

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203</p>	<p>DATE FILED: October 23, 2013 2:39 PM</p>
<p>ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2)</p> <p>Petitioners: Robert Bows and Jason Bosch, Proponents</p> <p>v.</p> <p>Respondents: Title Board: Suzanne Staiert, Jason Gelender, and Daniel Domenico</p> <p>v.</p> <p>Respondents: Don Childears, Objector Barbara M.A. Walker, Objector</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for the Petitioners:</p> <p>Earl H. Staelin Onsager, Staelin, & Guyerson, LLC 1873 S. Bellaire St., Suite 1401 Denver CO 80222303-512-1123 Fax 303-512-1129 Email: estaelin@osglaw.com</p>	<p>Supreme Court Case Number: 2013SA231</p>
<p style="text-align: center;">AMENDED OPENING BRIEF OF PETITIONERS BOB BOWS AND JASON BOSCH</p>	

CERTIFICATE OF COMPLIANCE

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

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

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

For the party raising the issue:

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

For the party responding to the issue:

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

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


Earl H. Staelin

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STATEMENT CONCERNING ISSUES PRESENTED FOR REVIEW

1. Under the provisions of Colorado law requiring an initiative to contain a single subject, does the fact that the initiative provides that the income and expenditures of the bank shall not be limited except upon sound financial and public policy considerations deprive the Title Board of jurisdiction to set title?
2. Under the provisions of Colorado law requiring an initiative to contain a single subject, does the fact that the initiative provides that if the bank pays a portion of its income to the general fund of the state, that portion after receipt by the general fund shall not be limited and may be used to expand, maintain, or restore essential services and facilities of the state deprive the Title Board of jurisdiction to set title?
3. Under the provisions of Colorado law requiring an initiative to contain a single subject, does the fact that the initiative authorizes the bank to issue bonds or multiple-year obligations for the sole purpose of providing adequate capitalization for the bank and without specifying the amount deprive the Title Board of jurisdiction to set title?
4. Under the provision of Colorado law requiring an initiative to be clear and not confusing, does the fact that the initiative does not specify the

dollar amount of multi-year obligations , leaving it to the board of directors to decide after due diligence, render the initiative confusing such that the Title Board does not have jurisdiction to set title?

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This original proceeding is brought pursuant to C.R.S. §1-40-107(2) seeking review of the action of the Ballot Title Setting Board on August 21, 2013 by which it declined to set a title for proposed initiative #45. Proponents Bob Bows and Jason Bosch timely filed a Motion for Rehearing before the Title Board pursuant to C.R.S. § 1-40-107(1). At the rehearing on September 4, 2013 the Title Board denied the Petitioners' Motion for Rehearing. Proponents timely filed their Petition for Review in this Court, together with certified copies of the required documents within five business days after the date of hearing on the Motion for Rehearing as required by C.R.S. § 1-40-107(2).

II. NATURE OF THE MEASURE, COURSE OF PROCEEDINGS, AND DISPOSITION BEFORE TITLE BOARD.

A. NATURE OF THE MEASURE. Initiative #45 would require the state to establish a bank to be owned by the state of Colorado by adding a new section 22 to Article X of the Colorado Constitution. The bank would be 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. (subsection 4)

The purpose of the bank would be to strengthen the economy of Colorado and to protect it from the cyclical ups and downs caused by private banks and financiers who control the creation of money and credit in the United States (subsection (1)(a)). The bank would be governed by a five-member board of directors, to be elected from five districts throughout the state (subsection 5). The board of directors would appoint a president experienced in banking. The remaining management would be hired according to the standards of the state personnel system (subsection 6(c)). The management of the bank would receive advisory input from a nine-member advisory board selected from a cross-section of the economy appointed by the Governor and confirmed by the General Assembly. (subsection 6(a)).

Capitalization of the bank is provided for in subsection 8 and consists of all taxes, revenues, and other funds of the state. If deemed necessary by the board of directors of the bank, it may issue bonds or multiple-year obligations “for the sole purpose of establishing adequate capitalization of the bank” (subsection 4).

The debts and obligations of the bank are backed by the full faith and credit of the state of Colorado, and the bank is not required to join the Federal Deposit Insurance Corporation (FDIC). The measure also provides that the revenue and income of the bank shall not be limited, and that its expenditures shall not be restricted, except upon sound financial and public policy considerations (subsection 4). In addition, the bank may transfer funds from time to time to the general fund of Colorado, and the funds transferred are not subject to limitations imposed by the Colorado Constitution or other state laws, and may be used to expand, maintain, or restore essential services and facilities, and to enable the state to maintain a balanced budget (section 9).

**B. COURSE OF PROCEEDINGS AND DISPOSITION BEFORE
TITLE BOARD.**

At the first hearing of the Ballot Title Setting Board (“Title Board”) on August 21, 2013 the board declined to set a title for proposed initiative #45 on the ground that the initiative contains multiple subjects on a 2 to 1 vote. The proponents timely filed a motion for rehearing. At the end of the rehearing on September 4, 2013 the Title Board voted 2 to 1 to deny the motion for rehearing. Proponents timely filed a Petition for Review in this Court.

C. STATEMENT OF THE FACTS

Initiative #45, subsection 4 provides that there shall be no limitation on the income of the bank or the expenditures of the bank, except upon sound financial and public policy considerations, and that the measure supersedes any conflicting constitutional or statutory provision, namely the limitation of income and expenditures under Const. Article X, §20(1), (4) and (7)).

Objectors objected that this provision violates the single subject rule (Rehearing Before Title Board, September 4, 2013, Michael Hoke, 15/4 – 15/11). Proponents assert that the provision is necessarily connected to the operation of a state-owned bank, since the bank has the same authority as other banks in Colorado (subsection 4, third sentence), although the bank must follow the “sound banking practices” of non-profit banks operated in the public interest, such as the Bank of North Dakota, rather than the speculative and fraudulent practices engaged in by private for-profit banks (see examples provided to the Legislative Council at the Review and Comment Hearing on July 22, 2013 at 11:20 – 29:08; e.g. 11:20- and 14:30- studies showing the small concentration of 147 bank holding companies controlling most of the world’s economy; 16:04- rigging of financial markets through high speed trading; 17:00- the LIBOR scandal involving manipulation of interest rates; 18:11- rigging of the municipal bond market, and

betting on derivatives; 21:14- interest rates swaps and derivatives; 22:00- the MERS system problems and the confusion and loss of reliable deed records; 26:50- commodity trading and speculation). Under subsection 4 the state-owned bank's practices must be based upon "sound financial and public policy considerations" (as defined in subsections 3(a) and 3(c), respectively). (Certified Audio CD of Review and Comment Hearing

Initiative #45 appears to be the first initiative considered by this Court that involves the potential creation of substantial new revenue for the state that does not involve a new or increased tax or fee or an increased valuation for tax purposes. The entire focus of Colorado Const. Art. X, §20 (the TABOR amendment) is upon income or revenue of the state produced by new or increased taxes and fees to taxpayers. The term "revenue" is not defined in TABOR (see definitions (Article X, §20(3)), and none of its examples of taxes or charges that require a vote of the electorate lists "interest" (Article X, §20(4)(a), (5), and (6)). Thus, the entire premise for limiting the growth of government and restricting revenue and expenditures appears to be that all new income of the state involves new or increased taxes and fees.

Second, the measure provides that the bank may from time to time pay money to the general fund of the state, and that such money once transferred shall

not be limited nor shall the expenditures associated with such transferred funds be limited by the provisions of the Colorado Constitution, namely Art. X, §20 (9) of TABOR. Objectors assert that this provision violates the single subject rule. (Rehearing before Title Board, September 4, 2013, Hermine Kallman, Lewis Roca Rothgerber, for Elector Barbara Walker, Executive Director of Independent Bankers of Colorado, Tr. 25/14 – 26/15).

Proponents assert that this measure is fundamentally different from the tax measures addressed by TABOR because the state-owned bank does not require or involve any new taxes, but rather produces a large amount of new income for the state from existing assets (Hearing before Title Board, August 21, 2013, Robert Bows, Tr. 13/24 – 14/3), and can be expected to provide the equivalent of the average of approximately 20% return on equity per year earned by the Bank of North Dakota, compared to a maximum of 3-4% return on equity in Colorado where the state's funds are instead deposited or invested in the major Wall Street banks and other private financial institutions (Review and Comment Hearing, July 22, 2013; Robert Bows, speaking as Proponent: 1:07:55 – 1:09:11).

Finally, the measure provides that the bank may issue bonds (multi-year obligations) if it deems it necessary for the “sole purpose of establishing adequate capitalization of the bank” (initiative subsection 4), and that it supersedes any

conflicting state constitutional provisions of law, namely Article X, section 20(4)(b) of the Constitution (last sentence of initiative subsection 4). Objectors assert that this provision also violates the single subject rule. (Hearing before Title Board, August 21, 2013, Michael Hoke, 8/24 – 10/1). Proponents assert that such provision is necessary to ensure that the bank will be able to operate with an adequate level of capitalization to fulfill its purposes as a bank under subsection 4. Mr. Domenico commented at the rehearing on September 4, 2013 that he is inclined to “agree with the proponents” on this issue now, because the proponents changed the measure from its wording in 2012-2013 Initiative #39, where the provision did not state that the purpose of the bonds was solely to provide adequate capitalization. (Rehearing, Mr. Domenico, Tr. 17/2 – 17/16).

Mr. Hoke argued that the authority of the bank to issue bonds causes voter confusion (Hearing, August 21, 2013, Tr. 9/22 – 10/1). Mr. Gelender argued that the failure to specify the amount of any bonds would cause voter confusion (Rehearing September 4, 2013, Tr. 27/10 – 27/25). Proponents explain that the decision regarding the amount of capitalization, whether to issue bonds, and if so, in what amount, is a complex decision requiring a thorough evaluation that must be made by the board of the bank (Proponents’ Petition for Review, part D, pp. 3-4)

SUMMARY OF ARGUMENT

The provision of subsection 4 of the initiative exempting the bank's revenues and expenditures from limitations as to amount imposed by the Colorado Constitution or other law is necessary to enable the bank to function effectively as a bank and therefore does not involve a second subject.

Unlike previous initiatives affected by Const. art. X, §20 because they were designed to raise revenue for the state of Colorado by levying or raising taxes or fees on its citizens, Initiative #45 proposes to establish a bank that will generate substantial income from existing assets without any new or increased taxes or fees. The TABOR amendment, Article X, §20, did not envision or even consider such a means of raising revenue and therefore its "preferred interpretation" to "reasonably restrain most the growth of government" and its related provisions restricting revenue and expenditures should be deemed not to apply to initiative #45.

