SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED: April 29, 2014 6:00 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
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") **Petitioner: RICHARD EVANS** **v.** **Respondents: VICKI ARMSTRONG and BOB HAGEDORN** **and** **Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER**	▲ COURT USE ONLY ▲
Attorneys for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rechtkornfeld.com	**Case No. 2014SA106**
PETITIONER'S OPENING 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).

Choose one:

☐ It contains _____ words.

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X For the party raising the issue:

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, 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.

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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Whether the Title Board erred by failing to disclose that the measure guarantees 2,500 slot machine devices at each track and allows each track to have an unlimited number of such devices.

Whether the Title Board erred in failing to include in the titles the fact that each of the racetrack casinos may expand their operations to 24 hours a day.

Whether the Title Board erred by failing to state that, despite other indications in the titles drafted, neither of these measures require local voter approval as a "limited gaming" site.

STATEMENT OF CASE

A. Statement of Facts

This appeal addresses ballot titles set for two companion initiatives which allow for slot machines and similar gambling devices to be operated at one existing horse racetrack in Arapahoe County and two non-existent racetracks in Mesa and Pueblo Counties. Those two racetracks, if they ever come into being, must wait five (5) years before they can get the gambling devices that must be made available to the Arapahoe County track as of July 1, 2015.

Initiative #80 would amend the Colorado constitution to permit on-site electronic gaming (known as video lottery terminals) at one qualified horse racetrack in each of the counties of Arapahoe, Mesa, and Pueblo, as well as at limited gaming establishments in Cripple Creek, Blackhawk, and Central City. A new tax is imposed, amounting to 39% of net proceeds from video lottery terminals. Revenues are estimated at $107,600,000 in the first fiscal year. Of this 39% tax, 37% would be directed to a new K-12 education fund for school districts and the charter school institute; 2% would be given to the host communities in which the operator is located.

Video lottery terminals are electronic gaming devices that feature virtual slot machines and virtual table games, among others. Upon approval of an operator's license, the director must approve the greater of 2,500 video lottery terminals at

that location, or such other number as requested by the location's operator. The only constraint on the number of video lottery terminals to be granted to any racetrack is that such number must maximize the funds made available to the K-12 education fund. There is no maximum number provided in the initiative. Such gaming devices are also to be available to limited gaming operators in the existing limited gaming towns of Black Hawk, Central City, and Cripple Creek. However, those facilities are not guaranteed any such devices and will receive them only if the Lottery Division director finds it to be "economically feasible."

Initiative #81 would allow for limited gaming, including slot machines, blackjack, poker, roulette, and craps, at the one existing horse racetrack in Arapahoe County and the two previously referenced, hypothetical racetracks in Mesa and Pueblo Counties. A new tax would be imposed on the operators' adjusted gross proceeds from limited gaming at horse racetracks, which is expected to result in $120,700,000 in tax revenue annually in the first fiscal year. A new tax is imposed, amounting to 36% of adjusted gross proceeds from horsetrack limited gaming. Revenues are estimated at $120,100,000 in the first fiscal year. Of this 36% tax, 34% would be directed to a new K-12 education fund for school districts and the charter school institute; 2% would be given to the host communities in which the operator is located.

Both #80 and #81 prohibit gaming between 2 a.m. and 8 a.m. However, the host community in which the operator is located may authorize video lottery terminals and limited gaming to be used up to 24 hours per day.

A local vote to approve the statewide voter is not permitted under Initiative #80. A local vote to approve 24-hour gaming is not permitted under either Initiative #80 or Initiative #81. Based on constitutional amendments adopted by voters in 1994 and 2008, such votes are mandated for all other gaming expansion that is authorized by statewide voters.

B. Nature of the Case, Course of Proceedings, and Disposition Below.

Vicki Armstrong and Bob Hagedorn (hereafter "Proponents") proposed Initiatives #80 and #81 (the "Proposed Initiatives"). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter the Proponents submitted final versions of the Proposed Initiatives to the Secretary of State for submission to the Title Board.

