23] *See* audio recording of September 4, 2013, Title Board rehearing ("September 4 Rehearing Audio"), a true and correct copy of which is attached hereto as Exhibit D, at 43:17–44:25.

Nor is the unrestricted issuance of multi-year obligations necessary or even properly related to the establishment of a state bank, particularly where the obligations are backed by the full faith and credit of the state. And there is nothing inherent in operating a state bank that would require the state to pledge its credit in aid of private interests.

Moreover, the Proponents have made clear that the unrestricted transfer of funds to the state general fund is an intended purpose of the Measure. Their desire is not just to establish a state-owned bank, but also to give the state a mechanism to circumvent TABOR restrictions on state revenue and spending. These dual purposes are not necessarily or properly connected. As a result, the Measure impermissibly contains multiple subjects and the Title Board lacked jurisdiction to set a title. Accordingly, this Court should affirm the Title Board's determination.

ARGUMENT

A. THE TITLE BOARD PROPERLY DECLINED TO EXERCISE JURISDICTION TO SET A TITLE BECAUSE THE INITIATIVE CONTAINS MULTIPLE SEPARATE SUBJECTS HAVING NO NECESSARY OR PROPER CONNECTION.

1. Standard of Review

"The Constitution and the statute prohibit initiatives from containing two or more separate and discrete subjects that are not dependent upon or necessarily

connected with each other."[24] A "proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the foregoing single-subject requirement."[25] Separate provisions of a measure must be "directly tied to the initiative's central focus" to satisfy the single-subject requirement.[26]

This Court reviews the Title Board's determinations on single-subject grounds only for abuse of discretion.[27] The Court "must examine the proposal sufficiently to enable review of the Title Board's action."[28] In doing so, the Court

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[24] *In re Title, Ballot Title & Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 873 (Colo. 2007).

[25] *In re Ballot Title 1999–2000 No. 104*, 987 P.2d 249, 253 (Colo. 1999); *see also Matter of Title, Ballot Title & Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to Constitution of State of Colo. Adding Subsection (10) to Sec. 20 of Art. X ("Amend Tabor 25")*, 900 P.2d 121, 125 (Colo. 1995) (tax credit unconnected to procedures for adopting future initiatives and therefore constitutes an additional subject).

[26] *In re Title, Ballot Title, Submission Clause for 2009–2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010).

[27] *Id.* at 1088 (Coats, J., dissenting) ("Subject only to judicial review for an abuse of its discretion, the Title Board is entrusted with the obligation to ensure that popularly initiated measures contain a single subject."); *see also In re 2009–2010 No. 91*, 235 P.3d at 1076 (in reviewing measure for single-subject compliance, Court noted that it employs "all legitimate presumptions in favor of the propriety of the Board's actions").

[28] *In re 2007–2008, #17*, 172 P.3d at 874.

applies "the general rules of statutory construction and accord[s] the language of the measure its plain meaning."[29]

2. The single-subject requirement was intended to limit the power to enact laws through initiative.

In 1994, the General Assembly referred a constitutional amendment to the voters seeking to *limit* the initiative power reserved to the people by restricting initiatives to a single subject.[30] In conjunction with the single-subject referendum, the General Assembly enacted legislation explaining the rationale behind the single-subject requirement. C.R.S. § 1-40-106.5. According to the express legislative intent, article V, section 1(5.5) of the Colorado Constitution was intended to "forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits." § 1-40-106.5(1)(e)(I). The legislature also intended the single-subject limitation to "prevent surreptitious

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[29] *Id.*

[30] *Matter of Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II ("Waters II")*, 898 P.2d 1076, 1078 & n.2 (Colo. 1995) (rejecting measure on single subject grounds where "[n]o necessary connection exist[ed]" between distinct provisions of the measure).

measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters." § 1-40-106.5(1)(e)(II). The Court has long recognized the importance of the General Assembly's concerns:

> In considering this constitutional provision, it is important to bear in mind the evils sought to be corrected thereby. The practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits, was undoubtedly one of the evils sought to be eradicated. Another object is to prevent surprise and fraud . . . .[31]

