SUPREME COURT, STATE OF COLORADO Colorado State Judicial Building 2 East 14th Avenue, 4th Floor Denver, Colorado 80203	
Appeal from the District Court, City and County of Denver, Colorado Honorable Christina Marie Habas, District Judge Case No. 07-CV-12064	**▲ COURT USE ONLY ▲**
Plaintiffs-Appellees: MESA COUNTY BOARD OF COUNTY COMMISSIONERS; MAIN STREET CAFÉ; EVAN GLUCKMAN; DONALD SHONKWILER; JOHN BOZEK; SHARON JOHNSON; RICK NEVIN; and ALL SIMILARLY SITUATED COLORADO TAXPAYERS AND REGISTERED VOTERS **Defendant-Appellant: COLORADO DEPARTMENT OF EDUCATION** **Defendants/Intervenors: STATE OF COLORADO; and BILL RITTER, JR., in his official capacity as the Governor of Colorado**	Case Number: 08-SC-~~487~~ 216
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BRIEF OF AMICUS CURIAE SPECIAL DISTRICT ASSOCIATION OF COLORADO AND COLORADO MUNICIPAL LEAGUE

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STATEMENT OF INTERESTS OF THE AMICI

I. COMMON INTERESTS OF THE AMICI.

As discussed in more detail below, the Amici represent hundreds of Colorado municipalities and special districts, all of which have an immediate and direct interest in the issues raised in this action, including specifically: (1) the validity of voter-approved revenue changes under Article X, Section 20 of the Colorado Constitution; and (2) the standard of review applied by Colorado courts in reviewing the validity of such measures, including when extrinsic evidence can be considered to interpret such measures after the fact.

This action involves, among other things, judicial review of voter-approved measures permitting school districts, without increasing tax rates, to collect, retain and expend "all revenues" in excess of the revenue limitations imposed by Article X, Section 20 of the Colorado Constitution ("TABOR"), which requires voter approval of increases in both taxes and the amount of revenues that may be expended by a district.[1] Without voter approval, districts are required to refund to taxpayers any revenue collected in excess of the limitations imposed by section (7) of TABOR, even though the tax rate was not increased.

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[1] A "district" is defined under TABOR as "the state or any local government, excluding enterprises." COLO. CONST. art. X, § 20(2)(b).

Measures that allow a district to collect, retain and expend "all revenues" in excess of the TABOR limitations, regardless of source (as opposed to measures identifying specific sources of revenue that may be retained), are commonly referred to as "broad form de-Brucing" measures. The language of such measures generally tracks the language of a voter-approved measure held to have complied with TABOR by this Court in *Havens v. Board of County Comm'rs of the County of Archuleta,* 924 P.2d 517, 524 (Colo. 1996).

Since TABOR was adopted in 1992, literally thousands of "de-Brucing" measures have been adopted by Colorado districts, including the State of Colorado,[2] municipalities, counties, school districts and a myriad of special districts providing services from ambulance and emergency services to water and sewer facilities. For example, according to data from the Colorado Department of Local Affairs, 1381 of the 1867 special districts in Colorado had adopted at least one "de-Brucing measure" since 1993 (the first year after TABOR was adopted), and many of these districts have adopted more than one such measure. At least half of these measures involved "broad form de-Brucing," allowing the special

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[2] On November 1, 2005, voters adopted Referendum C, permitting the State to "retain and spend all revenues in excess of the constitutional limitation on state fiscal year spending for the next five fiscal years." Ballot Title, Colorado Referendum C, adopted November 1, 2005.

districts to collect, retain and expend "all revenues," regardless of source, in excess of the TABOR limitations. In addition, according to data collected by the Colorado Municipal League, at least 196 Colorado municipalities have adopted at least one "broad form de-Brucing" measure since 1993. Likewise, the vast majority of Colorado counties have adopted at least one "broad form de-Brucing" measure since 1993. Taken together, these voter-approved measures have allowed the State of Colorado and its municipalities, counties and other districts to retain and expend hundreds of millions of dollars for the provision of vital services to their constituents. Representative samples of the "broad form de-Brucing" measures adopted by Colorado special districts, municipalities and counties are attached hereto as Appendices A, B and C, respectively.

