

<p>COLORADO SUPREME COURT 1300 Broadway Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #45</p> <p>Petitioners: ROBERT BOWS and JASON BOSCH, Proponents</p> <p>v.</p> <p>Respondents: DON CHILDEARS and BARBARA M.A. WALKER, Objectors</p> <p>and</p> <p>Title Board: SUZANNE STAIERT, DANIEL DOMENICO, and JASON GELENDER.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>OPENING BRIEF OF TITLE BOARD</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 those rules.

Specifically, the undersigned certifies that:

1. The brief complies with C.A.R. 28(g) because it contains 1,376 words.

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

I acknowledge that the 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/ LeeAnn Morrill
Attorney for the Title Board

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Title Board members Suzanne Staiert, Daniel Domenico, and Jason Gelender (hereinafter “the Board”), by and through undersigned counsel, hereby submit the Opening Brief of Title Board.

STATEMENT OF THE ISSUES

Whether the Board properly refused to set a title because the proposed initiative had more than one subject?

STATEMENT OF THE CASE

Robert Bows and Jason Bosch (hereinafter “Proponents”), seek to circulate Proposed Initiative 2013-2014 #45 (“#45”), to obtain the requisite number of signatures to place a measure on the ballot to amend Article X of the Colorado Constitution by adding Section 22, which would establish a state-owned bank. Proponents amended the original draft of #45 after a review and comment period before the Offices of Legislative Council and Legislative Legal Services, and submitted their final draft of #45 to the Board on July 23, 2013. *Exhibit*

A.

The Board conducted an initial public hearing on August 21, 2013, at which it declined to set a title because it found that #45 violated the single subject rule. *Exhibit B*. Proponents filed a motion for rehearing on August 26, 2013. *Exhibit C*. A rehearing was held on September 4, 2013, at which the Board again declined to set a title because it found that #45 violated the single subject rule. *Exhibit D*. Proponents timely filed a petition for review with this Court on September 10, 2013.

STATEMENT OF FACTS

Measure #45 would amend Article X of the Colorado Constitution by adding “**Section 22. State-owned bank.**” See *Exhibit A* for the full text of the final draft of #45. As explained by the “**Statement of intent,**” the purpose of establishing a state-owned bank is “to strengthen [Colorado’s] 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.” *Exhibit A*.

SUMMARY OF THE ARGUMENT

As proposed, #45 contained more than one subject. Not only would the measure have resulted in the creation of a state-owned bank, but also in the exemption of any transfers of bank funds to Colorado's general fund from any restrictions imposed by state or local law, including the revenue and spending limits of Colo. Const., art. X, § 20. As such, the Board properly refused to set a title for the measure because #45 violated the single subject rule.

ARGUMENT

- I. **THE MEASURE CONTAINS AT LEAST TWO SUBJECTS: (1) THE CREATION OF A STATE-OWNED BANK; AND (2) THE EXEMPTION OF ANY TRANSFERS OF BANK FUNDS TO COLORADO'S GENERAL FUND FROM ANY RESTRICTIONS IMPOSED BY STATE OR LOCAL LAW.**

Proponents contend that the Board erred by not setting a title because #45 contains only one subject. For the following reasons, the Court should reject this argument.

A. The single subject rule.

The Board must abide by the single subject rule when considering proposed initiatives. Indeed, Colo. Const., art. V, § 1(5.5), states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. *If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.*

(emphasis added). Colorado law further prevents the Board from setting a title for a measure that contains “incongruous 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), C.R.S. (2013). Likewise, the Board cannot set a measure that would cause surprise and fraud to be practiced upon the voters. § 1-40-106.5(1)(e)(II), C.R.S. (2013).

A proposed measure violates the single subject rule if “it relates to more than one subject, and has at least two distinct and separate purposes that are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for 2005-06 #55*, 138 P.3d 273, 277 (Colo. 2006) (“#55”); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002) (“#21”). In contrast, a proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). The single subject rule serves to prevent both the joinder of multiple subjects to secure the support of various factions, and voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (“#43”).

B. Standard of single subject review by this Court.

Whether a proposed initiative contains a single subject is a question of law that must be determined by the Board before it

exercises jurisdiction to set a title. In this case, the Board denied the title setting request because #45 did not constitute a single subject.

Exhibit D. As such, the Board's decision is subject to *de novo* review by this Court. See *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #219*, 999 P.2d 819, 820-22 (Colo. 2000).