To effectuate its intent, the General Assembly directed that the single-subject requirement "be liberally construed, so as to avert the practices against which they are aimed . . . ." § 1-40-106.5(2). According to Black's Law Dictionary, "liberal construction" means "[a]n interpretation that applies to a writing in light of the situation presented and that *tends to effectuate the spirit and purpose* of the writing."[32] Based on the plain text of Section 1-40-106.5(2), therefore, the legislature intended the single-subject requirement to be interpreted

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[31] *Catron v. Bd. of Comm'rs of Archuleta Cnty.*, 18 Colo. 553, 557, 33 P. 513, 514 (1893); *see also Waters II*, 898 P.2d at 1079 ("The same reasoning was used to support passage of the single subject requirement for initiatives.").

[32] BLACK'S LAW DICTIONARY (9th ed. 2009), construction.

loosely in order to *ensure that measures not be adopted* other than on the merits and that the voters not be subject to surprise or fraud.

3. Initiatives that seek to alter aspects of TABOR pose a heightened risk of failing to satisfy the single-subject requirement.

For a measure to satisfy the single-subject requirement, the Court must "recognize a necessary or proper connection" among the various aspects of the measure, which must be directly tied to the initiative's central focus.[33] Measures that seek to alter disparate aspects of state government and function fail to satisfy the requirement. This is particularly true where, as here, initiatives seek to alter aspects of TABOR—in large part because TABOR itself contains multiple, disparate subjects.

In one of the earliest cases in which a ballot measure was challenged under the constitutional single-subject requirement, the Court affirmed the Title Board's refusal to set a title for a measure seeking to repeal and reenact several sections of TABOR.[34] The Court observed that "[t]he underlying constitutional provision to be repealed must be examined in order to determine whether the repealing and reenacting initiative contains a single subject" because, if an initiative proposes to

[33] *Amend Tabor 25*, 900 P.2d at 125 (measure establishing specific tax credits and amending procedures relating to future voter initiatives failed single-subject review).

[34] *In re Proposed Initiative 1996-4*, 916 P.2d 528, 530–31 (Colo. 1996).

repeal a provision that itself reflects multiple subjects, "then the initiative contains multiple subjects."[35] The Court further observed that TABOR "would not have met the single subject requirement . . . ."[36] Fully recognizing that the single-subject requirement might pose significant hurdles to ballot measure proponents seeking to modify existing constitutional provisions, the Court nevertheless found that the measure impermissibly contained multiple subjects.[37]

Since then, this Court has consistently applied particular scrutiny to measures that seek to alter aspects of TABOR, finding multiple subjects whenever multiple aspects of TABOR are affected. For example, in a series of cases in the late 1990s, the Court rejected numerous initiatives on single-subject grounds because they included both a tax cut, and either changes to procedures for voter approval for tax increases or mandatory cuts to state spending.[38]

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[35] *Id.* at 533.

[36] *Id.*

[37] *Id.*

[38] *See, e.g., Matter of Title, Ballot Title, & Submission Clause, Summary for 1997–98 No. 30*, 959 P.2d 822 (Colo. 1998); *Matter of Title, Ballot Title, Submission Clause, Summary for 1997–98 No. 84*, 961 P.2d 456 (Colo. 1998); *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 No. 25*, 974 P.2d 458 (Colo. 1999).

4. The Court should uphold the Title Board's determination that the Initiative impermissibly contains multiple separate subjects that are not dependent upon each other.

The Measure fails the single-subject requirement because it seeks implicitly to repeal several constitutional provisions as they currently apply to the state, including multiple aspects of TABOR. "A proposed initiative contains multiple subjects not only when it proposes new provisions constituting multiple subjects, but also when it proposes to repeal multiple subjects."[39]

While the Measure states that its "sole" purpose is "to establish a publicly owned state bank that effectively promotes the general welfare of the citizens of the state of Colorado" (Measure at 1), it also seeks to generate unrestricted revenue for the state that would be exempt from all "limitations imposed by any state constitutional, state statutory, state chartered, or other state or local provisions" (*id.* at 3). This would effectively repeal TABOR's revenue limitations as applied to the state general fund and could allow the state government to grow *without limitation*, including current limitations under both TABOR and the balanced budget restriction contained in article X, section 16.