Although the instant action was limited in its context to a change in school district finance under the Colorado School Finance Act, C.R.S. § 22-54-101, *et seq.*, the District Court's ruling, if affirmed, would potentially have broad reaching implications for the finances of government at all levels in Colorado.[3] Specifically,

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[3] It is important to note that financing of school districts is unique from the way other districts in Colorado are financed. Under the School Finance Act, C.R.S. § 22-54-101, *et seq.*, each school district receives a fixed "Total Program" budget consisting of revenues generated from the mill levy in the district and "equalizing" revenue provided by the State. Increases in property tax revenues collected by the school district are offset by a decrease in the "equalizing" funding provided by the State, resulting in a consistent "Total Program" budget. No such

although the District Court found that the voter-approved measures allowing for the collection, retention and expenditure of "all revenues" in excess of the TABOR limitations were not worded in such a way as to mislead the electorate, the court found that the measures nevertheless violated the voter approval requirements of TABOR because they did not include specific language "advising voters of potential changes in property tax revenue amounts" pursuant to section (7)(c) of TABOR. (Findings of Fact, Conclusions of Law, Order and Judgment entered May 30, 2008, at pp. 13-14).

The District Court's ruling, if affirmed, would potentially call into question the validity of all voter-approved "broad form de-Brucing" measures that exempted both property taxes and other revenues from TABOR's spending limits, and would have devastating impacts on districts, and the citizens served by those districts, if such revenues could not be retained in the future or, even worse, if it were determined that the revenues previously retained pursuant to such measures must be refunded with interest. Accordingly, the Amici respectfully urge this Court to affirm the validity of "broad form de-Brucing" measures such as those adopted by the school districts in this action.

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revenue "equalization" funding or "Total Program" budget limitation exists for other Colorado districts.

II. THE AMICI

A. The Special District Association of Colorado.

The Special District Association of Colorado ("SDA") is a non-profit, voluntary membership association of approximately 1,250 member special districts located throughout the state of Colorado organized to serve the interest of the special district form of local government in Colorado. SDA exists to help special districts serve the public in the most efficient and economical manner possible. SDA has appeared as an *amicus* before the Colorado Court of Appeals and the Colorado Supreme Court in appeals where a significant decision affecting Colorado special districts is possible.

SDA has a heightened interest in the outcome of this particular case in terms of any interpretations this Court may make concerning the validity of voter-approval of increased revenue limits pursuant to Article X, Section 20, Colorado Constitution.

SDA, as an *amicus* in this case, will provide the Court with a statewide special district perspective on the issues presented, and assure that the general interest of its special district members is represented. SDA members have a great deal at stake in the proper resolution of this matter, as do the citizens of Colorado who look to special districts to provide vital municipal services.

The variety and number of special districts that provide services in Colorado, and that could be affected by the ruling in this case, is demonstrated by the makeup of SDA's membership of special districts:[4]

Type of District:	Number of SDA Member Districts:
Ambulance	5
Business Improvement	21
Cemetery	3
Fire Protection	124
Health Services (Hospital)	14
Library	10
Parks and Recreation	37
Sanitation	55
Water	71
Water and Sanitation	100
Water Conservancy	25
Metropolitan[5]	763

Like the school districts in this action, many of the SDA's constituent special districts receive revenues from multiple sources, including property taxes. The majority of these special districts have adopted at least one "broad form de-Brucing" measure since 1993, allowing these special districts to collect, retain and expend revenues from all sources, notwithstanding the revenue limitations of

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[4] According to records of the Division of Local Government, there are approximately 400 additional special districts that are not members of SDA.

[5] Metropolitan Districts are those districts organized pursuant to Title 32, C.R.S., that by their service plan are authorized to provide two or more of the enumerated services of other special districts.

TABOR. (*See* Appendix A for a representative sampling of the "broad form de-Brucing" measures adopted by Colorado special districts).

If such "broad form de-Brucing" measures were declared to be unconstitutional, it would have devastating consequences for the special districts and the constituents they serve. Not only would vital services have to be reduced or eliminated, but also the very fiscal existence of these special districts would be threatened.

