

From: Bob Schaffer [mailto:bobschaffer@comcast.net]
Sent: Thursday, February 21, 2008 5:28 PM
To: 'Dispranch@starband.net'
Subject: RE: SBE Office: Court Order Denying CDE's Motion to Dismiss/PRIVILEGED AND CONFIDENTIAL

The logo for 'FACE THE STATE' is displayed in white, uppercase letters on a dark blue rectangular background. The word 'FACE' is on the left, 'STATE' is on the right, and 'THE' is positioned between them, slightly higher and smaller. A thin white horizontal line runs beneath the letters 'A', 'E', and 'T'.

Pam: Do you know where you're heading on this yet? Now that we have no option other than to answer the compliant, I think we should stipulate and therefore agree with the plaintiffs. Our obligation is to the Constitution, not the Legislature or the governor. It's an easy obligation to maintain in our case, as the \$3.8 billion tax increase is a massive shift of wealth from rural Colorado to urban. I'm inclined to push for the board to stipulate or find some other way to get us out of this. If, as it now appears, there's no option, I see only one response, and that is to strenuously object to any effort by the Board to defend the Legislature's unconstitutional tax hike. I've not spoken with the others, but my guess is this will be a 4-3 split on the Board - and it is of great historical and Constitutional significance. As you know, Attorney General Suthers has already opined that the law in question is unconstitutional.

I believe that if we stipulate, the governor will move to take the case from us. I also believe, having traveled all over Colorado for the past year, the majority of voters will be with us - especially in rural Colorado. In stipulating, we do not need to actually oppose the tax increase. Stipulating would only establish our support for the TABOR principle that the Legislature ask the voters first before socking them with \$3.8 billion in new property taxes.

It appears impossible to me that there is a way in which the Board can proceed from this point in a unanimous way. Evie, Elaine and Jane will likely never agree to stipulate. I, on the other hand, will never agree to turn my back on the State Constitution, much less spend state money in the legal effort to trample it.

We can discuss this when it's convenient for you if you'd like. The direction of this probably depends on you so please let me know. The longer we wait, the more Sherman and Howard will rack up in legal bills as they try to push us toward paying the firm to pursue its longstanding assault on TABOR.

Bob