

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #80 (“Proceeds from Video Lottery Terminals for K-12 Education”) and #81 (“Horse Racetrack Limited Gaming Proceeds for K-12 Education”)</p> <p>Petitioner: RICHARD EVANS v. Respondents: VICKIE ARMSTRONG and BOB HAGEDORN</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>PETITIONER’S ANSWER BRIEF</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:

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

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It contains 1,038 words.

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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.

s/ Mark G. Grueskin

Mark G. Grueskin

Attorney for Petitioners

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INTRODUCTION

Vickie Armstrong and Bob Hagedorn ("Armstrong") proposed Initiatives #80 and #81 to expand gambling at racetracks by converting them into casinos, either in terms of limited gaming (slot machines and certain table games) or video lottery terminals (virtual slot machines and virtual table games). The titles omit central features of the measures.

LEGAL ARGUMENT

A. The titles contain a political message about 94%/95% of revenue.

Armstrong made no unanticipated arguments about the titles' reference to using 94% or 95% of tax revenues for a K-12 fund. This question must be resolved in favor of the voter who quickly peruses the title, on a petition or on the ballot, and does not study the text or interlineate ballot titles with questions and comments. *Matter of Proposed Initiated Constitutional Amendment Concerning Limited Gaming in City of Antonito*, 873 P.2d 733, 742 (Colo. 1994). The title's structure will mislead that voter.

B. The order of topics in the title is misleading.

Armstrong sought placement of education funding language, at the beginning and end of the ballot title, so it would be *the* message voters would see and remember. Armstrong's counsel admitted to the Title Board, "As we all know, **what the voters are looking at is the first phrase and**

the last phrase (in the title). And to get the true intent of the measure over to the voters, we should put that K through 12 education **at the end.**” See Petitioner Evans’ Opening Brief (Case No. 2014SA141) at 12-13 (emphasis added) and **Exhibit 2** thereto. This “bookending” tactic violates the clear title requirement. *Antonito, supra*, 873 P.2d at 742.

C. The titles omit central features – minimum casino size (2,500 slot machines), 24-hour casino operations, and preemption of local voters approval of casinos and 24-hour operations.

Armstrong is adamant voters do *not* need to know: (a) the number of initially authorized slot machines (2,500) or the fact that there is no ceiling on such number; (b) the authorization for 24-hour operation of these casinos; or (c) the measure's exemption relating from the local voter approval requirements that otherwise apply to new limited gaming jurisdictions and extensions of gaming hours. Respondents' Opening Brief at 17-21.

Ironically, Armstrong also believes gambling “is right up there with drinking, drug use, and adultery in the eyes of many voters.” Petitioners Armstrong and Hagedorn’s Opening Briefs (Case No. 2014SA142) at 14; (Case No. 2014SA147) at 27; (Case No. 2014SA149) at 18; (Case No. 2014SA151) at 16. If Armstrong is correct that “many voters” subscribe to her racetrack-as-opium-den philosophy, these would be the very people who would want to know that #80 and #81 will launch a single casino in 2015

with more gambling devices than there are in all of Central City,¹ that 2,500 is only the beginning number of gaming devices at the three racetrack casinos and there is no maximum number, and that casinos authorized by these measures can get local authorization to operate around the clock.

Armstrong points to the 1990 ballot title for the limited gaming amendment, noting voters were not told there about casino hours. True enough. But voters *were* told about the mere possibility of 24-hour gaming when they considered (and approved) Amendment 50 in 2008.

Shall there be an amendment to the Colorado constitution concerning voter-approved revisions to limited gaming, and in connection therewith, **allowing the local voters in Central City, Black Hawk, and Cripple Creek to extend casino hours of operation**, approved games to include roulette or craps or both, and maximum single bets up to \$100....

Legislative Council of the Colo. General Assembly, *2008 State Ballot Information Booklet*, Research Pub. No. 576-1 at 40 (2008). Clearly, a possible expansion to full-day gambling is a central feature of any measure that permits it and, as such, deserves express mention in ballot titles for Initiatives #80 and #81 as well.

¹ There were 2,176 gaming devices in Central City at the end of 2013. Colorado Division of Gaming, *Fact Book and Abstract; Report for 2013* at 16 (May 2013). <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251983562240&ssbinary=true> (last viewed May 18, 2014).

Finally, as to the local voter approval requirement from which expansion under #80 or #81 is apparently exempt,² a title can repeat an initiative text verbatim, but the result can still be flawed and misleading. The Title Board must address status quo protections that voters expect but initiative proponents deceptively change in their measure. In *Matter of Title, Ballot Title, Submission Clause, and Summary by Title Bd. Pertaining to a Proposed Initiative on Obscenity*, 877 P.2d 848 (Colo. 1994), the Court required a correction to titles for a measure that lessened certain First Amendment protection. The corrected title stated that the initiative “prevent[ed]” First Amendment protection by the courts, even though the warning itself went beyond the initiative's express language. *Id.* at 850-51.

Here, if there is a statewide vote to authorize casino gambling in Arapahoe, Mesa, and Pueblo Counties, local voter approval will not be required for the casinos or their 24-hour operations. Voters would not know that the Proponents carved themselves out of these general requirements. *See* Colo. Const., art. XVIII, sec. 9(6), (7)(a)(I) (adopted by voters in 1994 and 2008, respectively, to impose these mandates). Much like *Obscenity*, this initiative is crafted to leave voters with one impression when the truth is quite different. That is the essence of misleading the electorate.

² *See* Armstrong and Hagedorn's Opening Brief at 21 (#80 and #81 “do not require a second vote prior to implementation.”)

These ballot titles will mislead voters about what has become a central tenet of gambling expansion in Colorado – local voters' final word. The test of a title's adequacy is whether the “general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear” from reading the title. *Obscenity, supra*, 877 P.2d at 850-51, citing C.R.S. § 1-40-106(3)(b). If these ballot titles are left unaltered, voters will not understand their “yes” votes approve of gambling expansion *and* exempt such expansion from key voter-enacted conditions on such expansion: local voter approval of gaming in those new jurisdictions and/or any expansions of hours to 24 hours.

CONCLUSION

The titles for #80 and #81 fall short of clear statutory and judicial standards. They should be corrected before being presented to voters.

Respectfully submitted this 19th day of May, 2014.

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CERTIFICATE OF SERVICE

I, Mark G. Grueskin, hereby affirm that a true and accurate copy of the **RESPONDENT'S ANSWER BRIEF** was sent this day, May 19, 2014, via ICCES to the Petitioners' counsel and to counsel for the Title Board at:

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