B. The Colorado Municipal League.

The Colorado Municipal League ("League") is a nonprofit, voluntary association of 264 municipalities located throughout the State of Colorado (comprising 98 percent of the total municipal population of our state) that was formed in 1924. The League's membership includes all 91 home rule municipalities, all municipalities greater than 2,000 in population, and the vast majority of those having a population of 2,000 or less. The League has appeared as *amicus* before this Court and the Court of Appeals for decades to express the concerns and perspective of Colorado municipalities.

As with the SDA, the League's constituent municipalities receive revenues from a variety of sources, including property taxes, and the majority of these municipalities have adopted "broad form de-Brucing measures" enabling them to

retain all revenues in excess of TABOR limitations. (*See* Appendix B for a representative sampling of the "broad form de-Brucing" measures adopted by the League's constituent municipalities). Hundreds of millions of dollars in additional revenues have been retained and expended by the League's constituent municipalities since 1993, and the impact on these municipalities and their citizens would be devastating if their "broad form de-Brucing" measures were invalidated.[6]

Accordingly, the League and its constituent municipalities have a significant interest in the issues raised in this action.

STATEMENT OF THE ISSUES

The Amici share a common interest in the following issues before the Court:

I. WHETHER THE DISTRICT COURT ERRED IN DETERMINING THAT THE SCHOOL DISTRICTS' "BROAD FORM DE-BRUCING" MEASURES, WHICH PROVIDED FOR THE RETENTION OF ALL REVENUES IN EXCESS OF THE LIMITATIONS OF SECTION (7) OF TABOR WITHOUT SPECIFYING THE AMOUNT OF PROPERTY TAXES RETAINED, ARE UNCONSTITUTIONAL.

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[6] For example, since 1993 the City of Holyoke has retained approximately $2,771,543 in excess revenues, including property taxes, pursuant to its "broad form de-Brucing" measure. The annual budget of Holyoke is approximately $4,158,309. Similarly, the city of Loveland has retained approximately $7,560,348 in excess revenues, including property taxes, pursuant to its "broad form de-Brucing" measure. This is roughly the equivalent of Loveland's annual budget for fire protection, for police officers on the street or for parks and recreational services. Thus, if these cities were required to refund their retained revenues in excess of TABOR limitations, with interest, the financial impact would be devastating.

II. WHETHER THE DISTRICT COURT ERRED IN EXAMINING EVIDENCE OF THE ELECTORATE'S "INTENT," WHERE THE LANGUAGE OF THE "BROAD FORM DE-BRUCING" MEASURES AT ISSUE, PERMITTING THE DISTRICTS TO COLLECT, RETAIN AND EXPEND "ALL REVENUE" IN EXCESS OF THE LIMITATIONS IMPOSED BY SECTION (7) OF TABOR, WAS CLEAR AND UNAMBIGUOUS.

ARGUMENT

I. "BROAD FORM DE-BRUCING" MEASURES, ALLOWING DISTRICTS TO COLLECT, RETAIN AND EXPEND "ALL REVENUE" IN EXCESS OF THE LIMITATIONS IMPOSED BY SECTION (7) OF TABOR, ARE CONSTITUTIONALLY VALID.

Each of the "broad form de-Brucing" measures considered by the District Court allowed the school district to collect, retain and expend "all revenues" (or substantially similar language), notwithstanding the revenue limitations of TABOR, without specifying the source or amount of such revenues. In holding these measures unconstitutional, the District Court found that the measures failed to advise voters of potential changes in property tax revenues and, therefore, violated section (7)(c) of TABOR which provides limitations on a district's "property tax" revenue. Specifically, the District Court ruled:

> The CDE argues that "all revenue" is a clear and unambiguous phrase that includes revenue from any source whatsoever. (CDE Proposed Findings, p.31). CDE argues that because "all" means that there are no exceptions, a reading of "all revenue" reflects a clear voter approval to retain revenue from any source whatsoever. However, in the court's view, this ignores

> the distinction included in TABOR itself between "revenue" in general (section 7(d)) and "property tax revenue" (section 7(c)).
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> While the individual de-Brucing measures certainly met the purpose as originally stated (to retain "revenue" in general), this court concludes that the purpose of the TABOR voter approval requirements advising voters of potential changes in property tax revenue amounts were not met by those de-Brucing measures. Specifically, this Court concludes that the specific voter approval language requirements of TABOR section 7(c) applies if the state and CDE wish to utilize those measures as advance voter approval of the fiscal impact of SB-199.