In determining whether the single subject requirement has been satisfied, the Court will not address the merits of a proposed initiative, interpret it, or construe its future legal effects. #21, 44 P.3d at 215-16; #43, 46 P.3d at 443. However, the Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. #55, 138 P.3d at 278. To do so, the Court will "examine sufficiently the initiative's central theme to determine whether it contains a hidden purpose under a broad theme." *In re Title, Ballot Title and Submission Clause for 2007-08 #17*, 172 P.3d 871, 875 (Colo. 2007). Through its exam, the Court will "determine unstated purposes and their relationship to the central theme of the initiative." #55, 138

P.3d at 278. If the unstated theme is consistent with the general purpose, the single subject requirement will be met. *Id.*

C. Application of the single subject rule to #45.

The Board correctly refused to set a title because the measure, on its face, had at least two subjects. The first was the establishment of a state-owned bank, which is accomplished by certain of the provisions for the bank's creation, governance, and capitalization set forth subsections one through eight of the measure. *Exhibit A*, p. 1-3, § 22(1-8). The second was the vesting of discretion in the state-owned bank to transfer funds to Colorado's general fund subject to the provision that any transferred "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." *Exhibit A*, p. 3, § 22(9).

The second subject of #45 would have enabled the state-owned bank to assist the State of Colorado in operating outside of the revenue and spending limits established by Colo. Const., art. X, § 20. Indeed,

the measure expressly indicated that any transferred funds “may be used to enable the state to expand, maintain, or restore essential services and facilities and to enable the state to maintain a balanced budget.” *Exhibit A*, p. 3, § 22(9). The second subject had a “distinct and separate purpose[]” from the first subject – the mere establishment of a state-owned bank – and the two subjects were “not dependent upon or connected with each other.” #55, 138 P.3d at 277. Further, the inclusion of at least two subjects in the measure very likely would have caused surprise to the voters if the Board had set a title for #45. § 1-40-106.5(1)(e)(II), C.R.S. (2013). As a result of these legal defects, the Board properly declined to set a title for #45.

CONCLUSION

For the above-stated reasons, the Court should affirm the Board’s decision that #45 violated the single subject rule.

DATED: October 21, 2013.

JOHN W. SUTHERS
Attorney General

s/ LeeAnn Morrill
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In accordance with C.A.R. 30(f), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1300 Broadway, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

This is to certify that on October 21, 2103, I electronically filed a true and correct copy of the foregoing **OPENING BRIEF OF TITLE BOARD** with the Clerk of the Court via the ICCES e-filing system which will send notification of such filing to the below individuals:

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**2014 Initiative for an Amendment to the Colorado Constitution
to establish a state-owned bank in Colorado**

#45

**The original final typewritten draft
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by

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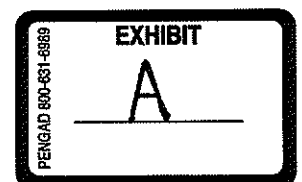
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JUL 23 2013

**ELECTIONS/LICENSING
SECRETARY OF STATE**

S. WARD

4:30 P.M.



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

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 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.

(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 AND SUSTAINED PROSPERITY COMES IN LARGE PART FROM PUBLIC MONEYS CREATED AND MANAGED IN THE PUBLIC INTEREST.

(2) **Effective date.** THE EFFECTIVE DATE OF THIS SECTION SHALL BE JANUARY 1, 2015.

(3) **Term definitions.**

(a) "SOUND BANKING PRACTICES" MEANS 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.

(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.

(c) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, PARTICULARLY THOSE OF THE STATE OF COLORADO, SUCH AS THOSE ENUMERATED IN SUBSECTION (4) OF THIS SECTION.

(d) "ANY LIMITATIONS IMPOSED BY ANY STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS" MEANS ANY AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO OR COLORADO LAW THAT CONFLICTS WITH OR RESTRICTS THE EXECUTION OF THIS AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, THE SOLE PURPOSE OF WHICH IS TO ESTABLISH A PUBLICLY OWNED STATE BANK THAT EFFECTIVELY PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (4) OF THIS SECTION.

(4) **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 THAT SUPPORT 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 ISSUE BONDS, IF DEEMED NECESSARY BY THE BOARD OF DIRECTORS OF THE BANK, FOR THE SOLE PURPOSE OF ESTABLISHING ADEQUATE CAPITALIZATION OF THE BANK. 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 SUBSECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

(5) 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 SECTION, 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, 2015, IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL FIVE DISTRICTS, TWO OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND THREE OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. TWO YEARS LATER, WHEN THE TWO-YEAR TERMS EXPIRE, SAID TWO DISTRICTS SHALL ELECT MEMBERS TO TERMS OF FOUR YEARS. FOUR 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 IN CONJUNCTION WITH THE GENERAL ELECTION.

(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 SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES, WHICH SHALL BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. THE SECRETARY OF STATE SHALL SET ALL ELECTIONS IN ACCORDANCE WITH THIS SUBSECTION. OFFICIALS SO DESIGNATED BY LAW SHALL CONDUCT ALL ELECTIONS SPECIFIED, IN ACCORDANCE WITH THIS SUBSECTION.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2016.

(6) 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 FORTH BY THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

(7) Rules and Regulations of State Bank. FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2016, 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.