[39] *Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-1998 No. 64*, 960 P.2d 1192, 1196 (Colo. 1998).

The Measure would also authorize the bank to issue multi-year bonds in any amount and with any frequency without first presenting the basic information about its bond issues to the voters for approval. The bank could issue multi-year bonds whenever it deemed it necessary to raise additional funds to support state objectives, thereby impliedly repealing the limitation on multi-year obligations contained in article XI, section 3. Finally,[40] the Measure would allow—and possibly even require—the state to pledge its credit in aid of private interests, implicitly repealing article XI, section 1.[41]

None of these additional features are necessarily or properly connected to the establishment of a state-owned bank. Indeed, that conclusion is supported by Proponent Bows's own actions: he previously proposed a measure that did not authorize unrestricted transfers of bank revenue to the general fund, state spending

[40] This list of significant changes to state finance is not meant to be exhaustive. For example, the measure would also effectively repeal the Public Deposit Protection Act, C.R.S. § 11-10.5-101 *et seq.*, which currently requires public funds held in deposit to be insured by the FDIC, instead explicitly requiring the state to self-insure its own public deposits.

[41] The bank would be authorized to issue bonds necessary to allow the bank to issue loans to promote *industry*, among other things. The bank could also accept deposits from private individuals and entities. In either case, the bank would pledge the state's credit in aid of these interests, because the *all* obligations of the bank would be backed by the full faith and credit of the state.

in excess of TABOR caps, or unlimited multi-year bond issues.[42] Moreover, a state bank could be insured, and even self-insured, without requiring all of its obligations to be backed by the full faith and credit of the state.

As Mr. Gelender recognized, Proponents explicitly seek and intend through the Measure to allow the state to grow and to "expand, maintain, or restore" state services and facilities, free from current TABOR restrictions.[43] There can be no question that this is an additional purpose of the Measure. Each of the other aspects above also appear to be *intended* purposes of the Measure. Because the Measure advances these distinct purposes, which are not necessarily or properly connected to the establishment of a state bank, they each constitute an impermissible separate subject.

Indeed, voters would surely be surprised to find that a measure purporting to establish a bank in fact provided a mechanism for the state to generate unlimited TABOR-exempt revenues, expand its budget to spend any such revenues without limitation, and to raise funds to support state programs through multi-year bond issues. These features are precisely the surreptitious provisions "coiled up in the

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[42] *See generally* Initiative 2011–2012 #95, a true and correct copy of which is attached hereto as Exhibit E.

[43] Ex. B, Initiative 39 Rehearing Audio, at 00:49:12–00:49:36 ("It sounds almost like what you're saying is that the single purpose is to make government bigger, and/or maybe to make government have more money to provide services.").

folds" that the single-subject requirement was intended to prevent.[44] Mr. Gelender expressed the problem perfectly at the September 4 rehearing: "[I]t would confuse the people voting on this, who, reading the measure, or probably any title we can set, would be very hard-pressed to know what the potential consequences of what they are voting on are."[45] The Title Board correctly rejected the Measure because "[t]he risk of 'uninformed voting caused by items concealed within a lengthy or complex proposal' is what the single subject requirement seeks to avoid."[46]

Moreover, the Measure could improperly succeed by enlisting support from the advocates of disparate objectives. Some voters might support the Measure because it would establish a state-owned bank; still others might seek to exempt the state general fund from TABOR restrictions; and while a measure seeking to do either of those things alone might fail, the combined Measure might nevertheless be approved. This, too, is precisely what the single-subject requirement was adopted to prevent.

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[44] *In re 2007–2008, #17*, 172 P.3d at 875.

[45] Ex. D, September 4 Rehearing Audio, at 43:17–44:25.

[46] *Matter of 1997–98 No. 30*, 959 P.2d at 825.

B. IN THE EVENT THE COURT REVERSES THE DETERMINATION OF THE TITLE BOARD, THE INITIATIVE MUST BE REMANDED TO THE TITLE BOARD TO DETERMINE WHETHER THE MEASURE IS TOO VAGUE TO SET A TITLE.