The provision of subsection 9 allowing the state-owned bank to transfer funds from time to time to the general fund and not to restrict such funds after transfer as to revenue or expenditures is necessarily connected to the purpose of the bank to function as an effective bank and agency of the state of Colorado and thus does not involve a second subject. In addition, because TABOR did not envision a

means of raising revenue without the imposition of new or increased taxes or fees, as stated above, Colorado Constitution Article X, §20 (1), and (7)(a) and (b) should be deemed not to apply to initiative #45.

The provision of subsection 4 permitting the bank to enter into multi-year obligations solely to establish adequate capitalization of the bank is essential in order to ensure that the bank will be able to begin operations and to conduct operations at an adequate level of lending, and therefore is necessarily connected to the purpose of the measure and does not involve a second subject. Nor will that measure be confusing to voters. Further, because nowhere in Const. art. X, §20 did it contemplate or enumerate any means of raising revenue without the imposition of new or increased taxes or fees, Const. art. X, §20, and in particular its section governing bonds, §(4)(b), should be deemed not to apply to initiative #45.

STANDARD OF REVIEW

Whether the Title Board has jurisdiction to set title is a question of law that this Court reviews *de novo*. See e.g. *In re Title, Ballot Title & Submission Clause and Summary for 1999-2000*, #219, 999 P.2d 819, 820-822 (Colo. 2000) implicitly construing *de novo* C.R.S. §1-40-107(1), which grants the Title Board jurisdiction over motions for rehearing.

Proponents preserved the issue of there being no limitations on revenue in the Proponents' Motion for Rehearing, paragraph 3. At the hearing on August 21, 2013 it appears that the only issue on which at least two of the Title Board members agreed that the single subject rule was violated was whether the removal of limits on revenue and expenditures on funds transferred by the bank to the general fund of the state in subsection 9 of the initiative involved a second subject. (Mr. Gelender, Tr. 16/1 – 16/21; Mr. Domenico, Tr. 21/1 – 21/12).

Proponents preserved each issue during the rehearing on September 4. Mr. Bows preserved the revenue and spending limits issue by his discussion of various bond measures containing similar wording to initiative #45 (Rehearing, September 4, Tr. 2/15 – 3/25; see also Tr. 6/20 – 7/18). Proponents preserved the multi-year borrowing issue by discussing it at length at pages 10-11 and more specifically on pages 11-12 (Rehearing, September 4, 2013, Tr. 11/3 – 11/16; and 12/7 - 12/11).

The issues were also preserved in Proponents' Petition for Review: section A, exemption of revenues from TABOR limits; section B, transfer of funds from bank to general fund and their exemption from revenue limits; section C, bonds used solely to establish adequate capitalization; section D, whether failure to specify the amount or a limit for the bonds caused confusion; section F, whether using the bank to strengthen the state's economy involves a second subject.

ARGUMENT

I. THE BOARD IMPROPERLY REFUSED TO EXERCISE JURISDICTION TO SET TITLE FOR THE INITIATIVE BECAUSE THE PROVISION EXEMPTING FUNDS IN THE BANK FROM REVENUE AND EXPENDITURE LIMITS IMPOSED BY THE COLORADO CONSTITUTION OR OTHER LAWS COMPLIES WITH THE SINGLE SUBJECT RULE

Colorado law requires “that every constitutional amendment or law proposed by initiative ... be limited to a single subject, which shall be clearly expressed in its title.” C.R.S. § 1–40–106.5(1)(a); *see also* Colo. Const. art. V, § 1(5.5) (“No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title....”). In *People ex rel. Elder v. Sours*, 31 Colo. 369, 403, 74 P. 167, 177 (Colo. 1903) the Court held: “A proposed initiative violates this rule if its text “relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other.”

In *In re Title, Ballot Title, and Submissions Clause* 2011-2012 #3, 274 P.3d 562, 563-76 (Colo. 2012) this court in discussing *Sours* stated:

As such, the subject matter of an initiative must be “necessarily and properly connected” rather than “disconnected or incongruous.” *In re Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative “Pub. Rights in Waters II”*, 898 P.2d 1076, 1079 (Colo.1995). We used the *Sours* test to determine whether the initiative ran afoul of the new amendment: “In order to constitute more than one subject ..., the text of the

measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not dependent upon or connected with each other.” *Id.* at 1078–79; *accord In re Proposed Initiative for 1999–2000 # 104*, 987 P.2d 249, 253 (Colo.1999); *In re Proposed Initiative for 1997–98 # 30*, 959 P.2d 822, 825 (Colo.1998); *In re Amend TABOR 25*, 900 P.2d at 125.

Proponents submit that exempting the funds in the bank from the revenue and expenditure limits of the TABOR amendment, Article X, Section 20 (7)(a) and (d) is essential in order to enable the bank to function as any other bank and to achieve its purposes of lending to meet the needs of the citizens of Colorado as expressed in section 4 of the initiative. Private banks do not set upper limits on their income nor do they set arbitrary limits on their expenditures. Section 4 of initiative #45 provides that the management of the revenue, income, assets, and expenditures of the bank shall not be restricted except upon sound financial and public policy considerations. Such provision is reasonable and any limits to the bank’s income and expenditures that would be imposed by Const. art. X, §20(7)(a) and (d) would substantially interfere with the lending operations of the bank. Therefore, the elimination of restrictions upon the bank’s income and expenditures are necessarily connected to the single purpose of establishing an effective bank, and do not violate the single subject rule.

The courts must liberally construe statutes governing initiatives to “allow the greatest possible exercise of this valuable right”, City of Glendale v. Buchanan, 578 P. 2d 221, 224 (Colo. 1978).

This Court has held that its scope of review of the Board's action on the single subject issue is limited:

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, 125 (Colo. 1995)

In addition, this court had held that when reviewing an action of the Board, it must liberally construe the single-subject and title requirements to ensure that the rights of proponents are not unduly restricted. C.R.S. § 1-40-106.5(2). In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127, 1131 (Colo. 1996).

A. The Restrictions of the Tabor Amendment, Const. Article X, §20 (7)(a) and (d), upon Income and Expenditures Should Be Deemed Not to Apply to Initiative #45 Because Initiative #45 Produces Income in a Manner That Was Not Contemplated or Impliedly Restricted by TABOR.

The proposed state-owned bank created by the initiative is expected to produce a large amount of additional income through lending without the imposition or increase of any taxes or fees upon taxpayers. The TABOR

amendment, Const. art. X, §20, does not envision or mention the production of new income by such means. Instead the only means of raising revenue that it mentions are taxes and fees, and increases in taxes and fees, of valuation of taxable property. (See e.g. Const. art. X, §20(3) through (8), all of which refer to taxes of various kinds and never mention the possibility of interest income. The statement of purpose and the restriction on revenue, spending, and debt set forth in Const. art. X, §20(1): “Its preferred interpretation shall reasonably restrain most the growth of government.... Other limits on district revenue, spending, and debt may be weakened only by future voter approval” should be construed in the context of the remainder of the measure, whose sole focus is on restricting any new or increased taxes or fees by requiring voter approval first.

In addition, Article X §20 does not anywhere define “revenue”. Therefore, this court may and should construe “revenue” to mean only revenue produced by new or increased taxes and fees or re-evaluations as specifically mentioned in Const. Article X, §20. For the same reason, the term “expenditures” should be construed as limited solely to expenditures of funds raised by taxes, fees or other means specifically enumerated in Article X §20.

II. THE BOARD IMPROPERLY REFUSED TO EXERCISE JURISDICTION TO SET TITLE FOR THE INITIATIVE BECAUSE THE PROVISION EXEMPTING FUNDS TRANSFERRED FROM THE BANK TO THE GENERAL FUND FROM REVENUE AND EXPENDITURE LIMITS IMPOSED BY THE COLORADO CONSTITUTION OR OTHER LAWS COMPLIES WITH THE SINGLE SUBJECT RULE

A principal purpose of the bank as stated in section (1)(a) of initiative #45 is to strengthen the economy of Colorado and protect it from cyclical ups and downs, and a related purpose is to lend money to support numerous purposes as set forth in section 4. Many if not most private banks are the subsidiaries of a larger holding company, or in many cases a large corporation. The proposed state-owned bank of Colorado will be a part of or an alter ego of the state of Colorado, like a division or department. Just as private banks routinely transfer a portion of their profits to a parent or holding company without restriction as to how the parent or holding company is to use those funds, so the provision in section 4 of initiative #45 exempting the portion of funds paid from time to time by the bank to the general fund from any revenue or expenditure limits imposed by Colorado law is necessarily connected to the function of the bank as a bank in the same way that private banks in Colorado and elsewhere function. Therefore, the removal of such restrictions on revenue and expenditures derived from funds transferred by the bank to the general fund should be held not to violate the single subject rule.

A. The Restrictions of the Tabor Amendment, Const. Article X, §20 (7)(a) and (d), upon Income and Expenditures Should Be Deemed Not to Apply to Initiative #45 Because Initiative #45 Produces Income in a Manner That Was Not Contemplated or Impliedly Restricted by TABOR.

Proponents adopt and incorporate here the facts and reasoning set for above in part I (A).

III. THE BOARD IMPROPERLY REFUSED TO EXERCISE JURISDICTION TO SET TITLE FOR THE INITIATIVE BECAUSE THE PROVISION AUTHORIZING THE BANK TO ISSUE BONDS SOLELY FOR THE PURPOSE OF ESTABLISHING ADEQUATE CAPITALIZATION TO FULFILL THE PURPOSES OF THE BANK COMPLIES WITH THE SINGLE SUBJECT RULE

Section 8 of initiative #45 expressly provides that the issuance by the bank of bonds or multi-year obligations would be done only if deemed necessary by the board of directors, and in that event would be solely to establish adequate capitalization of the bank. “Adequate capitalization” is defined in section 3 of the initiative as capitalization adequate to meet its reserve requirements necessary to enable the bank to fulfill its purposes as described in section 4 of the initiative. Because it is anticipated that the bank would regularly earn a roughly 20% return on equity each year, it is probable that any bonds would be completely repaid in about four years. Just as the bank of North Dakota issued bonds in order to establish the capitalization necessary to begin operations, so the authorization to issue bonds will be necessary in order ensure that the bank will able to begin

lending operations. Therefore, the authorization to issue bonds for the sole purpose of capitalization does not constitute a second subject.