A Title Board hearing was held on March 19, 2014 to establish the Proposed Initiatives' single subject and set titles for both. The following title was set for Initiative #80:

> Shall state taxes be increased $107.6 million annually in the first full fiscal year, and by such amounts that are raised thereafter, by taxing authorized horse racetracks' and limited gaming establishments' net proceeds from video lottery terminals, amending the Colorado constitution to permit video lottery terminals to be operated in specified limited locations, allocating approximately 95 percent of the

resulting tax revenues to a new K-12 education fund to be distributed to school districts and the charter school institute for local K-12 education, and allocating the remainder to host communities?

The following title was set for Initiative #81:

Shall state taxes be increased $120.7 million annually in the first full fiscal year, and by such amounts that are raised thereafter, by taxing authorized horse racetracks' adjusted gross proceeds from limited gaming, amending the Colorado constitution to permit limited gaming at specified horse racetracks in addition to existing pari-mutuel wagering, allocating approximately 94 percent of the resulting tax revenues to a new K-12 education fund to be distributed to school districts and the charter school institute for local K-12 education, and allocating the remainder to host communities?

On March 26, 2014, Petitioner filed Motions for Rehearing on Initiatives #80 and #81. The rehearing was held on April 2, 2014, at which time the Title Board granted in part the Motions for Rehearing to cure certain deficiencies in the titles. The following revised title was set for Initiative #80:

Shall state taxes be increased $107,600,000 annually in the first full fiscal year, and by such amounts that are raised thereafter, by imposing a new tax on authorized horse racetracks' and limited gaming establishments' net proceeds from on-side electronic gaming in part to increase funding for K-12 education, amending the Colorado constitution to permit one qualified horse racetrack in each of the counties of Arapahoe, Mesa, and Pueblo and limited gaming establishments in Cripple Creek, Blackhawk, and Central City to operate electronic game machines including virtual slot machines and virtual table game devices, allocating approximately 95 percent of the resulting tax revenues to a fund to pay the state's administrative expenses and to be distributed to school districts and the charter school institute for local K-12 education, and allocating the remainder to host communities?

The following revised title was set for Initiative #81:

> Shall state taxes be increased by $120,700,000 annually in the first full fiscal year, and by such amounts that are raised thereafter, by imposing a new tax on authorized horse racetracks' adjusted gross proceeds from limited gaming in part to increase funding for K-12 education, amending the Colorado constitution to permit limited gaming in addition to pre-existing pari-mutuel wagering at one qualified horse racetrack in each of the counties of Arapahoe, Mesa, and Pueblo, allocating approximately 94 percent of the resulting tax revenues to a fund to pay the state's administrative expenses and to be distributed to school districts and the charter school institute for local K-12 education, and allocating the remainder to host communities?

The Board did not, however, cure certain remaining deficiencies that were raised at the rehearing, and Petitioner timely filed petitions for review before this Court pursuant to C.R.S. § 1-40-107(2).

SUMMARY OF ARGUMENT

The Title Board's errors fall in two categories. First, the Board couched certain of the measures' provisions in misleading ways that are more political than text-related. The Board calculated the relative percentages that tax revenue recipients would receive rather than simply state the amount of the tax rate. The Board fashioned the ballot title so that gambling legalization – assiduously avoided as a primary subject of the initiative by the Proponents – is placed between references to K-12 education funding.

Then came the errors of omission. The Board omitted references to the 2,500 slot machine minimum at each track and the fact that there is no maximum. The Board omitted reference to authorization for 24-hour gambling or for the

textual exclusions from the right of local voters to have a say on whether casinos would come to their jurisdictions. As the Board treats significant omissions to be as misleading as misstatements of the initiative text, these errors were material and sufficient to require that the titles set for both Initiatives #80 and #81 be returned to the Title Board for correction.

LEGAL ARGUMENT

A. The Title Board failed to set an informative title, one that communicates the central features of this initiative.

1. Standard of review; preservation of issue below.

The Title Board must set titles that "correctly and fairly express the true intent and meaning" of the proposed initiative and "unambiguously state the principle of the provision sought to be added, amended, or repealed." C.R.S. § 1–40–106(3)(b). This Court's duty is to ensure that the titles "fairly reflect" the proposed initiative so petition signers and voters will not be misled into supporting or opposing a measure due to the words employed by the Board. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington*, 830 P.2d 1023, 1026 (Colo.1992).