(Findings of Fact, Conclusions of Law, Order and Judgment, pp. 13-14).

The District Court's interpretation of the voter approval requirements of section (7) of TABOR is contrary to the plain language of TABOR as well as the prior decisions of this Court concerning the validity of voter-approved revenue changes. Accordingly, the decision of the District Court should be reversed insofar as it held that the school districts' "broad form de-Brucing" measures are unconstitutional.

A. TABOR Does Not Require Specific Disclosure Of The Sources Or Amounts Of Revenues To Be Retained In A "De-Brucing" Election.

The measures approved by voters in the school districts involved only the retention of revenues, not any increase in taxes or district debt. Indeed, the District

Court acknowledged that "the individual de-Brucing measures certainly meet the purpose as originally stated (to retain "revenue" in general)." (Findings of Fact, Conclusions of Law, Order and Judgment, p. 14) (parentheses in original). Accordingly, the validity of these measures must be determined based upon the election requirements applicable to changes in revenue under TABOR.

The revenue and spending limitations of TABOR are found in section (7) of TABOR, which provides as follows:

> (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such numbers shall be adjusted every decade to match the federal census.
>
> (b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
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> (c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
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> (d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset....

COLO. CONST. art. X, § 20(7).

While section (7) of TABOR permits a district to exceed the revenue limitations with voter approval, nothing in this section requires a ballot issue to advise voters of the amount or sources of revenues retained. *See City of Aurora v. Acosta*, 892 P.2d 264, 269 (Colo. 1995) ("[N]o provision of [TABOR] expressly required the City to present the proposed increase [in revenues retained] as a dollar amount."). Although separate revenue limitations are set forth in sections (7)(a) through (7)(c), the language that permits retention of revenue that exceeds these limits with voter approval is set forth in section (7)(d) of TABOR. This section requires only that voters may approve revenue changes to any of "these limits," without requiring separate disclosure of the sources or amount of revenues to be retained. *See* COLO. CONST. art. X, § 20(7)(d) (providing for the refund of revenues exceeding "*these limits*...unless voters approve a revenue change as an offset") (emphasis added). The reference to "these limits" in section (7)(d) clearly refers to the spending limits set forth in sections (7)(a) through (7)(c), collectively. There is no requirement that votes to retain property taxes in excess of the limits of section (7)(c) be handled any differently than votes to retain other types of revenues.

In determining that the broad form de-Brucing measures were required to

"advise voters of potential changes in property tax revenue amounts," the District Court apparently relied upon the disclosure requirements in the election provisions of section (3) of TABOR. (*See* Findings of Fact, Conclusions of Law, Order and Judgment, p. 12) ("[A]ny voter approval of that [revenue] growth must comply with the language provisions of TABOR § 3(c)."). Section (3) of TABOR, however, deals with elections related to increases in tax rates or district debt. Section 3(c), cited by the District Court, includes three provisions: (1) an election requirement where revenues from a specific tax increase or spending related to a specific tax increase previously approved by voters exceeds the estimate set forth in the election notice for such tax, (2) a prohibition on the issuance of bonded debt where the repayment costs would exceed the estimate in the election notice for such bonded debt, and (3) a requirement that "ballot titles for tax or bonded debt increases" begin with certain specified language. COLO. CONST. art. X, § 20(3)(c). None of these circumstances were presented by the "broad form de-Brucing" measures considered by the District Court, which dealt only with retention of excess revenues *without* any change in the tax rate.[7]

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[7] The only other specific election notice provisions in TABOR are set forth in section (3)(b), which provides that any measure proposing an increase in tax rates or district debt must include a "NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE." Such notice must include, among other things, "for the first full

Section (7)(d) of TABOR expressly recognizes that revenue retention elections and elections on tax rate changes are separate, specifically stating that "[v]oter-approved revenue changes do not require a tax rate change." COLO. CONST. art. X, § 20(7)(d). Thus, there is no reason that the notice requirements of section (3) of TABOR applicable in tax increase elections should be applied to an election to retain and spend excess revenues under section (7)(d).