A. The Restrictions of the Tabor Amendment, Const. Article X, §20 (7)(a) and (d), upon Income and Expenditures Should Be Deemed Not to Apply to Initiative #45 Because Initiative #45 Produces Income in a Manner That Was Not Contemplated or Impliedly Restricted by TABOR.

Proponents adopt and incorporate here the facts and reasoning set for above in part I (A).

B. THE BOARD IMPROPERLY REFUSED TO EXERCISE JURISDICTION TO SET TITLE FOR THE INITIATIVE BECAUSE THE PROVISION AUTHORIZING THE BANK TO ISSUE BONDS WITHOUT SPECIFYING THE AMOUNT THEREOF DOES NOT CREATE CONFUSION

The "confusion clause", C.R.S. §1-40-106.5 (1)(e) (II), provides that some of the practices intended to be "inhibited" by the single subject rule is "To prevent surreptitious 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".

Mr. Gelender of the Title Board argued that the fact initiative #45 does not specify the amount of any bonds to be issued by the bank renders the measure "confusing" such that the Board should refuse to set title. As explained in paragraph D of Proponents' Petition for Review, the determination of which assets and funds of the state are available for capitalization, how much capitalization is necessary, and how much in bonds should be issued are complicated questions

which the initiative reserves for the board of directors of the bank only after a thorough evaluation. The fact that it is expected that any bonds will be promptly repaid within about four years based upon the anticipated income of the bank, and the fact that the bond proceeds can only be used for capital reserves, ensures that the measure will not confuse the voters nor effect any surprise or fraud upon the voters.

CONCLUSION

For all of the foregoing reasons, Proponents request that the Court reverse the action of the Title Board and approve the initiative under the single subject rule.

Dated: October 23, 2013

Respectfully submitted,

/s Earl H. Staelin

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2013, the Petitioners' AMENDED OPENING BRIEF was filed with the Court and served upon counsel below via ICCES, and copies are also being delivered via HAND DELIVERY OR OVERNIGHT DELIVERY SERVICE to counsel listed below:

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

DATE FILED: October 23, 2013 2:45 PM

#45

**The original final typewritten draft
which has the final language for printing of the proposed initiative**

by

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RECEIVED

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.

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AUDIO TRANSCRIPTION

DATE FILED: October 23, 2013 2:46 PM

TITLE BOARD HEARING

August 21, 2013

BOARD MEMBERS: SUZANNE STAIERT, JASON GELENDER,
DANIEL DOMENICO

1 MS. STAIERT: Okay. Good afternoon. This is a
2 meeting of the Title Setting Board pursuant to Article 40
3 of Title 1, CRS. The time is 1:30. The date is -- help me
4 with the date.

5 UNIDENTIFIED SPEAKER: 21st, August.

6 MS. STAIERT: August 21, 2013. We're meeting
7 in the Secretary of State's Aspen Room, 1700 Broadway,
8 Denver, Colorado.

9 The Title Board today consists of myself,
10 Suzanne Staiert, Deputy Secretary of State, on behalf of
11 Scott Gessler; Dan Domenico, Solicitor General, designee of
12 Attorney General John Suthers; and Jason Gelender, Senior
13 Attorney Designee of the director of Office of Legislative
14 Legal Services, Dan Carton. Also to my left is Steve Ward
15 of the elections division.

16 Today we are meeting consider title setting for
17 one hearing. There are two titles for each measure. Any
18 changes adopted to the title would then be adopted in a
19 question.

20 For anyone who wishes to testify, there is a
21 sign-up sheet on the back table.

22 And this hearing is being broadcast over the
23 Internet from the Secretary of State's Web site.

24 When the Title Board considers a proposed
25 initiative for the first time, the Board will follow three

1 steps.

2 First, the board may wish to ask questions of
3 the proponents. This to ensure the Board understands the
4 proposal.

5 Second, the Board will first determine if it has
6 jurisdiction to set a title. In particular, the Board must
7 determine if the measure complies with the single-subject
8 rule prescribed in Article 5, Section 1, 5.5 of the
9 Colorado constitution, and Section 1-40-106.5 of Colorado
10 Revised Statutes. This is because the Board is prohibited
11 from setting a title for a measure that contains more than
12 one subject.

13 Third, if the Board determines it has
14 jurisdiction to set a title, then the Board will use a
15 staff-prepared draft for discussion purposes. A copy of
16 the staff draft is on the table.

17 Generally we will take testimony first, then the
18 Board will discuss, and vote after testimony is complete.
19 A decision is reached by two or three members of the Board
20 -- two of the three members.

21 Please take note that we're not concerned with
22 the merits of any proposal here. We are only concerned
23 with the setting of title. Furthermore, we are not
24 concerned with legal or constitutional objection to the
25 measures except to the extent such objections relate to the

1 jurisdiction of the Board to set titles or the correctives
2 of the titles in the summaries themselves.

3 Anyone dissatisfied with the decision of the
4 Title Board may file a motion for rehearing within the
5 Secretary -- with the Secretary of State within seven
6 calender days.

7 The only agenda on today's item -- or the only
8 item on today's agenda -- a lot of meetings here -- is
9 20-13, 20-14, Number 45, establishment of a state-owned
10 bank.

11 If the proponents could come forward to the
12 podium and introduce yourselves.

13 (Inaudible.)

14 MR. BOWS: I'm Robert Bows.

15 MR. BOSCH: And I'm Jason Bosch.

16 MS. STAIERT: All right. Does anyone have -- I
17 think we'll take single subject first. We've done this
18 title a couple of other times, and that's always a big
19 issue.

20 So before we get to the merits of it, is there
21 anything the proponents would like to say about
22 single-subject issue?

23 MR. BOWS: Sure.

24 MR. BOSCH: You can go ahead.

25 MR. BOWS: This is obviously a key point in

1 this particular proposal, and so I went and reviewed some
2 of the law and rulings on this. And a couple things I
3 noticed that I think are important is that the General
4 Assembly directed that the single-subject and title
5 requirements for initiatives we liberally construed,
6 whatever that means. I have my own idea.

7 In order to preserve and protect the right of
8 initiative and referendum, it also, in the Colorado
9 constitution, Article 5, Section 1, 5.5, it's says that, of
10 course, no measure shall be proposed by petition containing
11 more than one subject, which shall be clearly expressed in
12 it's title.

13 And then through the passage of this, voters
14 took the affirmative action to eliminate the practice of
15 combining several unrelated subjects in a single measure
16 for the purpose of enlisting support from advocates of each
17 different subject.

18 So also in the Secretary of State's ballot title
19 requirements, in accordance with Colorado law, ballot
20 titles in the fourth main bullet say, Must unambiguously
21 state the principle of the provision sought to be added.
22 This seems rather important to me, and I'll get to my point
23 here in just a minute.

24 Um, and the reason for that is that when I look
25 back over the title that's been given to this proposal, I

1 could see that it could be confusing to voters because of
2 the way it's written. There's this whole series of issues,
3 it seems, or that could misinterpreted as the purpose of
4 this.

5 And so in that regard, I wrote up my own
6 proposed title and sent it to Steven. And I think you guys
7 may have they received that.

8 UNIDENTIFIED SPEAKER: It has been forwarded to
9 the Board.

10 MR. BOWS: Yeah. Okay.

11 And I have reviewed that, actually, and had a
12 slight change with it. But I did that for the purpose of
13 making it clear what the single subject is versus the means
14 by which that purpose, as the law and the rulings on it,
15 the principle, the means by which that principle is -- is
16 going to -- would be instituted should this be passed.

17 So I just wanted to -- I think that was just a
18 key point that I wanted to make before we start, that I
19 think by slightly rearranging the structure of the title,
20 we could be clearer in what the single subject is, the main
21 purpose in principle or whichever term you wish to use, and
22 then the means by which that would occur. And those are
23 two different things, and I think we've been getting
24 confused over this.

25 And the one other thing I would add is that in

1 one of its rulings the Supreme Court said that,
2 furthermore, proposed initiative contains multiple
3 subjects, not only when it proposes new provisions
4 constituting multiple subjects, but also when it proposes
5 to repeal multiple subjects.

6 And I know last time we got into a discussion
7 about all of these things that may or may not be affected
8 by this, this proposal, and I wanted to make it clear that
9 this proposed section doesn't change or repeal any other
10 section of the law except where it conflicts with the sole
11 purposes of the section, in which case they supply wouldn't
12 apply. They're not being repealed.

13 So as a layman, you know, that's -- that's my
14 spin on this. Thank you.

15 MS. STAIERT: Anyone have any questions for the
16 proponents?

17 No? Okay. Thank you.

18 Um, we have two people signed up, and so I'm not
19 sure whether this is on the title or on the single subject.
20 So let me just ask.

21 Jason Dunn, do you want to comment on single --
22 okay.

23 Michael Hoke.

24 MR. HOKE: (Inaudible.)

25 MS. STAIERT: Sure.

1 MR. HOKE: Again, I'm Michael Hoke from
2 Brownstein Hyatt Farber Schreck. We're here on behalf of
3 Elector Don Childears, who's the president and CEO of the
4 Colorado Bankers Association.

5 We've had this conversation a couple of times
6 before already, so I just want to get straight to the point
7 on single subject.

8 This Board denied the last measure, Number 39,
9 on single-subject grounds, and the fact is nothing
10 substantive has changed to affect decision. I think that
11 the easiest way to see that is just to walk through the
12 substantive changes and note that they don't alleviate any
13 of our concerns that we discussed the last time.

14 The first change we note is that they've added
15 a few definitions, one of which purports to set forth the
16 sole purpose of the measure. And, you know, that clarifies
17 maybe the intent of the proponents but does nothing to
18 change the fact that we've got some Tabor issues that we
19 discussed the last time.

20 You've got exemptions from Tabor for debt
21 issuances. You've got exemptions from Tabor on the revenue
22 side that caused serious problems under Supreme Court
23 precedent dealing with single-subject challenges.

24 The next change that we note is that they have
25 purportedly limited the bank's authority to issue debt.

1 Now it says they can only do it to establish adequate
2 capitalization.

3 A couple of things to note: One, again, that
4 doesn't affect the revenue problems at all; two, they still
5 exempt the debt issuances from all of their Tabor
6 restrictions, namely voter approval and, you know, notice.

7 The bank still has complete discretion to issue
8 any amount of debt it thinks appropriate without taking it
9 to the voters. They can set the terms, the maturity, the
10 everything without taking it to the voters.