(8) Capitalization of State Bank. THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, AND FUNDS GENERATED BY BONDS, IF DEEMED NECESSARY BY THE BOARD OF DIRECTORS OF THE BANK IN ORDER TO GENERATE SUFFICIENT CAPITALIZATION OF THE BANK, AS NOTED IN SUBSECTION (3) OF THIS AMENDMENT, 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 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 AS SET FORTH IN THIS SECTION.

(9) 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. SUCH FUNDS MAY BE USED TO ENABLE THE STATE TO EXPAND, MAINTAIN, OR RESTORE ESSENTIAL SERVICES AND FACILITIES AND TO ENABLE THE STATE TO MAINTAIN A BALANCED BUDGET. SURPLUS FUNDS IN THE ACCOUNTS OF THE BANK SHALL NOT BE INCLUDED IN THE

DETERMINATION OF A BALANCED BUDGET. SUCH FUNDS SHALL SERVE AS OPERATING CAPITAL FOR THE BANK, AT THE DISCRETION OF THE BOARD OF DIRECTORS AND MANAGEMENT OF THE BANK.

Ballot Title Setting Board

DATE FILED: October 21, 2013 9:11 PM

Proposed Initiative 2013-2014 #45¹

Hearing August 21, 2013:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 2:07 p.m.

¹ Unofficially captioned "Establishment of a State-owned Bank" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



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AUG 26 2013

S.WARD
9:33AM

STATE OF COLORADO

ELECTIONS/LICENSING
SECRETARY OF STATE
October 21, 2013 9:14 PM

INITIATIVE TITLE SETTING REVIEW BOARD

In re Ballot Title and Submission Clause for 2013-2014 Initiative #45 ("Establishment of a State-owned Bank")

PROPONENTS' MOTION FOR A REHEARING

Robert Bows, designated representative for Proposed Initiative 2013-2014 #45, hereby seeks correction of the Title Board's action in denying the setting of title for said initiative, as a result of the facts and reasons stated below:

1. A hearing to set the ballot title for 2013-2014 Initiative #45 (hereinafter referred to as "Initiative"), a measure for which Bows and Bosch are named as proponents, was held on August 21, 2013.
2. The Board found that, based on the following reasons set forth the by one of its members, Mr. Dan Domenico, it did not have jurisdiction to set title, as it claims that the Initiative violates the single subject provision of the constitution of the state of Colorado [Article V, § 1 (5.5)].
3. In support of this claim, Mr. Domenico reasons that the Initiative has two subjects: (1) creating a state-owned bank to perform various actions; and (2) exempting the revenues collected from these actions from any legal restrictions, namely, as he sees it, TABOR (Article X, § 20).
4. However, Mr. Domenico's reasoning and the Title Board's de facto agreement to said reasoning is in direct conflict with a ruling of the state Supreme Court (a) and an initiative referred by the present session of the general assembly (b) for the 2014 ballot, to wit:

a. In setting titles for initiatives, the Board is directed to "apply judicial decisions construing the constitutional single-subject requirement for bills," and is advised to "follow the same rules employed by the general assembly in considering titles for bills." § 1-40-106.5(3). ... The General Assembly has directed that the single subject and title requirements for initiatives be liberally construed, "so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum." § 1-40-106.5(2). [*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, 124-25 (Colo. 1995)]

b. (d.3) NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY



REVENUES GENERATED BY THE RETAIL MARIJUANA EXCISE AND SALES TAXES IMPOSED PURSUANT TO PARAGRAPHS (d.1) AND (d.2) OF THIS SUBSECTION (5), AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION HELD IN NOVEMBER OF 2013, MAY BE COLLECTED AND SPENT AS VOTER APPROVED REVENUE CHANGES WITHOUT ADDITIONAL VOTER APPROVAL. (Senate Concurrent Resolution 13-003, p. 6, lines 19-27)

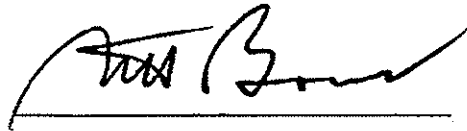
5. In other words, the state supreme court directs the title board (4.a. above) to liberally interpret the provisions of the single subject law and to follow the same rules as the general assembly in setting title.

6. In turn, the general assembly, in enacting Senate Concurrent Resolution 13-003 (4.b. above), does not consider exempting revenues from "Section 20 of Article X of the state constitution or any other provision of law" as a second subject.

7. Therefore, the title board's basis for claiming the Initiative violates the single subject provision is in conflict with the current practice of the general assembly, which the supreme court directs the title board to follow.

Proponents respectfully request the title board to set these matters for rehearing and thereby set title for the Initiative.

Robert Bows



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Ballot Title Setting Board

DATE FILED: October 21, 2013 9:14 PM

Proposed Initiative 2013-2014 #45¹

Hearing August 21, 2013:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 2:07 p.m.

Rehearing September 4, 2013:

Motion for Rehearing denied.

Hearing adjourned 2:23 p.m.

¹ Unofficially captioned “**Establishment of a State-owned Bank**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