If the title clearly and concisely summarizes the measure's "central features," the Title Board will be deemed to have done its job, and the title will be upheld. *In re Title, Ballot Title, Submission Clause for 2007-2008 Initiative #61*, 184 P.3d 747, 752 (Colo. 2008). Where, however, the Board has omitted reference

to, or mischaracterized, a central element of the measure, the title is legally deficient because voters will be misled, and the title must be sent back to the Board to be corrected. *See Matter of Proposed Election Reform Amendment,* 852 P.2d 28, 34-35 (Colo. 1993). In sum:

> The titles, standing alone, should be capable of being read and understood, and capable of informing the voter of the major import of the proposal, but need not include every detail. They must allow the voter to understand the effect of a yes or no vote on the measure. When they do not, both the title board and this court fail in our respective functions.

In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22 ("English Language Education"), 44 P.3d 213, 217 (Colo. 2002).

This issue was presented to the Board at the rehearing and preserved for review. *See* Motion for Rehearing on Initiative 2013-2014 #80 at 2 and Motion for Rehearing on Initiative 2013-2014 #81 at 2.

2. The title is misleading to voters.

(a) The Board's reference to the allocation of taxes to K-12 education is an unnecessary characterization rather than a reflection of the actual initiative text.

The Board stated in both titles that 94% (limited gaming in #81) or 95% (video lottery terminals in #80) of the taxes generated would go to the state K-12 fund created by the measure. The titles do not state the actual state or local tax rates that are created by the measures, even though the creation of a new tax at a

specific rate is the very event under Article X, section 20 of the Constitution ("TABOR") that compels an election with a ballot title worded in this fashion. By departing from the text to address the relative share of taxes generated that would go to the state fund, the Board's title tilted that descriptive document toward a political characterization rather than the fair and balanced reflection of the initiative text that it is supposed to be.

In using this reference, the Board violated one of the central tenets of ballot title setting. "Neither the Board, in preparing the title, ballot title and submission clause, and summary, nor this court, sitting in review of the Board's actions, can interpret the effects of a proposed initiative." *Matter of Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1072 (Colo. 1994). Nor is it within the Board's purview to interpret the language and "suggest how it will be applied if adopted by the electorate." *Matter of Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in City of Antonito*, 873 P.2d 733, 739 (Colo. 1994). Yet, by using a calculator to determine the effect of the state tax imposed in light of the local tax imposed, the Board's title was just that – it suggested effects and applications rather than summarize the measure's text. On the other hand, the Board will not typically err when its title "use[s] language substantially similar to the language contained in the Initiatives." *In re Proposed Initiative Bingo-Raffle Licensees (I)*, 915 P.2d 1320, 1326 (Colo. 1996).

This type of evaluative title setting in evidence here lends itself to political usage of title language. And where "the Title Board tips the substantive debate surrounding the issue to be submitted to the electorate" through the language it uses in the title, it has departed from its central task to set a fair and balanced title. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A),* 4 P.3d 1094, 1100 (Colo. 2000). The Title Board is to avoid words "that provoke political emotion" in favor of "those which are merely descriptive of the proposal." *Id.* The measure does not use these percentage figures. Given that the title couples these calculations with references that the monies are raised "to increase funding for K-12 education," the potential political usage of these percentages is clear – and problematic.

(b) The combination of the dollar figure, the percentage figure, and "K-12" will mislead the voter reading the title in haste.

If the Court glances at the ballot title, three things stick out:

- the dollar figures stated at the title's outset – $120,700,000 (limited gaming in #81) and $107,600,000 (video lottery terminals in #80);
- the percentage figures stated near the title's end – 94% (limited gaming in #81) and 95% (video lottery terminals in #80); and
- "K-12 education" stated both at the title's beginning and end (both).