11 And the third thing I think I want to observe
12 is that even though it may look on its face that they've
13 limited the authority of the bank to issue bonds, really
14 what's happened is they've just hidden that authority.

15 If you look at the definition they added of
16 adequate capitalization, it suggests that capitalization
17 means the reserves required for the bank to issue the loans
18 that they feel necessary or proper to issue, meaning any
19 time that the bank deems it necessary to hold more reserves
20 to back the loans it wants to make, it's authorized to
21 issue bonds.

22 So it hasn't eliminated any of the bank's
23 authority to issue bonds, it's just caused even more voter
24 confusion. It's hidden it. You know, this is precisely
25 what the Supreme Court's talked about in -- in additional

1 measures being coiled up in the folds here.

2 The next change in the measure that I noticed
3 was that they've changed some of provisions dealing with
4 the capitalization. Now, instead of all funds being the
5 capital of the bank, the bank has discretion to decide
6 which state funds to some extent constitute capitalization
7 of the bank.

8 Again, that doesn't alleviate any of concerns we
9 talked about the last time. It just gives the bank more
10 discretion over which funds of the state the bank can
11 exercise control over.

12 And I think the last substantive change that I
13 noticed is -- is pretty telling here. They still authorize
14 the bank to transfer moneys to the state general fund.
15 They still exempt those explicitly from Tabor, but now they
16 have added a statement saying and those funds can be used
17 without limitation to further certain purposes. They've
18 doubled down. They've said, No, we really mean it, we want
19 these funds to be exempt from Tabor.

20 So nothing in the measure has changed from the
21 last time to eliminate any of the multiple subjects that
22 caused this Board to decide that the measure violated the
23 single-subject requirement.

24 And so I think on that basis, the same decision
25 is warranted here. This measure contains multiple

1 subjects. It not only establishes a state bank, but it
2 also exempts certain revenues and debt issuances by a state
3 agency from the provisions of Tabor.

4 And I did want to address one concern that came
5 up in the discussion on Measure 39.

6 Madam Chair, you had expressed the concern that
7 funds deposited in the bank would already have been subject
8 to Tabor limitations, so that if funds then later
9 transferred out of the bank, were exempt from Tabor, it
10 really wouldn't matter the money was subject to the
11 limitations beforehand.

12 But this measure again has made it even more
13 explicit. The purpose of the bank is to go and raise funds
14 by making profits on loans and transfer those profits that
15 were never subject to Tabor limitations to the State
16 general fund, again exempting them from revenue caps.

17 And so it's clear to me that we have all the
18 same problems we had the last time. Nothing's been fixed,
19 and so the same decisions is warranted.

20 Thank you.

21 UNIDENTIFIED SPEAKER: (Inaudible.)

22 MS. STAIERT: Oh, you -- oh, okay. That's fine.

23 So let me ask the proponents: With regard to
24 specifically what was said -- I understand your first time
25 up you were talking more about what you think the case law

1 is related to single subject, but as to whether you've made
2 any substantive changes that you believe would correct any
3 deficiencies that were found last time, if you could limit
4 your comments to that.

5 MR. BOWS: Well, part of the issue seems to be
6 interpretation. I mean, personally, the fact that
7 Mr. Hoke, you know, goes through this enumeration of
8 conflicts with Tabor I don't see is relevant whatsoever
9 because the logic that he has presented -- this was true
10 last time, and it's true today -- is that -- and this is
11 why I use this -- the term be liberally construed. What
12 does this mean? Okay.

13 So we have a proposed law. We can look at this
14 law in two different ways, right? We can look at it as
15 some -- something outside of the body of constitutional and
16 statutory law and criticize it and come up with all of
17 these places that might conflict or we can look at this
18 proposed section as how it would operate from within that
19 body of law.

20 Now, if I were, perhaps, Mr. Hoke arguing this,
21 I would use both ways of doing it, which what we saw last
22 time where if this were a law, people could spend any
23 amount of money doing anything, ignoring the sound banking
24 principles set forth in this law, which are, perhaps,
25 different than what someone working for the for-profit

1 banks might consider to be sound banking practices because
2 certainly public banks and for-profit banks have much
3 different practices, and I could readily present a whole
4 series of articles that would support my position on that.
5 Okay.

6 So the question is, you know: How is this
7 liberally construed? If it's construed as being as if you
8 are seeing it inside of the body of law, right, then it
9 simply is the means by which the principal purpose of the
10 section is facilitated. Okay?

11 MS. STAIERT: And -- and let me just stop you,
12 because I --

13 MR. BOWS: Sure.

14 MS. STAIERT: -- understand what your argument
15 is.

16 MR. BOWS: Okay.

17 MS. STAIERT: I guess my question is: Do you
18 have any comment on whether you made any changes to it --

19 MR. BOWS: Okay.

20 MS. STAIERT: -- that you believe would
21 alleviate those issues?

22 MR. BOWS: Yeah. Well, as far as the Tabor
23 issues go, which I did not say the last time, but I think
24 it's worth stating, or maybe I mentioned it once, but as
25 Mr. Hoke said, these -- these are profits from lending.

1 They are not tax moneys. Okay? And as I understand, the
2 purpose of Tabor was to deal with the raising of taxes and
3 issues, that's generally how it's -- you know.

4 So I did try to clarify a few things in this to
5 make it more clear. For example, on one of the issues
6 Mr. Hoke raised on the issue of bonds, right? And perhaps
7 it could have been clearer what I really meant with that
8 was the capitalization of the bank is what I'm talking
9 about is the initial capitalization, although I did not use
10 that term, right?

11 Secondly, this idea that they could issue bonds
12 for whatever amounts of money, you know, that's not sound
13 banking practices, you know, and -- and part of the reason
14 that I -- you know, it may be sound banking practices in
15 for-profit banking, but we see where that has led. As I
16 said, I brought pretty of materials to show that, but
17 that's not sound bank practices in terms of a public bank
18 to use bonds for deficit spending. I -- I just reject
19 that. I do completely, and I don't think that there is any
20 proof of that anywhere that Mr. Hoke could show.

21 You know, as far as the transfer goes, I still
22 insist that the -- that, you know, this doesn't -- this
23 doesn't make it multiple subjects, because a bank would
24 transfer these moneys and not be subject to other
25 restrictions. It doesn't make it multiple subject. It's

1 just enabling the bank to do it just -- just like the bank
2 of North Dakota does its job. That's how the bank does it.

3 And, you know, why the -- the profits -- or in
4 this case it would be surplus since it's a nonprofit body
5 -- would come under this law from, you know, a nontaxable
6 -- nontax source is beyond me. I don't understand the
7 logic of that.

8 That's the best I can answer.

9 MS. STAIERT: Okay. Anyone have any questions?

10 No?

11 All right. Thank you.

12 MR. BOWS: Uh-huh.

13 MS. STAIERT: Discussion by the Board.

14 MR. DOMENICO: I guess my preliminary thought
15 would just be that, you know, we found that we had multiple
16 subjects last time because of the potential consequences.
17 I don't see any changes to the language of the measure that
18 seemed to make a difference at this point.

19 That would be my main comment.

20 MR. GELENDER: Yeah. I agree. I think we are
21 essentially in the same place we were before. I'm not sure
22 I agree with Mr. Hoke that it's really worse, but the same
23 problem exists, which is even setting aside kind of the
24 income side of things to the bank, it seems to me there's
25 -- there's two subjects. One is creating a bank to do

1 these things at the beginning of the measure, basically
2 setting up a bank that would, A, allow the state to take
3 its funds out of the private for-profit banks, and also
4 allow individuals, presumably, or businesses to use this
5 bank to deposit their money or invest in through bonds
6 without engaging in what the measure calls the speculative
7 and fraudulent practices of those banks, which to me is a
8 perfectly legitimate single subject, but then Section 9,
9 again, still creates to me what clearly is an additional
10 subject, which is exempting the money that this bank
11 creates from the limitations of Tabor. Tabor is not just
12 about raising taxes. It's about limiting the growth of
13 government.

14 So Section 9 is clearly about allowing the funds
15 that the bank creates to enable the state to expand,
16 maintain, or restore essentially services and facilities,
17 et cetera, and that is a different subject than creating a
18 bank, creating a mechanism for the state to spend more
19 money is a separate subject. Tabor today would be multiple
20 subjects. That's -- the Supreme Court's made that very
21 clear.

22 And so those two subjects, expanding the
23 government and creating a state-owned bank, to me are
24 separate subjects. Even if I agree with the proponents
25 that there may be sort of one kind of purpose here, one

1 underlying motivation, but they go about it through
2 multiple subjects, and that's no less of a problem in this
3 version than the last one.

4 MS. STAIERT: And substantively I don't see a
5 change. I voted for a single subject last time. I'm not
6 sure that I, at this point, think it constitutes two, but I
7 think the analysis by the proponent that, you know, this
8 isn't tax money and therefore it doesn't have anything to
9 do with Tabor is just -- I mean, the problem is I think you
10 could get to the same point without doing this, but the
11 fact is Tabor has to do with the base, and it doesn't
12 matter whether you collected it by taxes or some other way.
13 If you move it back into the general fund and it
14 contributes to the base, then it has to do with Tabor, and
15 that is the limitation that you're seeking to expand. So
16 it's not just about taxes.

17 I mean, having said that, I'm not sure it
18 necessarily creates two subjects, but the problem wasn't
19 removed, and so I'm just not sure, you know, why we're back
20 here.

21 But if you want to comment really specifically
22 on that point, I mean --

23 MR. BOWS: I have a question --

24 MS. STAIERT: Okay. Go ahead.

25 MR. BOWS: -- for Mr. Domenico.

1 MS. STAIERT: I don't know that we're going to
2 answer questions but --

3 MR. BOWS: Okay. Well, here's -- here's the
4 difficulty I have here, is that -- is Mr. Domenico makes
5 the point here that in Section 9, by exempting this money,
6 it creates a separate subject. My contention would be that
7 the objectives of the bank, as stated at the beginning of
8 the measure, right, that that's why this money is exempted.
9 Okay? So it's really to fulfill those objectives.

10 I don't see it -- and I agree with you that it's
11 not a separate subject because of that. It's -- it's along
12 those same very lines. It's pointed towards the same
13 objective that's stated at the beginning of the section in
14 number one, I believe, you know, where there's a list of
15 why we are doing this, and that's why.