In his Motion for Rehearing, Respondent raised other challenges to the Title Board's jurisdiction to set a title. Those concerns were not addressed at either the initial hearing on August 21 or at the September 4 rehearing because the Title Board voted on the single-subject issue before addressing those other concerns, and as a result found the other challenges to have been mooted. Those objections are therefore not before the Court now. Should the Court find that the Measure satisfies the single-subject requirement, the Measure should be returned to the Title Board to consider Respondent's other objections.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that the Court affirm the action of the Title Board and return the Measure to the Proponents.

Respectfully submitted this 21st day of October, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2013, I electronically filed a true and correct copy of the **OPENING BRIEF OF RESPONDENT DON CHILDEARS** with the Clerk of the Court via the ICCES e-filing system which will send notification of such filing to the below individuals. I further certify the document was delivered via overnight delivery service and email to the following:

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2013-2014 #39
Establishment of a
State-Owned Bank

Final Text
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S.WARD

Proposed Constitutional Amendment for the State of Colorado
To Establish a Publicly-Owned State Bank
To be Numbered as Article X, Section 22

DATE FILED: October 21, 2013 3:30 PM

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

In the constitution of the state of Colorado, **add** section 22 to Article X as follows:

Section 22. State-owned bank. Statement of intent. (1)(a) THE STATE OF COLORADO DESIRES TO BUILD AN ECONOMY FREE OF THE UPS AND DOWNS CREATED BY THE FINANCIERS AND SPECULATORS WHO CONTROL MONEY CREATION AND CREDIT REGULATION PROCESSES IN THE UNITED STATES.

(b) MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES AND THE CURRENT STATE OF NORTH DAKOTA, AS WELL AS MANY NATIONS WORLDWIDE, HAVE SHOWN THAT TRUE PROSPERITY COMES FROM PUBLIC MONEYS CREATED AND MANAGED IN THE PUBLIC INTEREST.

(2) **Effective date.** THE EFFECTIVE DATE OF THIS AMENDMENT SHALL BE JANUARY 1, 2014.

(3) **Establishment of State-owned Bank.** THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE AND TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY, AND OTHER PURPOSES FOR THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO. THIS SHALL INCLUDE THE POWER TO UNDERTAKE MULTI-YEAR OBLIGATIONS. THE DEBTS AND OBLIGATIONS OF THE BANK ARE BACKED BY THE FULL FAITH AND CREDIT OF THE STATE OF COLORADO THAT SHALL SERVE AS SELF-INSURANCE FOR THE BANK, WHICH SHALL NOT BE REQUIRED TO JOIN THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC). THE REVENUE AND INCOME OF THE BANK SHALL NOT BE LIMITED, NOR SHALL EXPENDITURES AND MANAGEMENT OF ITS REVENUE, INCOME, AND ASSETS BE RESTRICTED, EXCEPT UPON SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(4) **Governance of state bank: elected officials:** THE BOARD OF DIRECTORS OF THE BANK SHALL CONSIST OF FIVE MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE STATE LEGISLATURE SHALL, IN A TIMELY FASHION NOT TO EXCEED THREE MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT, DIVIDE THE STATE INTO FIVE DISTRICTS BY GROUPING THE STATE HOUSE DISTRICTS INTO FIVE CONTIGUOUS DISTRICTS OF ROUGHLY EQUAL POPULATION, WITH DUE RESPECT TO THE RURAL AND URBAN CHARACTERISTICS OF SAID DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2014, AND INCLUDE CANDIDATES FOR ALL FIVE DISTRICTS, TWO OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF THREE YEARS AND THREE OF WHOM SHALL BE ELECTED FOR A TERM OF FIVE YEARS. THREE YEARS LATER, WHEN THE THREE-YEAR TERMS EXPIRE, SAID TWO DISTRICTS SHALL ELECT MEMBERS TO TERMS OF FOUR YEARS. FIVE YEARS AFTER THE INITIAL VOTE, SAID THREE DISTRICTS SHALL ELECT MEMBERS FOR FOUR-YEAR TERMS. THEREAFTER, ALL TERMS FOR ALL DISTRICTS SHALL BE FOR FOUR YEARS. EXCEPT FOR THE INITIAL ELECTION AND ANY RUN-OFF ELECTIONS, EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS.