A voter who glances but does not study the language would assume that 94% or 95% of more than $100,000,000 would be dedicated to K-12 education. And it is this voter, the person who quickly scans a ballot title, who represents the standard in title setting. *Limited Gaming in City of Antonito, supra*, 873 P.2d at 742.

In fact, the costs of administering the regulatory apparatus are also paid from the K-12 fund. Proposed Art. XVIII, § 17(9)(b)(#80); proposed Art. XVIII, § 17(6)(b)(#81). What those costs might be were never estimated for purposes of calculating the TABOR tax increase in the title. But if existing gaming expenses are any guide, they will not be insubstantial.[1]

The title should be fairly worded "so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed." *Dye v. Baker*, 354 P.2d 498, 500 (1960). Given the dollar figure, the percentage figure, and the two (2) references to "K-12 education," this standard is not met. Some voters will likely be misled into voting on the measure without comprehending narrative in the ballot title. A ballot title's adequacy is judged by the potential reactions of its intended readers. This title is complex, and the

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[1] The cost of limited gaming regulation in 2011 and 2012 was over $12,000,000. Colorado Division of Gaming, *2012 Fact Book and Abstract* at 13 (http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251854585517&ssbinary=true) (last viewed April 28, 2014).

references that stand out will leave the reader with an unfair representation of the measure itself. The Title Board thus erred.

c. The order of tax and gambling expansion language is confusing.

As the Court held in *Limited Gaming in the City of Antonito, supra,* 873 P.2d at 742, the order in which a gaming measure is presented to voters is significant. There, the measure had "two distinct parts." *Id.* One changed gaming rules for all limited gaming jurisdictions; the other legalized such gaming in Antonito. The statewide measures were buried between references to Antonito.

> In order to correctly and fairly express the true intent and meaning of the Initiative, **all provisions solely concerning Antonito must be grouped together, and not separated and placed like bookends at both the beginning and the end of the title and submission clause.** Grouping together related material is necessary to alert voters and petition signers that the Initiative not only involves limited gaming in Antonito, but also changes the provisions regulating limited gaming in all other areas in which limited gaming is lawful.

Id. (emphasis added).

Here, the Title Board erred in the same way. The ballot title begins with the required TABOR question and a gratuitous reference to education funding: "Shall taxes be increased..... to increase funding for K-12 education." Then, the authorization of three new sites of legalized casino-type gaming is referenced. The ballot title concludes with another reference to the fact that funds – 94%/95% of them – are "distributed to school districts and the charter school institute for local K-12 education, and allocating the remainder to host communities." The Title

Board thus sandwiched language about gambling expansion between more politically attractive references to K-12 education funding.

Given the length of these titles, it will take a discerning voter to know even sparse details about newly legalized gaming in Arapahoe, Mesa, and Pueblo Counties. The Board erred by wrapping revelatory elements about gambling expansion in politically attractive narrative about school funding, and the titles should be returned to the Board for correction.

d. The title omits any reference to imposition of a "new tax" or the tax rate to be used as to this gaming activity.

This ballot title is set to comply with the minimum requirements of TABOR. Even though a new tax on a newly legalized activity is created, neither the words "new tax" or the tax rate to be imposed can be found in the ballot title.

A TABOR election is about at least two things: (i) the fiscal event that triggers the election (a new tax, tax rate increase, extension of an expiring tax, fiscal policy change directly causing a net revenue gain); and (ii) the voter approval to spend revenue in excess of the rate that otherwise applies (inflation plus growth). Colo. Const., art. X, sec. 20(4)(a), (7)(a). Voters cannot intelligently decide whether the first issue deserves a "yes" or a "no" vote without being told that there is a new tax being imposed and that it is set at a given rate. The Court has held that, under TABOR, revenue and spending authorizations are entirely

separate issues. *In the Matter of the Title Ballot Title and Submission Clause, and Summary for Initiative 1997-98 #30*, 959 P.2d 822, 826 (Colo. 1998); accord *In the Matter of the Title Ballot Title and Submission Clause, and Summary for 2005-2006 #74*, 136 P.3d 237, 242 (Colo. 2006). The ballot titles speak of the spending of revenue generated but fail to provide any specifics about the revenue generation element of these initiatives. Key issues in a ballot measure cannot be hidden from view, either entirely or by use of jargon used in a title. *Dye, supra,* 354 P.2d at 500.