16 MS. STAIERT: I mean, I understand that, but
17 with Tabor --

18 MR. BOWS: Yeah.

19 MS. STAIERT: -- as we've just stated, the
20 Supreme Court has said unequivocally that it wouldn't have
21 passed single subject. Tabor did the same thing. The
22 purpose is to limit the growth government, and then it went
23 through and it -- you know, just like you said, Tabor has
24 to do with taxes. That's what people thought. You know,
25 that's what people thought the single subject was, but it

1 really had, you know, six or seven provisions.

2 MR. BOWS: Okay. So then this raises the
3 question for me is that within the constitution and -- and
4 statute of the state of Colorado, it's hard for me to
5 imagine that there aren't conflicts in laws all over the
6 place.

7 MS. STAIERT: Conflicts in laws, sure, but
8 we're talking about whether one particular constitutional
9 provision is a single subject, not whether it conflicts.
10 That's not our jurisdiction.

11 MR. BOWS: Well, why -- why would its conflict
12 make it a separate subject? I -- I just don't get it,
13 logically speaking, you know. If -- if it conflicts, okay,
14 it conflicts. Why does that make it a separate subject?
15 You know, that's my question. Okay. It's not something --

16 MS. STAIERT: Right.

17 MR. BOWS: I agree (inaudible). It's
18 rhetorical, but that would be -- that would be because how
19 you rule on this, you know, is obviously important. It
20 will affect what I do next --

21 MS. STAIERT: Sure.

22 MR. BOWS: -- in term of how I rewrite it. And
23 so it's important for me to understand the logic, right,
24 because in some ways what I'm -- what I get here is -- is
25 like a court ruling. You know, it's cutting it off early,

1 right? I can appeal this to the Supreme Court, of course,
2 but -- but in a sense it's a ruling at a certain level,
3 right? And I need to understand it if we're going to get
4 anywhere on this.

5 So -- and so that's why I'm, you know, in a
6 sense asking you a question. Okay. So there's a conflict
7 here. Why does that make it a second subject? That's it.

8 MS. STAIERT: Okay. Any other comments from
9 the Board?

10 MR. DOMENICO: I'd just -- my explanation of
11 why there's a conflict, why this creates a second subject
12 is because it -- it seeks to do things that are not
13 necessarily related to one another. One is creating a bank
14 where the state can put its money and where the people
15 could put their money. Two is creating a mechanism by
16 which the state budget can grow without being limited by
17 the current limitations.

18 Each of those is a perfectly fine goal, purpose
19 to have. They're not necessarily related to one another,
20 and they're different subjects, and so if someone wanted to
21 come create a state bank, as I think the very first time we
22 saw this, at least if there was problem, I didn't catch it.
23 The first bank seemed to me to be just the first part,
24 creating a bank so the state wouldn't be investing in
25 private, for-profit banks.

1 But when you also are trying to evade, exempt
2 yourself, exempt the entire state budget from current
3 constitutional limitations, which is what this does, then
4 that's a separate subject, and you have to ask -- you have
5 to convince the voters separately of those two things, if
6 you want do those two things. I think that's what the
7 single subject requirement does.

8 If this were subject to all the revenue and
9 expenditure limits, then I don't think there would be a
10 problem, but it -- it specifically says it's not, and those
11 are two separate things you have to get approval from
12 separately.

13 MS. STAIERT: Do you have anything?

14 MR. BOWS: (Inaudible.)

15 MS. STAIERT: Related to --

16 MR. BOWS: The only thing I would clarify about
17 that is that the single purpose isn't just to create a
18 state bank. It's to create an effective state bank and --

19 MS. STAIERT: I know, but I think we're just
20 trying to --

21 MR. BOWS: -- and effective for all of those
22 different reason.

23 MS. STAIERT: Sure. I think we're just trying
24 to answer the question that you asked.

25 Do you have anything, Jason?

1 MR. GELENDER: I'm thinking of whether the
2 question would go to the substance or not or if it goes to
3 Mr. Bows' last point.

4 I think -- actually, I do have a question. I
5 think I would ask, then: Why is it necessary to do these
6 exemptions from the Tabor and other limitations to make
7 this -- allow this bank to be effective?

8 MR. BOWS: I suppose one could argue about what
9 the effects of Tabor have been on the State. Okay. And
10 we'll leave that aside for the moment.

11 But from my perspective, the services provided
12 by the state have been shrinking for a variety of reasons:
13 One, having to do with Tabor; two, having do with the
14 choking of the money supply and other things.

15 MS. STAIERT: But what does that have to do
16 with an effective bank?

17 MR. BOWS: Well --

18 MS. STAIERT: I mean, that has to do with an
19 effective state.

20 MR. BOWS: Well, if -- if -- if the banks -- if
21 the revenues from the bank were subject to Tabor, to those
22 limitation, or whatever other law may restrict that -- you
23 know, it could be Tabor, it could be something else -- if
24 they were subject to that, then we're basically just at a
25 standstill that -- that what we can provide is -- is simply

1 not keeping up with the demands that are needed, and, you
2 know, we're going in the wrong direction.

3 MS. STAIERT: But it not because -- just
4 because you transfer money doesn't necessarily mean that
5 that's going to cause an overage. I mean, there's a
6 formula that goes into Tabor. Why does transferring money
7 I think is the question -- why does having an effective
8 bank have to do with whether you can transfer money out of
9 that bank to the state?

10 MR. BOWS: I don't think the issue is whether
11 you can transfer it. It's whether it's subject to the
12 restrictions of Tabor, as I understood what Mr. Domenico
13 was saying. I'm a little confused on that. I thought
14 that's what he was really saying. It's not so much the
15 transfer, because the transfer is absolutely necessary
16 regardless of whether it would be subject or not. I mean,
17 that's -- that's what the bank's there for is it's the
18 state d/b/a as a bank. That's at least in North Dakota it
19 is.

20 So it's really -- it's really whether that
21 income would be subject to this, and if it were, then it
22 would have a -- you know, it would mean that the tax rates
23 would then necessarily need to be changed or the money
24 raised by taxes would need to be lowered, and there would
25 be perhaps incremental growth, but perhaps -- but my

1 perspective is I'm saying that it wouldn't be adequate to
2 do this because what we are seeing is that more and more
3 state services are becoming privatized all across the
4 country, and that should be an indication that the state
5 and, in particular, in this case, Colorado, is having
6 difficulty maintaining the services that it traditionally
7 was expected to provide.

8 And so you're absolutely right in saying that
9 this is a means for the state to be able to do what certain
10 of its citizens believe is expected of it, which -- which
11 may involve, you know, growth, and it may run counter to
12 some other constitutional amendment, and so be it,
13 That there's two amendments. And in areas where they
14 conflict, this one fulfills its purpose, and in areas I
15 think where -- in other areas Tabor fulfills its function.

16 And it's fairly common, I would say, in law,
17 having seen, you know, read different amendments where --
18 where conflicts between different laws are resolved in this
19 manner. I'm not repelling Tabor, you know. I'm just
20 saying it wouldn't -- you know.

21 MS. STAIERT: Sure.

22 MR. BOWS: Anyway.

23 MS. STAIERT: All right. Anything else?

24 You want to make a motion? You want to comment?

25 MR. DOMENICO: Um, I guess my only comment

1 would be that we didn't set a title on this last time. We
2 found it constituted multiple subjects. I see no changes
3 made to it that change our opinion on that, and therefore,
4 I guess, I would make a motion that we find that proposed
5 Initiative 2013-14, Number 45, has multiple subjects, and
6 we don't have jurisdiction to set a title.

7 MR. GELENDER: Second.

8 MS. STAIERT: All right. All those in favor?

9 (Multiple speakers.)

10 MS. STAIERT: Opposed?

11 No.

12 I think -- the title, we don't need to move to
13 the setting of the title since the Board has found we don't
14 have jurisdiction over the title as it constitutes two
15 subjects.

16 As I stated earlier, any protests of the ruling
17 to the Title Board can be made within seven days to the
18 Secretary of State's Office.

19 And that is the only item on our agenda, and we
20 are adjourned.

21 (Whereupon, the recording was concluded.)

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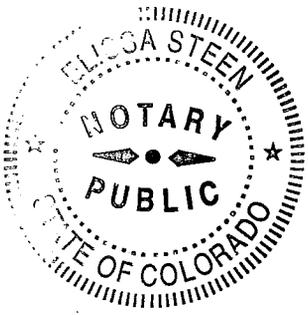
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CERTIFICATE

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

I, Elissa Steen, Registered Professional Reporter and Notary Public in and for the State of Colorado, do hereby certify that this transcript was taken in shorthand by me from an audio recording and was reduced to typewritten form by computer-aided transcription; that the speakers in this transcript were identified by me to the best of my ability and according to the introductions made; that the foregoing is a true transcript of the proceedings had; that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal this 15th day of October, 2013.



Elissa Steen
Professional Shorthand Reporter
and
Notary Public

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AUDIO TRANSCRIPTION

DATE FILED: October 23, 2013 2:46 PM

TITLE BOARD HEARING

September 4, 2013

BOARD MEMBERS: SUZANNE STAIERT, JASON GELENDER,
DANIEL DOMENICO

1 UNIDENTIFIED SPEAKER: All set.

2 MS. STAIERT: Good afternoon. This is a
3 meeting of the Colorado Title Setting Board. It's 1:30.
4 The date is September 4th, I think. We are meeting in the
5 Aspen Room at the Secretary of State's office, 1700
6 Broadway on the third floor.

7 We have one items on the agenda, which is a
8 motion for rehearing from a title setting last -- I think
9 two weeks ago where the Board found we had no jurisdiction.

10 Are both the proponents here?

11 UNIDENTIFIED SPEAKER: Yes.

12 MS. STAIERT: Okay. If one of you could come
13 up to the microphone and just explain your motion or state
14 your basis.

15 MR. BOWS: Thank you. I'm Bob Bows.

16 So as I understood the reasons for inability to
17 set title -- if that's the correct phrase -- there were a
18 couple. I think Mr. Domenico, if I remember, basically
19 what he was saying is that the -- is that the initiative
20 did two different things. It created a bank that could do
21 various things to be effective, and then it was excluding
22 its revenues is how I understood it, which basically was a
23 reference to Tabor, or anything else for that matter, that
24 might fall under that.

25 And so in looking at that, I went back and in

1 the motion cited the same Supreme Court piece that -- that
2 I did that day, which basically says that the Board's
3 directed to apply jurisdictional decisions concerning the
4 constitutional (inaudible) subject requirement for bills
5 and follow the same rules employed by the General Assembly
6 in considering titles for bills, and also that the title
7 requirements be liberally construed.