Consistent with this view, this Court has previously held in *Acosta* that section (3) of TABOR is inapplicable to an election to increase *spending* limitations pursuant to section (7)(d) of TABOR. 892 P.2d at 268-9; *see also Bickel v. City of Boulder*, 885 P.2d 215, 230-31 (Colo. 1994) (noting that the notice requirements of section (3) of TABOR apply only to tax and debt elections). In *Acosta*, the City of Aurora adopted a measure increasing sales taxes, and approving the retention of excess revenue in future years. The plaintiff asserted that the measure violated TABOR because it failed to state the dollar amount of the excess revenues that could be retained. This Court held that the notice and election provisions of section (3) of TABOR do not apply to an election to retain excess

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fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase." COLO. CONST. art. X, § 20(3)(b). Because the "broad form de-Brucing" measures do not involve any increase in tax rates, these provisions are likewise inapplicable.

revenues under section (7)(d) of TABOR, stating:

> Section 3 of [TABOR] is entitled "Election provisions" and addressed the requirement for form and content of ballot titles and election notices. This section requires that proposed revenue changes be presented in dollar amounts only when voters are asked to approve a "district tax increase." [COLO. CONST. art. X] § 20(3)(b)(iii). In that situation, the estimated maximum dollar amount of the increase must be provided in the ballot title and notice. *Id.* § 20(3)(b)(iii), (c). *[TABOR] contains no other provision indicating the form in which proposed revenue changes are to be presented to the voters for approval.* Nor is there any provision prohibiting a taxing district from presenting a revenue change to the voters by reference to a tax rate. *The challenged revenue change in Ballot Question A was not a district tax increase subject to subsection (3)(b)(iii) or (c) and thus, no provision of [TABOR] expressly required the City to present the proposed increase as a dollar amount.*

892 P.2d at 268-69 (emphasis added).

Although *Acosta* dealt with a revenue change from a sales tax and not a revenue change from property tax, the election provisions governing revenue changes from either source are governed by section (7)(d) of TABOR. Section (7) includes no special notice requirements in an election to retain revenues generated, in whole or in part, from property taxes. Had the framers of TABOR intended to include such disclosure requirements as part of a section (7)(d) revenue retention election, they could have easily done so. *Cf. Acosta,* 892 P.2d at 269 ("If

[TABOR] had been intended to require that all revenue changes be presented to the voters for approval in terms of dollar amounts, it could have been drafted to state precisely that."). The fact that the specific disclosure requirements are set forth only in relation to tax rate increases and debt elections indicates that no such requirement was intended in connection with other elections. Therefore, the District Court erred in reading such a requirement into the provisions of section (7). *Cf. Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo. 1994) (noting that a court should "not judicially legislate by reading a statute to accomplish something the plain language does not suggest, warrant or mandate").

B. "Broad Form De-Brucing" Measures That Permit A District To Collect, Retain and Expend "All Revenues" In Excess Of TABOR Limitations, Without Specifying The Source Or Amount Of Such Revenues, "Substantially Comply" With The Requirements Of TABOR And, Therefore, Are Valid.

The validity of voter approved measures authorizing the retention of revenue in excess of the limits imposed by section (7) of TABOR are reviewed under a "substantial compliance" standard. *See Acosta*, 892 P.2d at 267; *Bickel*, 885 P.2d at 227. In *Acosta*, this Court noted:

> When reviewing claims brought to enforce the [TABOR] election provisions, we have held that a "substantial compliance" standard is the proper measure to apply...the application of this standard reflects our longstanding position that "[i]mposing a requirement of strict compliance with voting regulation, especially in the

> absence of any showing of fraud or other intentional wrongdoing, would unduly restrict the franchise."...