EXHIBIT A

(c) CANDIDATES MUST BE CITIZENS OF THE STATE OF COLORADO FOR AT LEAST FIVE YEARS BEFORE THEY CAN DECLARE THEIR CANDIDACY AND MUST BE RESIDENTS OF THEIR DISTRICT FOR TWO YEARS.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES SHALL REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL HOLD A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES, WHICH SHALL BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE ELECTION IS DECIDED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SECTION.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2015.

(5) **Governance of State Bank: Management, employees, and advisors:** (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE, INCLUDING BUSINESS AND INDUSTRY, FARMING, TECHNOLOGY, FINANCE, SMALL BUSINESS, EDUCATION, LABOR, AND EMPLOYMENT, TO BE APPOINTED BY THE GOVERNOR, FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. MEMBERS OF THE BOARD OF ADVISORS SHALL BE NOMINATED BY VARIOUS GROUPS WITHIN EACH AREA OF INTEREST IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. ALL REPORTS AND THE AUDIT SHALL BE MADE PUBLIC WHEN THEY ARE RECEIVED BY THE BOARD.

(c) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM, WHICH SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS AND COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEES OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS AND BONUSES. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET BY THE BOARD OF DIRECTORS.

(6) **Rules and Regulations of State Bank.** FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2015, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK. PRIOR TO SUCH APPROVAL, THE RULES AND REGULATIONS PROMULGATED BY SAID FIVE OPERATING OFFICIALS SHALL BE EFFECTIVE ON AN INTERIM BASIS.

(7) **Capitalization of State Bank.** THE CAPITALIZATION OF THE BANK SHALL INCLUDE ALL TAX AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, SUBJECT TO SOUND BANKING PRACTICES AND THE RULES AND REGULATIONS OF THE STATE BANK. SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEYS HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS AFTER THE BANK THE BEGINS OPERATION. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK.

(8) **Transfer of funds from the state bank to the general fund of the state of Colorado.** THE STATE BANK MAY TRANSFER FUNDS, FROM TIME TO TIME, TO THE GENERAL FUND OF THE STATE OF COLORADO. SUCH AMOUNTS SHALL NOT BE SUBJECT TO OR COUNTED AGAINST ANY LIMITATIONS IMPOSED BY ANY STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

DATE FILED: October 21, 2013 3:30 PM

CD CONTAINING EXHIBITS B-D to

OPENING BRIEF OF RESPONDENT DON CHILDEARS

WILL BE HAND DELIVERED TO THE COURT AND

OVERNIGHT SERVICE TO THE PARTIES

Proposed Constitutional Amendment for the State of Colorado
To Establish a State-Owned Bank
To be Numbered as Article X, Section 23

WHEREAS, since 1919 the People of North Dakota have owned and benefited from the successful operation of the Bank of North Dakota, the specific purpose of which has been to provide an in-state repository for the holding, management, and distribution of the fees and taxes collected from the operation of the government of North Dakota; and

WHEREAS, the Bank of North Dakota is limited in its scope and purpose to: make funds available for state, city, and county government operations, to benefit the People and communities of North Dakota, and to provide correspondent banking services for chartered members; and

WHEREAS, the People of North Dakota have significantly benefited from the Bank of North Dakota which has paid the state treasurer more than three hundred twenty-five ($325,000,000) from bank profits over the past ten years; and

WHEREAS, the Bank of North Dakota is attributed with being the cause for the North Dakota economy topping the list of state economies year after year, and with being the only State that has had a continuous budget surplus since before the financial crisis of 2008; and while the rest of America has been enduring a recession, the state of North Dakota has enjoyed the largest budget surplus in its history; and

WHEREAS, the Bank of North Dakota is attributed with being the cause why in 2011 the People of North Dakota saw almost five hundred million ($500,000,000) returned to them in income and property tax cuts and will enjoy a 30% decrease in tax liability when combining 2009-2011 tax cuts; and

WHEREAS, the Bank of North Dakota is attributed with being the cause why North Dakota has the lowest foreclosure rate, the lowest credit card default rate, and the lowest unemployment rate of any State (3.3%) in the nation; and