8 So I ran across an initiative that was on the
9 ballot -- let's see -- this year. It will be on the ballot
10 this year -- that both raises taxes, in this case on
11 medical marijuana, and also had a provision excluding that
12 revenue in the same manner that we had done. And so I
13 thought, well, okay. That's just one.

14 In the meantime, I went back to check and see
15 how common this was, and I found out that it's very common,
16 or reasonably common anyway. In 2011, there was a measure,
17 Proposition 103, shall state taxes be increased \$536.1
18 million annually. And in that title at the bottom, and
19 allowing the additional tax revenues to be collected, kept,
20 and spent, notwithstanding sending any limitation provided
21 by law. Similar.

22 Then we go on to -- let's see. There's a slew
23 of them here -- 2008, Amendment 58. Oh, I should add:
24 it's worth noting that that was an initiative. That came
25 to the ballot as an initiative. Then in 2008 --

1 MS. STAIERT: You're referring to the second
2 one? Because marijuana is not coming to the ballot as an
3 initiative.

4 MR. BOWS: Correct, yes.

5 So -- so these -- so there are -- you know,
6 there are differences that way. There are some that are
7 referred there by the general assembly, which that one was.
8 This one came as an initiative. There are others that came
9 -- referred from the general assembly.

10 But I'm also trying to establish somewhat of a
11 precedent in that there have been many things on the ballot
12 so that -- so what the Supreme Court was writing here,
13 which I take as a generalization, the way they said it. It
14 wasn't just specifically to do with the question they were
15 seeing there, but in general saying to the Title Board, you
16 know, this is -- this is how we see it.

17 So in following what the General Assembly does,
18 right, so we -- I will present a couple examples from the
19 general assembly, and then also show that initiatives have
20 come the same way and have been allowed to raise revenues
21 and exclude Tabor.

22 MS. STAIERT: And when you say "have been
23 allowed," are you referring to initiatives that have been
24 appealed to the Supreme Court or you're just -- you didn't
25 look at that issue?

1 MR. BOWS: Apparently I -- I do not know if any
2 of these have been reviewed, but they were all on the
3 ballot.

4 MS. STAIERT: Right. I mean, I understand
5 you're not a lawyer, but when we talk about precedent, it's
6 generally the precedent of --

7 MR. BOWS: I understand that.

8 MS. STAIERT: -- a higher court.

9 MR. BOWS: I understand that. Perhaps it's a
10 precedent that's never been challenged, but nevertheless,
11 if it hasn't been challenged, there's no, then, legal
12 opinion saying that it's -- that it's also a second subject
13 as well. Okay?

14 So in 2008, Amendment 58, severance taxes on oil
15 and natural -- natural gas industry. State taxes
16 increased \$321.4 million. This was the question. And
17 exempting revenues from the tax and related investment
18 income from state and local government spending limits,
19 that's also in there, okay, as well as actually setting
20 very specific numbers on how those taxes would be spent.

21 Okay. That was an initiative as well. Okay.

22 MS. STAIERT: And that -- I guess the other
23 thing I'd point out is that you understand that those are
24 all under Tabor?

25 MR. BOWS: Yes.

1 MS. STAIERT: I mean, that's how Tabor says you
2 must ask a question. You must -- those are all sections of
3 Tabor. We have to go to the voters to get a tax increase.
4 We have to go to voters to exclude it from the base, but
5 those that you have described are all tax increases which
6 are excluded from the base, and it's all under Tabor.

7 What you did was propose a bank -- and, I mean,
8 I'm just playing devil's advocate because obviously --

9 MR. BOWS: Yeah, that's right.

10 MS. STAIERT: -- I voted every time that I
11 think it is a single subject, but --

12 MR. BOWS: Yes.

13 MS. STAIERT: -- you have proposed a bank that
14 then also has a Tabor clause in it. So you haven't
15 proposed a tax increase that is affected by Tabor. You've
16 propose a bank that doesn't necessary have to interact with
17 Tabor, and that's where we're running into this double
18 subject. You proposed something that doesn't necessarily
19 have to draw in Tabor.

20 MR. BOWS: Well, you're correct in saying that
21 it doesn't have to, in the sense that, you know, you could
22 take North Dakota as an example, let's say, because it's
23 the only other state -- it's the only state that has a
24 public bank. Okay.

25 So it's -- it's income from interest mostly,

1 right, is transferred to the general fund of the state of
2 North Dakota. The -- they don't have a Tabor Amendment
3 there. So for many years, taxes remained the same. It did
4 allow them not to raise taxes, but this was extra money
5 that allowed them to do what they -- whatever they needed
6 to do for services. Right?

7 In the proposed amendment that we have, we do
8 say that sound -- we do attempt to define sound banking
9 practices and give North Dakota as an example of this.
10 Right? So it's not out of the ordinary that a state bank
11 would be able to transfer moneys and not have it directly
12 affect the taxes; that is, if the state took the money from
13 us, they would necessarily at some point, then, probably
14 have to reduce taxes, right, under Tabor because if the
15 growth of the state income excluded a certain amount, and
16 they would have a choice either of keeping taxes where they
17 are or, you know, somehow not taking money from the bank.
18 Okay.

19 So it's not an abnormal thing, it's just that in
20 this situation, right, you're right. It has to refer to
21 Tabor and each of these -- you know, says that in a certain
22 way, says the same thing.

23 I mean, I just wanted to make the citations so
24 that we knew. And maybe you're correct in that they are
25 not exactly parallel or not, that they each have to cite

1 this in raising this money, and so perhaps that's what
2 we're doing. I mean, because the bank, either through its
3 ability to capitalize itself, which is mentioned in the --
4 or through interest income will be raising moneys, and then
5 they would be exempt, right.

6 It's unclear whether that exemption is because
7 this is a -- this is a tax issue or not, although in 2005,
8 Referendum D, state borrowing, there was -- Referendum D
9 was to raise approximately \$2 billion in bonds. And again,
10 that had the same -- shall General Assembly be authorized
11 to make annual appropriations from the state general fund
12 that are exempt from the statutory limitations on the total
13 annual state general fund appropriations and from other
14 legally -- anyway.

15 So this -- this particular one seems to be going
16 a little further in that it's a bond issue, and they're
17 saying not only is it exempt because we're raising money
18 here, but when we spend this, the spending is going to be
19 exempt too. Okay. So perhaps that's a little more
20 parallel situation.

21 But there it is, year 2005, Referendum D, that's
22 the way that reads, and that was a House joint resolution.
23 So that came from there.

24 2004, shall taxes be increased \$175 million?
25 This was the tobacco tax. And, you know, again, it would

1 exempt those revenues from the statutory limitations. And
2 then that came across as an initiative.

3 And then in 2003, Ballot Issue A, revenue bonds
4 for water projects, and this is -- I only have one more
5 after this, but I didn't go back all the way to '93, but I
6 just wanted to show that there was fair number of examples
7 of this ballpark type of thing.

8 So in 2003 revenue bonds for water projects, \$2
9 billion bond question, exempting the proceeds -- the
10 proceeds of sales by the board of water, power, and other
11 assets. So this one too seems to go a little further in
12 saying that they're not asking for an exemption just to
13 raise the money, but also possibly how it's spent, and that
14 was a Senate bill.

15 And then the last one that I have here was 2001,
16 the I-70 fix guideway and -- and that actually was using
17 revenues from the State itself and also exempting the
18 authority from constitutional revenue and spending
19 limitations. So again, they're taking them the other --
20 this extra step.

21 So -- so, you know, that's basically what I
22 found. Some of those I agree with you have to mention
23 Tabor just in order to raise the money, and then it looks
24 like there's a couple that are saying that the -- after
25 raising this money, that the way we spend it would be

1 exempt and wouldn't count, and that's maybe where it
2 matters, if there is a parallel here.

3 Um, the only other thing that I can remember in
4 terms of objections at this point was actually going back
5 to Number 39. This is 45 that we are speaking on today,
6 but, you know, in saying that it wasn't that much different
7 than 39. And Mr. Domenico raised this issue of perhaps the
8 bank being able to issue bonds and then deficit fund the
9 State, essentially.

10 Okay. I just want to go over that a little
11 because, you know, that wasn't obviously our intent, but I
12 had to think about exactly what we had done here to prevent
13 such a thing from happening and whether that was adequate
14 or not in attempting to prevent it.

15 And so can the word capitalization, you know, to
16 you and I means one thing, and it's a little different when
17 we talk about banks, I think, you know.

18 You know, if I say I'm capitalized so I can go
19 to Vegas and spend some money, you know, it's kind of using
20 it colloquial, right? But in terms of a bank, you know,
21 banks -- this is what all the stress tests are about these
22 days, right, is that banks have to reserve a certain amount
23 of their capital, and they can loan against that, and, you
24 know, it serves -- and this is just a pretty general
25 explanation, but it serves to protect them against bad

1 loans and all sorts of stuff like that, and then there's
2 the whole question of fractional reserve lending.

3 So there's a certain ratio there that all
4 capital raised isn't just, you know, sitting there to be
5 loaned out, essentially, that you need a certain, you know,
6 level of capitalization in order to loan at a certain
7 level. So that's -- that's kind of the first gateway. So
8 that reduces the amount of capital available to do this.
9 Okay.

10 Um, and then -- so in -- in the measure it says
11 for the sole -- you know, for the sole purpose of
12 establishing adequate capitalization of the bank. Okay?
13 So it's not -- so this is the first mention where these
14 bonds would be issued to capitalize the bank, so the bank
15 could do what it's supposed to do, and what it's supposed
16 to do, according to the measure, is to make the loans.

17 And the reason I think that there's some
18 substance in that is that the sound banking practices, as
19 the measure defines it, is based on the Bank of North
20 Dakota. And what the Bank of North Dakota does is not
21 issue bonds, take that revenue, and put it into the general
22 fund of the state of North Dakota.

23 It uses its onetime capitalization, which
24 happened somewhere between 90 and 94 years ago, to make
25 loans, and then it's the profit or non -- nonprofit

1 governments, the surplus from the loans that, then, is
2 divided on a different ratio every year, -- this is about
3 since the '50s -- between expanding the loan portfolio or
4 -- or putting it into the general fund. Okay.

5 So that was the second thing about capitalizing
6 the bank.

7 And in the measure it says adequate
8 capitalization of the bank means meeting the reserve
9 requirements necessary to create the loans that enable the
10 state of Colorado to meet the objectives listed in the
11 subsection.

12 So I think that's another potential safeguard in
13 the measure, saying this is what we mean by capitalization,
14 and as I mentioned in North Dakota, the sound banking
15 practices.