892 P.2d at 267 (internal citations omitted). In determining whether a measure satisfies the "substantial compliance" standard, a court may examine a variety of factors, including the purpose of the provision allegedly violated, whether that purpose is substantially achieved despite the alleged noncompliance, and whether the district made a good faith effort to comply or whether the alleged noncompliance is the product of an intent to mislead the electorate. *Bickel*, 885 P.2d at 227.

Applying this standard, this Court has previously upheld the constitutionality of "broad form de-Brucing" measures. In *Havens v. Board of County Comm'rs of County of Archuleta,* for example, this Court held that a measure permitting the retention and expenditure of excess revenues was sufficient to comply with the requirements of TABOR. 924 P.2d at 524. The "de-Brucing" measure approved by the Court in *Havens*, like the measures approved by the various school districts in this action, was a "broad form de-Brucing" measure, permitting the collection, retention and expenditure of "all excess revenues" (which would have included property taxes) in excess of TABOR limitations. That measure provided:

> PROVIDED THAT NO LOCAL TAX RATE OR MILL LEVY SHALL BE INCREASED WITHOUT FURTHER VOTER APPROVAL, SHALL

> ARCHULETA COUNTY, COLORADO BE AUTHORIZED TO COLLECT, RETAIN AND EXPEND *ALL EXCESS REVENUE* AND OTHER FUNDS COLLECTED DURING 1994 AND EXPIRING AFTER 1997 (FOUR YEARS) WITHOUT FURTHER VOTER APPROVAL EXCEPT FOR STATE GRANTS WHICH COULD BE COLLECTED, RETAINED OR EXPENDED STARTING IN 1994 AND EACH SUBSEQUENT YEAR THEREAFTER, NOTWITHSTANDING THE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION.

Id. at 519 (emphasis added). The plaintiff asserted that this measure violated section (7)(d) of TABOR because it allowed the retention of excess revenue but did not include language providing for an "offsetting revenue reduction" in future years.

In affirming the constitutionality of the measure at issue in *Havens*, this Court "emphasized that 'substantial compliance' not 'strict compliance' is the proper standard to apply with regard to enforcement of the [TABOR] election provisions, so as not to 'unduly restrict the franchise'." *Id.* at 522 (quoting *Acosta*, 892 P.2d at 267). The Court further noted that TABOR was intended to "defer to citizen approval or disapproval certain proposed tax, revenue and spending measures that varied from [TABOR's] limitations," *id.* at 522, and that section (7)'s "voter approval provision, as an exception to the revenue and spending limits, continues this pattern of deferral to the electorate." *Id.* at 523. Finally, the Court

noted that "[s]ince the law of initiated and referred measures and the language of [TABOR] favor placing matters before the voters, we should not adopt a construction of this constitutional provision which would void the electorate's determination, in the absence of clear language to the contrary." *Id.* at 524.

Applying these standards, this Court held that the measure complied with the election provisions of TABOR, stating:

> The Referred Measure approved by the Archuleta County voters clearly provides that the county may retain and expend the excess revenues it collects for the years 1994-1997. Preventing the voters from considering and approving such a measure, in the absence of clear provisions to the contrary, would unduly restrict the electorate's prerogative to allow government utilization of funds, which otherwise would be refunded to them, without the necessity of effectuating future budget reductions.
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> Contrary to Havens' argument, the electorate's decision to allow Archuleta County to "collect, retain and expend all excess revenues" over the years 1994 through 1997, as the Referred Measure provides, accomplishes [TABOR's] purpose in providing for voter-retained consideration of whether to take the refund or allow the county to augment its authorized revenues and expenditures.

924 P.2d at 522-23.

Here, as in *Havens*, voters approved measures permitting the various school

districts to retain all revenues in excess of TABOR's limitations. The District Court specifically found no evidence "supports a conclusion that the individual de-Brucing ballot measures were worded in such a way as to mislead the electorate." (Findings of Fact, Conclusions of Law, Order and Judgment, p. 13). Given that there are no specific guidelines in section (7) of TABOR specifying what language must be included in the ballot question seeking voter approval to retain revenues in excess of TABOR's limitations, the "broad form de-Brucing" measures at issue, at a minimum, are in substantial compliance with the requirements of TABOR. Accordingly, the District Court erred in concluding that the measures violated TABOR.