WHEREAS, banks in the state of Colorado are failing at a rate five times greater than banks in other parts of the United States; and

WHEREAS, small businesses in the state of Colorado have experienced great difficulties in obtaining necessary capital as a result of the recession that began in 2008 and which result from the monetary policies of the national banking system under the control of the Federal Reserve System; and

WHEREAS, the Bank of North Dakota consolidates the handling of all state funds, while in Colorado various economic development and home ownership programs have limited authority, which may be more efficient if consolidated within one agency;

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

EXHIBIT E

In the constitution of the state of Colorado, add section 23 to Article X as follows:

(1) ESTABLISHMENT OF STATE-OWNED BANK. THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST TO PROMOTE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE AND TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY, AND OTHER PURPOSES FOR THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO; EXCEPT THAT THE BANK WILL NOT TAKE DEPOSITS OF INDIVIDUAL CITIZENS, CORPORATIONS, AND OTHER PRIVATE LEGAL ENTITIES. THE DEBTS AND OBLIGATIONS OF THE BANK ARE BACKED BY THE FULL FAITH AND CREDIT OF THE STATE OF COLORADO. THE REVENUE AND INCOME OF SUCH A BANK SHALL NOT BE LIMITED, NOR SHALL EXPENDITURES AND MANAGEMENT OF ITS REVENUE, INCOME, AND ASSETS BE RESTRICTED, EXCEPT UPON SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(2) GOVERNANCE OF STATE BANK: THE BOARD OF DIRECTORS OF THE BANK SHALL BE COMPRISED OF THE GOVERNOR, ATTORNEY GENERAL, AND AUDITOR OF THE STATE, PLUS FOUR OTHERS TO BE CHOSEN BY HOLDERS OF THE OFFICES FIRST MENTIONED ABOVE AND WHO REPRESENT COLORADO'S FINANCIAL, BUSINESS, AGRICULTURE, AND LABOR SECTORS. AT LEAST TWO OF THESE SEVEN MEMBERS MUST HAVE EXECUTIVE EXPERIENCE MANAGING BANKS, THE MAJORITY OF THE STOCK OF WHICH IS OWNED BY RESIDENTS OF THIS STATE. THE TERMS OF THE ADDITIONAL FOUR BOARD MEMBERS SHALL BE SET BY THE GENERAL ASSEMBLY. THE BOARD OF DIRECTORS SHALL RECEIVE INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE, INCLUDING BUSINESS AND INDUSTRY, FARMING, TECHNOLOGY, FINANCE, SMALL BUSINESS, EDUCATION, LABOR, AND EMPLOYMENT, TO BE APPOINTED BY THE GOVERNOR, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. MEMBERS OF THE BOARD OF ADVISORS SHALL BE NOMINATED BY VARIOUS GROUPS WITHIN EACH AREA OF INTEREST IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY. THE TERMS OF THE ADDITIONAL FOUR MEMBERS OF THE BOARD OF ADVISORS SHALL BE SET BY THE GENERAL ASSEMBLY. THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM, WHICH SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS AND COMPENSATE THEM ACCORDINGLY. THE PERSON APPOINTED AS PRESIDENT MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET BY THE BOARD OF DIRECTORS.

(3) RULES AND REGULATIONS OF STATE BANK. AFTER PASSAGE OF THIS AMENDMENT, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OFFICIALS OF THE BANK, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO APPROVAL BY ADVISORY BOARD, THE BOARD OF DIRECTORS OF THE BANK, AND THE COLORADO GENERAL ASSEMBLY AND SIGNED BY THE GOVERNOR, IN ACCORDANCE WITH THE RULES OF THE LEGISLATURE. PRIOR TO SUCH APPROVAL THE RULES AND REGULATIONS PROMULGATED BY THE SAID OFFICIALS SHALL BE EFFECTIVE.

(4) CAPITALIZATION OF STATE BANK: THE CAPITALIZATION OF THE BANK MAY INCLUDE ALL TAX AND OTHER REVENUES AND FUNDS OF THE STATE, SUBJECT TO SOUND BANKING PRACTICES. SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE BANK.