16 So that's all I -- I wanted to say just about,
17 you know, the basis for the appel here. I thank you for
18 your time. I'm more than happy to come talk again.

19 MR. DOMENICO: Well, our chair has had to run
20 off with a -- with a coughing episode, so maybe we just
21 take a quick break for a minute while she recovers and we
22 contemplate and then start back up when she's available.

23 Thanks.

24 (A recess was taken at this time.)

25 MS. STAIERT: Okay. Sorry. Go ahead.

1 MR. BOWS: No, I finished.

2 MS. STAIERT: Oh, you finished?

3 MR. BOWS: While you were out, I kept going.

4 MS. STAIERT: Okay. No one had any questions?

5 MR. DOMENICO: Well, we took a quick break so
6 you could -- so you could --

7 MS. STAIERT: Finish my coughing?

8 MR. DOMENICO: Yes. So you could recover and --
9 and be available for any questions. So I think we're just
10 sort of ready to start with --

11 MS. STAIERT: I think we are recording.

12 UNIDENTIFIED SPEAKER: Yeah.

13 MS. STAIERT: All right. Anyone have any
14 questions for the proponent?

15 MR. DOMENICO: I think you asked the main
16 question that I had, which was about whether these examples
17 were all tax and bond, basically money-raising efforts,
18 which strikes me as distinguishable from creating a bank.
19 So I didn't have any other specific questions. I might
20 have a question for the opponents, though.

21 MS. STAIERT: Okay. Do you have anything?

22 MR. GELENDER: I think I'd hold it until
23 opponents --

24 MS. STAIERT: Okay.

25 MS. STAIERT: -- if they're going to say

1 anything.

2 MS. STAIERT: Are there any opponents who wish
3 to -- if you could just come up and identify yourself.

4 MR. HOKE: Michael Hoke from Brownstein Hyatt
5 on behalf of Elector Don Childears, who is the head of
6 Colorado Bankers Association.

7 MS. STAIERT: Okay. I'm sorry, we're going to
8 have to -- we're going to have to break again.

9 MR. HOKE: No problem.

10 (A recess was taken at this time.)

11 MS. STAIERT: Okay. Sorry for the multiple
12 breaks.

13 If the opponents could come up and -- and make a
14 statement.

15 MR. HOKE: Again, Michael Hoke from Brownstein.

16 Just a couple of short points. First is that I
17 think you, Madam Chair, and Mr. Domenico, hit the point
18 right on the head. The initiatives in the referenda and
19 the bills that the proponents addressed are tax or bond
20 issue that's were initiated pursuant to Tabor provisions
21 and not exceptions to them.

22 They didn't, you know, purport to create a new
23 wing of government and allow the revenues from that agency
24 or division to be transferred to the general fund without
25 restriction. They were targeted specifically for

1 generating revenue and -- and initiated initiating pursuant
2 to Tabor, and that's totally different from what we are
3 dealing with here.

4 Here we've got the establishment of a state bank
5 and the exemption of all the revenues of that bank from
6 Tabor limitations, and those are two disconnected intents
7 expressed last time by the proponents. They explicitly
8 said we have, you know, two specific intents. One is to
9 allow revenues to be exempted from Tabor and, two, to
10 establish a state bank, and those just aren't necessarily
11 properly connected.

12 The second thing I would say is that, you know,
13 we agree that the title board, you know, has to interpret
14 the single-subject requirement in accordance with Supreme
15 Court precedent.

16 The fact is that Supreme Court precedent we've
17 discussed on at least two separate occasions, and there are
18 specific initiatives and measures that the Supreme Court
19 has addressed in the past, specifically a whole line of
20 them brought by Doug Bruce, that deal with attempts to
21 exempt issues from Tabor or to change multiple aspects of
22 Tabor at the same time, and they have all been held by the
23 Supreme Court to violate the single-subject requirement.

24 So I think, you know, everything we've said in
25 the past two meetings still holds. Nothing's changed from

1 Initiative 39 in any material respect, and the Supreme
2 Court precedent I think is fairly clear on this. This is
3 multiple subjects.

4 The one last thing I would like to address is
5 Mr. Bows talked about capitalization and how that provides
6 a backstop here. There's some limiting principal that
7 prevents that from being a Tabor issue.

8 And I just looked to the text of the measure
9 itself where capitalization is -- or adequate
10 capitalization is defined as meeting the reserve
11 requirements necessary to create loans that enable the
12 state of Colorado -- not the bank, but the state of
13 Colorado to meet the objectives listed in Subjection 4,
14 which are growth, promotion of agriculture and industry,
15 and certain other things.

16 The measure says capitalization is whatever the
17 bank feels is necessary for the State to meet it's growth
18 objectives. That's a Tabor issue. It's explicitly a Tabor
19 issue. The bank can issue debt here to fund the state's
20 growth except from Tabor. That's a problem. It's another
21 subject.

22 And I believe there were some -- possibly some
23 additional questions I'd be happy to address as well.

24 UNIDENTIFIED SPEAKER: Go ahead.

25 MR. GELENDER: I don't have questions. I'll

1 have comments in a bit, but that's all.

2 MR. DOMENICO: All right. Well, I guess I did
3 have one question. Maybe I'll just start with one comment.

4 I do think I was inclined maybe partly, I guess,
5 because it doesn't necessarily end up changing my ultimate
6 vote, but I -- on the capitalization question, I do think
7 this measure, 45, was better, and then 39, in at least
8 trying to put some brackets around what could be done under
9 the guise of giving out loans for capitalization.

10 So in that sense, I sort of think that I would
11 be inclined to apply the idea of interpreting the measure,
12 the right to the initiative liberally and sort of not read
13 it as opening up the bank to kind of deficit fund the state
14 even though it probably could be interpreted either way.

15 So on that aspect of it, I think I would be
16 inclined to agree with the proponents. But my question for
17 you is whether -- if this were considered an enterprise
18 under Tabor, would that be a problem? What if the State
19 just created a bank that is in many ways exempt from
20 Tabor's limitations because it's an enterprise, would that
21 be okay?

22 MR. HOKE: It might be. Enterprises are exempt
23 from the major Tabor requirements, as far as I understand
24 Tabor, and I can't profess to be a Tabor expert.

25 But this bank cannot be an enterprise under

1 Tabor. It is not authorized to issue the appropriate type
2 of bonds. Under the language of the measure, any bond
3 issued by the bank is a general obligation treasury bond.
4 It's backed by the full faith and credit of the state of
5 Colorado.

6 For an enterprise -- for something to qualify as
7 an enterprise under Tabor, it's my understanding that it
8 has to be authorized to issue special at revenue bonds;
9 that is, bonds backed only by the revenue from particular
10 venue sources, and the bank here just isn't and can't be an
11 enterprise.

12 So it's an interesting question, and I'm not
13 sure whether an enterprise would get around the
14 single-subject requirement or not, but this one isn't an
15 enterprise, and it can't be.

16 MR. DOMENICO: Yeah. I guess I was just trying
17 to think if the state decided to create a venture capital
18 fund and it was wildly successful, would that be okay? I
19 mean, I guess my view is that would sort of be the same as
20 this. I mean, it's a different sort of funding mechanism,
21 but what -- would that run into the same problems?

22 MR. HOKE: It would run into a different set of
23 problems, I think. Again, I'm not a Tabor expert, so there
24 may still be some limitations under Tabor that are
25 applicable to enterprises that I don't know about, but

1 there are also other constitutional limitations, such as
2 pledging capital for private enterprise and competing with
3 private enterprise in certain respects. I mean, there are
4 -- you know, there are other certain limitations that may
5 pop up, and I don't have that measure in front of me, so I
6 haven't done the research to figure out what all of those
7 problems would be but -- but I think you would be, you
8 know, out of the frying pan and maybe into a fire there.
9 There could be other issues that pop up.

10 MS. STAIERT: I actually thought of that same
11 question that I had written down to pass to somebody
12 because I was afraid that I would begin a coughing fit
13 again.

14 But I think one of the issues, and in thinking
15 through that, was that you would necessarily go above the
16 10 percent that an enterprise can receive from government.
17 I mean, usually enterprises are fee-based, so like a
18 utility or something that's really collecting its money in
19 a different way, not from the general fund, but from other
20 fees paid by users.

21 But I think it is an interesting question, that
22 if you created it through an enterprise, then it would all
23 fall under Tabor and what's really the functional
24 difference.

25 MR. HOKE: It's functionally different,

1 definitely. The debt issuance would be a different issue
2 as well, and I think that really is key in this case, that,
3 you know, it's an explicit intent of the proponents here
4 that all of the bank's debt and obligations be backed by
5 the full faith and credit of the state of Colorado, and
6 that just disqualifies it out of hand from being an
7 enterprise.

8 There's no way around that. They can't -- the
9 bank can't issue special revenue bonds if all its bonds are
10 backed by the full faith and credit of the state. It just
11 can't.

12 MS. STAIERT: So when utilities issue bonds to
13 build, I think they take their loans out through the state,
14 and I'm -- I'm not asking. I know you've already said
15 you're not a Tabor expert but --

16 MR. HOKE: Bond -- bond issues issued by
17 districts can be backed by special tax revenues or limited
18 revenue sources, and so lots of districts can issue revenue
19 bonds -- or I shouldn't say districts. Enterprises can
20 issue revenue bonds that are backed by specific revenue
21 sources, but they can -- to be a revenue bond, to qualify
22 something as an enterprise under Tabor, that has to be the
23 only thing backing the bond, right? And here we've got
24 every penny the state has claimed to as backing, any bond
25 issued by the bank, and it's just a fundamental difference.

1 In addition to the totally different model of
2 finance that you pointed out, that most State enterprises
3 are something like a user-fee funded enterprise or, at any
4 rate, have some other additional limitations on where their
5 funds can come from, and that doesn't appear to be the case
6 in this measure.

7 MS. STAIERT: Any other questions?

8 Well, no, I mean, we're going to ask questions,
9 and then we'll -- we'll bring you back up.

10 UNIDENTIFIED SPEAKER: I do have questions.

11 MS. STAIERT: Do you have any other questions?

12 MR. DOMENICO: I don't think so.

13 MS. STAIERT: All right. Thanks.

14 MR. HOKE: Uh-huh.

15 MS. STAIERT: Okay. If you want to come back
16 up in case we have any follow up.

17 MR. BOWS: That was a theoretical -- I'm just
18 asking you a question -- theoretically question. If it
19 were framed as an enterprise, which is not now -- am I
20 taking it right, that that's what you meant, because it's
21 not an enterprise now.