II. WHERE THE LANGUAGE OF A VOTER-APPROVED DE-BRUCING MEASURE IS PLAIN AND UNAMBIGUOUS, EXTRINSIC EVIDENCE OF THE ELECTORATE'S "INTENT" SHOULD NOT BE CONSIDERED BY THE COURT.

When construing a voter-approved measure, courts must ascertain and give effect to the intent of the electorate in adopting the measure. *See Zaner v. City of Brighton,* 917 P.2d 280, 283 (Colo. 1996). It is well-settled that, where the language used in a ballot question is unambiguous, it must be given its plain and ordinary meaning. *Bruce v. City of Colorado Springs*, 129 P.3d 988, 992 (Colo. 2006). If no ambiguity exists in the language of the ballot question, a court may not look to extrinsic evidence to interpret such language. *Cf. Minto v. Sprague*,

124 P.3d 881, 884 (Colo.App. 2005) ("When the plain language of a statute is free from ambiguity, other rules of statutory construction are unnecessary. The court should only resort to extraneous evidence for clarification when an uncertainty exists.") (citations omitted); *Sanger v. Davis*, 148 P.3d 404, 412 (Colo. App. 2006).

Consistent with the "broad form de-Brucing" measures adopted by the voters of the State (as in the case of Referendum C) and its municipalities, counties and special districts since 1993, each of the ballot questions considered by the District Court approved the collection, retention and expenditure of "all revenues," "full proceeds and revenues" or equivalent language, notwithstanding the revenue limitations of TABOR. These measures are plain and unambiguous on their face, and express a clear intent on the part of the voters to retain "all revenues," regardless of source or amount, in excess of the limitations of TABOR.

As the State of Colorado and Governor Ritter noted in their trial brief, the term "all" is unambiguous, and implies no exceptions whatsoever. *See City of Grand Junction v. Ute Water Conservancy Dist.*, 900 P.2d 81, 91 (Colo. 1995); *see also Hudgeons v. Tenneco Oil Co.*, 796 P.2d 21, 23 (Colo. App. 1990) (noting that "all" means the whole of, "each" and "every"). Likewise, language such as "full proceeds and revenues" is plain and unambiguous. *See, e.g. Oregon State Denturist Ass'n v. Board of Dentistry,* 19 P.3d 986, 989-90 (Or. App. 2001) (noting

that the term "full," as used in an Oregon statute, should be given its "common meaning," and meant the entire amount rather than a "partial" amount). In short, when voters pass a measure allowing the collection, retention and expenditure of "all revenues," "full proceeds and revenues" or the like, there can be no mistake that such language includes revenues from any source, including property taxes and other revenues.

Despite the fact that the "broad form de-Brucing" measures at issue were clear and unambiguous, the District Court nevertheless considered extrinsic evidence of the electorate's intent in adopting these measures. Among other things, the District Court considered election notice information submitted to voters during the de-Brucing elections and various witnesses' testimony presented at trial. (*See* Findings of Fact, Conclusions of Law, Order and Judgment, p. 14).

Considering extrinsic evidence of "voters' intent" where a voter-approved measure is clear and unambiguous sets a dangerous precedent, opening the door to "revisionist history" in the interpretation of a measure. In order to ensure consistency in the administration of voter-approved revenue changes, and to protect the interests of third parties that rely on the language of such measures, courts should be constrained to considering the language of a measure absent any ambiguity in the language of the measure. In short, if there is no ambiguity, there

is nothing to "interpret," and the measure should be given its plain meaning.

CONCLUSION

For the foregoing reasons, SDA and the League respectfully request that the Judgment of the District Court be reversed insofar as it held that the "broad form de-Brucing" measures were unconstitutional under TABOR.

Dated this 1st day of August, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 1st day of August, 2008, the original plus ten copies of the foregoing pleading were filed with the Court, and true and correct copies were served via U.S. mail, postage prepaid, as follows:

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