

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

DATE FILED: May 19, 2014 5:30 PM

Original Proceeding Pursuant to § 1-40-107(2),
C.R.S. (2013)

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2013-
2014 #80 and #81

Petitioner:

Richard Evans,

v.

Respondents:

Vicki Armstrong and Bob Hagedorn

and

Title Board:

Suzanne Staiert, Daniel Domenico, and Jason
Gelender

^ COURT USE ONLY ^

Case No. 2014SA106

JOHN W. SUTHERS, Attorney General
MATTHEW D. GROVE, Assistant Attorney
General, Reg. No. 34269*
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720-508-6157
FAX: 720-508-6041
E-Mail: matt.grove@state.co.us
*Counsel of Record

TITLE BOARD'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

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

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

It contains 843 words.

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

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.

*/s/ Matt Grove*_____

TABLE OF CONTENTS

	PAGE
I. The title's references to allocation of tax monies, rather than the gross tax rates to be imposed, is not misleading.....	1
II. The titles for #80 and #81 adequately describe the tax to be imposed.....	3
III. The Title Board did not err by omitting reference to the issue of local voter approval in the titles.	4
IV. Conclusion	5

TABLE OF AUTHORITIES

PAGE

CASES

<i>In re Casino Gaming Initiative</i> , 649 P.2d 303 (Colo. 1982).....	2, 5
<i>Matter of Proposed Initiative on School Pilot Program</i> , 874 P.2d 1066 (Colo. 1994).....	1

Suzanne Staiert, Daniel Domenico, and Jason Gelender, as members of the Ballot Title Setting Board (“Title Board”), hereby submit their Opening Brief. The Title Board’s opening brief anticipated most of the issues that Petitioner has raised in his own opening brief. In the interest of brevity, those issues will not be discussed here.

I. The title’s references to allocation of tax monies, rather than the gross tax rates to be imposed, is not misleading.

Petitioner asserts that the Title Board erred by approving titles that did not identify the actual tax rate, and instead indicated: 1) the projected amount of tax to be collected, and 2) the manner in which those tax monies would be allocated. Petitioner asserts that the Title Board inappropriately “interpret[ed] the effects of a proposed initiative” by approving titles indicating that the 94% or 95% of the taxes generated would go to the K-12 Education Fund, rather than stating the actual tax rates to be imposed. *Pet. Opening Brief* at 9, quoting *Matter of Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1072 (Colo. 1994).

As a general matter, Petitioner is correct that neither the Title Board nor this Court should “determine the meaning of the language of the initiative; a judicial interpretation of the meaning of the initiative

must await an adjudication in a specific factual context.” *In re Casino Gaming Initiative*, 649 P.2d 303, 310 (Colo. 1982). But this principle is apposite only in circumstances where there is some disagreement about what the measure could be taken to mean. Caution is warranted in such a situation because of the danger that the post-enactment interpretation of a court could differ from the Title Board’s initial understanding. But there is no reason to expand that interpretive principle in the manner that Petitioner suggests. 37 is now, always has been, and always will be approximately 95% of 39. Likewise, 34 is approximately 94% of 36. These calculations will not change if and when a judge is required to evaluate the meaning of the challenged measures.

Accordingly, as the Title Board argued in its opening brief, this Court should affirm its approval of the 94%/95% language in #80 and #81. It accurately and appropriately describes to the prospective voter the impact of the measure, and does so in a manner that is clearer than the actual text of the initiative.

II. The titles for #80 and #81 adequately describe the tax to be imposed.

Petitioner argues that the titles for #80 and #81 are deficient because “neither the words ‘new tax’ or the tax rate to be imposed can be found in the ballot title.” The Title Board’s opening brief addressed the reasons why a description of the actual tax rates to be imposed were unnecessary in this context. In short, the taxes will not be imposed on the general public, and instead will be collected from sophisticated corporate entities that, by definition, will not be voting on the measure.

The Title Board responds to Petitioner’s argument here, however, because it inaccurately claims that “the words ‘new tax’” do not appear in the ballot title. *Pet. Open. Br.* at 13-14. Those words do appear in both #80 and #81. #80 states: “Shall state taxes be increased...by imposing a new tax on authorized horse racetracks’ and limited gaming establishments’ net proceeds....” *Pet. Open. Br.* at 5. #81 states in pertinent part: “Shall state taxes be increased...by imposing a new tax on authorized horse racetracks’ adjusted gross proceeds....” *Pet. Open. Br.* at 6. Accordingly, this Court should reject Petitioner’s complaint that the

titles do not adequately disclose the nature of measures and that they seek to impose a new tax.

III. The Title Board did not err by omitting reference to the issue of local voter approval in the titles.

Petitioner asserts that the titles should be rejected because they “are silent on the important issue of local voter approval.” *Pet. Open. Br.* at 18. Petitioner goes on to engage in an in-depth analysis of #80 and #81, asserting that “it is possible that a local vote would be mandated by Initiative #81.” *Id.* at 19. Because #80 involves video lottery terminals, however, which are not “limited gaming,” “no local vote would be permitted.” *Id.*

Petitioner’s argument urges both the Title Board and this Court to engage in precisely the same sort of interpretive analysis that he derides with respect to the “tax rate” issue addressed above. In contrast to the simple arithmetical calculations that he identifies as problematic, however, here he urges the Court to preemptively assess the interplay between the proposed measures and various existing provisions of the Colorado Constitution. This is exactly the sort of pre-enactment analysis that this Court has studiously avoided in past cases. *See In re Casino*

Gaming Initiative, 649 P.2d at 310. It should follow the same course here and affirm the titles as drafted.

IV. Conclusion

Based on the reasoning and authorities herein and in the Title Board's opening brief, the Title Board respectfully requests that this Court affirm the titles for #80 and #81.

Respectfully submitted this 19th day of May, 2014.

JOHN W. SUTHERS
Attorney General

/s/ Matthew D. Grove

MATTHEW D. GROVE, 34269*

Assistant Attorney General

Public Officials Unit

State Services Section

Attorneys for Title Board

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that, on May 19, 2014, I duly served this
ANSWER BRIEF on all parties via ICCES or electronic mail, addressed
as follows:

Mark Grueskin
Heizer Paul Grueskin LLP
2401 15th Street, Suite 300
Denver, Colorado 80202
mark@rechkornfeld.com

Marcy G. Glenn
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
E-mail:

Lino S. Lipinsky de Orlov
Amy M. Siadak, No. 43702
1400 Wewatta Street, Suite 700
Denver, Colorado 80202

William A. Hobbs, No. 7753
1745 Krameria Street
Denver, Colorado 80220

/s/ Matthew D. Grove