22 MR. DOMENICO: Right. Yeah. I'm just trying
23 to figure out, you know, if the State created an enterprise
24 that was extremely successful, so successful that it went
25 over the -- that it created all of this excess funding,

1 would that -- how would that interact with tabor's revenue
2 limitations?

3 And I guess that was just my question. Yeah,
4 hypothetical enterprise --

5 MR. BOWS: Right.

6 MR. DOMENICO: -- that bumped up against the
7 revenue limitations.

8 MR. BOWS: Right. Yeah. And that -- I think
9 that's a great question because that's one of the questions
10 we have to consider in framing this piece of legislation,
11 you know. We didn't do it as an enterprise, but the
12 thought would be, you know, looking at North Dakota, which
13 is a much smaller state and there's less money involved in
14 everything. I mean, it's only 670,000 people.

15 But if you look at their current tact of how
16 they use their money, starting in the '50s, you know,
17 they've been incredibly successful at it, and it's been a
18 lot of money. And so if that happened here, you know, what
19 is our choice here but to have this clause in.

20 The logic that because this is a bank and that
21 we have a clause in here similar to a couple of the bond
22 propositions where the revenues wouldn't be subject to it
23 and that that alone makes this difference and creates a
24 second subject, that escapes me really.

25 Mr. Hoke said that we said that we had two

1 different intents. I know I would never have said that,
2 because I don't believe that exempting the interest income
3 is a second subject. I mean, we may disagree on that.
4 That's fine, but I wouldn't -- in fact, my whole point in
5 sending you folks a proposed title for this was to show a
6 different way of framing it so that it was -- here's a
7 State bank. Based on what we know about public banks,
8 these are different things that we need to do in order to
9 make it effective, and that's it. All we're trying to do
10 is create an effective state bank.

11 That's just my personal opinion but -- thank
12 you.

13 MS. STAIERT: Any comments from -- I guess I
14 would just start out by saying I don't want to encourage
15 you to submit this as an enterprise because I think you
16 would run into the same problem.

17 I mean, an enterprise would be allowed to keep
18 the money in the enterprise, but I think as soon as you
19 create an enterprise and then you seek to transfer -- I
20 don't think you can do this as an enterprise anyway because
21 it gets more of your funding.

22 But let's say you did, as soon as you seek to do
23 what your ultimate goal is, which is to transfer that money
24 back into the state general fund, then you run into the
25 same problem in the state general fund. And I think you

1 almost -- I think it's almost more clearly two subjects at
2 the point that you would try to create an enterprise here
3 and then say -- and once that enterprise has a surplus,
4 they're allowed to transfer into the state general fund not
5 subject to Tabor.

6 So I don't want to encourage you to do that.
7 I'm just saying that I think that brings a whole new set of
8 problems for what your goal is, but, I mean, maybe other
9 people feel differently. I just -- I know you're here
10 trying to gather information about how to do this is one
11 subject, and I don't think that's going to get you there.

12 MR. BOWS: Absolutely. And the feedback is
13 very helpful. You know, we just kind of keep moving along
14 trying to dial it in.

15 There was -- Mr. Hoke did raise an issue about,
16 you know, public versus private and competing with banks
17 and stuff. And so I just wanted to remind everyone that in
18 North Dakota that the BND, the Bank of North Dakota,
19 operates somewhat as a mini fed there, and it is a
20 partnership bank with the private bank.

21 And through that, that's how Main Street there
22 just kept the money flowing during the 2008 crash and why
23 they weren't affected by it. So -- so a bank is pretty
24 flexible. It doesn't -- you know, this -- this is question
25 of competing or not competing is a -- is, I think, a little

1 soft. Okay.

2 MS. STAIERT: Okay. Thank you. Does anybody
3 else have --

4 MR. BOWS: Because certainly there are -- you
5 know, the Department of Transportation, I mean, there's
6 private companies that pave roads too, you know.

7 MS. STAIERT: Right.

8 MR. BOWS: It's just very subjective.

9 MS. STAIERT: Okay. Anyone have any other
10 comments?

11 Did you have -- did you want to speak?

12 Oh, okay. Sorry. Go ahead.

13 MS. KALLMAN: Thank you.

14 Hermine Kallman, Lewis Roca Rothgerber. I'm
15 still getting used to that name. I'm here for Elector
16 Barbara Walker.

17 Mr. Hoke pretty much covered it all, so I'll
18 just be very brief and address one point that Madam Chair
19 just addressed a second ago, which is Subsection 9 of the
20 proposed initiative.

21 Somehow we have gotten away from discussing it,
22 and I think that's the main and (inaudible) to the Board
23 that that's the main problem here, which is not only can
24 this bank incur debt the term of incurring multi-year
25 obligations and not have those obligations and any other

1 revenues in the form of interest, not be subject to the
2 revenue caps of Tabor, but the bank can also transfer the
3 borrowed funds and any other revenue to the general fund,
4 again without being -- make it subject to Tabor. Those are
5 -- that's the distinct and separate subject, apart from all
6 of the discussion here, that that's not necessary to the
7 running of the bank, and it's not proper.

8 Mr. Domenico raised it last time. This is about
9 growth of government and being able to create a mechanism
10 for a government to spend what it cannot do otherwise under
11 Tabor. It is not necessary to create a bank. You can
12 create a bank. You can capitalize it arguably anyway you
13 are allowed to subject to sound banking action practices
14 but you cannot use that as a mechanism to finance the state
15 when the state has the expressed limitations of Tabor.

16 And I'll be happy to address the enterprise
17 question too, if the Board would like the further entertain
18 it.

19 MR. GELENDER: Oh, no, thanks. I've confused
20 myself already enough by bringing up the enterprise
21 question. I think it's -- I think we've dealt with it
22 adequately.

23 MS. STAIERT: Do you have anything? No?

24 Okay. All right. Thank you.

25 MR. BOWS: Thank you.

1 MS. STAIERT: Um, well, it's a motion for
2 rehearing. Does anybody want to -- any comments or --

3 MR. GELENDER: Yeah, I think I will comment, if
4 there aren't any other comments, then make a motion.

5 I think that the motion itself and discussion of
6 these other circumstances in which the State has submitted
7 the question to the voter -- the voters actually clarified
8 my own thinking on this sometime, and I want to talk about
9 that.

10 One of the things that the Title Board has to do
11 concerning single subject is safeguard against voter
12 confusion, and one of the reasons why those other measures
13 are so distinguishable is because they specifically ask
14 under a process of Tabor for a certain amount of money.
15 And Tabor even requires particular express language to
16 start those ballot question that indicate how much money is
17 to be raised or what the maximum principal amount is in the
18 case of bonds.

19 Here we have something besides even that just
20 creation of a bank alone doesn't -- I'm still not convinced
21 -- requires this level of other stuff to make it work and
22 potentially be effective. The voters have no idea how much
23 this approval is going to potentially cost them because
24 there's no limit whatsoever on what sort of bonds can be
25 used. It's not just, I think, the interest revenues of the

1 bank that can be exempted from Tabor. They can essentially
2 seem to take, as was pointed out by counsel, counsel for
3 one of the opponents, you know, bond proceeds, any other
4 money, and just sort of an unlimited potentially amount of
5 money to the general fund to be spent on whatever.

6 And it's just I cannot see how that's necessary
7 to the establishment of this bank, or for that matter, to
8 allow the bank to necessarily be effective, and I think it
9 would confuse the people voting on this who, reading the
10 measure, are probably (inaudible) we set would be very hard
11 pressed to know what the potential consequences of what
12 their voting are -- on are.

13 So with that, I would make a motion to deny the
14 motion for rehearing.

15 MS. STAIERT: Second?

16 MR. DOMENICO: Yeah. I'll second that motion.
17 I haven't -- I -- I haven't changed my mind. I hope that
18 we'll get some clarification maybe from the Supreme Court
19 so we can know one way or the other for sure instead of
20 debating among ourselves every year.

21 But I -- I appreciate getting all of the credit
22 in the motion, although I'm going to agree, as I did
23 before, with Mr. Gelender's take, rather than it being my
24 own, and second the motion.

25 MS. STAIERT: And I'm going to vote against it

1 just for the same essential reasons that I think I've
2 stated before, and that is that -- and maybe I'm construing
3 to too liberally -- I don't know -- but the access to the
4 ballot and the question is supposed to be liberally
5 construed, and I just don't know how we ever touch water or
6 education or any of these other very complex issues.

7 And I think that one issue with yours is it is
8 so plainly stated. Maybe it's a little more obviously
9 popping out as a second issue, but I feel like whenever we
10 touch these other complicated issues, there's almost no way
11 to touch them without touching on a few different things,
12 which is -- like in education, it was how the money is
13 going to be spent. And it touched Gallagher, and it
14 touched Tabor.

15 And I think as the constitution gets so complex
16 and the statutory framework gets so complex, it becomes
17 very difficult, even more difficult than maybe it used to
18 be to try to put something on a ballot and have it qualify
19 as a true single subject without giving it a very liberal
20 construction.

21 So that's why I'm going to vote against the
22 motion.

23 But all of those in favor?

24 MULTIPLE SPEAKERS: Aye.

25 MS. STAIERT: Opposed?

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Nay.

And that concludes the rehearing, and that's the only item on our agenda, so it concludes today's meeting, and we are adjourned.

(Whereupon, the recording was concluded.)

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CERTIFICATE

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

I, Elissa Steen, Registered Professional Reporter and Notary Public in and for the State of Colorado, do hereby certify that this transcript was taken in shorthand by me from an audio recording and was reduced to typewritten form by computer-aided transcription; that the speakers in this transcript were identified by me to the best of my ability and according to the introductions made; that the foregoing is a true transcript of the proceedings had; that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal this 15th day of October, 2013.

Elissa Steen

Registered Professional Reporter
and
Notary Public



STATE OF COLORADO

INITIATIVE TITLE SETTING REVIEW BOARD

DATE FILED: October 23, 2013 2:48 PM

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)

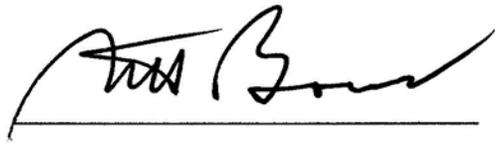
5. In other words, the state supreme court directs the title board (4.a. above) to liberally interpret the provisions of the single subject law and to follow the same rules as the general assembly in setting title.

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

A handwritten signature in black ink, appearing to read "Rob Bows", written over a horizontal line.

**Robert Bows
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Nederland, CO 80466**

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