TABOR does not mandate use of the words "new tax" or the tax rate imposed in a ballot title. But it cannot reasonably be argued that, in the post-TABOR world, those are mere details of implementation. As concepts, they are central features in this unique election process. They should not be omitted from the question presented to voters.

This is particularly so when a new tax is imposed. Few Coloradans are familiar with the regimen for taxing gaming proceeds. Fewer know that it is a gross proceeds tax, imposed on all revenue remaining after winnings are paid from wagers. The title would provide information that is certainly central to the operation of this measure and critical to voters' consideration of the desirability of this particular tax as an education funding mechanism. Voters would be able to assess, among other things, its reliability when imposed upon new gaming entities

like those authorized in these measures. The Title Board erred by failing to include the fact that a new tax is being imposed and the tax rate to be used in the titles.

e. The title fails to disclose that no fewer than 2,500 slot machines can be placed at a racetrack casino and that there is no ceiling on that number.

The objective of a ballot title is to reflect an initiative's central features. A measure's scope is such a central element.

These initiatives guarantee 2,500 gaming devices at each racetrack. That figure is important because it would make any one of these racetrack casinos the largest in the state. As a matter of perspective, in 2012 (the last year for published statistics on this issue), the entire town of Central City only had 2,210 gaming devices.[2] It is undoubtedly a central feature that the voters are being asked to approve single casinos that are as intensive in gaming device numbers as an entire gaming jurisdiction just outside the greater metro Denver area.

Moreover, there is no limit on the number of devices that can be approved as long as the Lottery Director is satisfied that the additional devices will add revenue to the K-12 education fund. Proposed Art. XVIII, § 17(4)(a); proposed Art. XVIII, § 17(4)(b)(#81). Should the Colorado racetrack grow even to the level of its sister

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[2] Colorado Division of Gaming, *2012 Fact Book and Abstract* at 16 http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251854585517&ssbinary=true (last viewed April 28, 2014).

facility in Rhode Island, they would both have 4,500 devices.[3] That figure is the same as the total number of devices in the entire town of Cripple Creek, which only had 4,591 devices among all its casinos in 2012.[4] This number need not be stated in the title, but the fact that this facility could grow without future voter input is relevant, particularly given what that growth would mean to neighboring communities in the counties where the racetrack casinos will be located. Those effects are anything but conjectural, given Colorado's experience with limited gaming to date. *See e.g.*, C.R.S. § 12-47.1-1601(4)(b) (local governments, eligible for gaming impact funds, are Boulder, Clear Creek, Grand, Jefferson, El Paso, Fremont, Park, Douglas, Gilpin, Teller, La Plata, Montezuma, and Archuleta Counties, as well all municipalities and special districts therein).

The Board must ensure that voters appreciate the "scope" of gaming expansion measures. *Matter of Title, Ballot Title and Submission Clause, and Summary Approved Feb. 12, 1992*, 830 P.2d 963, 968-69 (Colo. 1992). There, the measure authorized one new gaming jurisdiction and also changed rules that applied to the other three limited gaming jurisdictions. However, by using a reference to "statewide" gaming, the Court held that the Title Board

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[3] State of Rhode Island Lottery, http://www.rilot.com/video.asp (last viewed April 28, 2014).

[4] Colorado Division of Gaming, *2012 Fact Book and Abstract, supra,* at 17.

misrepresented the reach of the measure. The Board erred because it failed to communicate that the "statewide" changes really only dealt with four cities.

Just as the Board erred in failing to indicate the reach of that measure to four specific cities, it erred here in failing to state the magnitude of the authorized gaming expansion. The Board's silence on an important element of a ballot measure is every bit as misleading as an inartful wording choice, such as the phraseology used in 1992. The Board's titles are unfair and will not be upheld "if they contain a material and significant **omission**, misstatement, or misrepresentation." *In re Title, Ballot Title & Submission Clause & Summary for 1997–98 No. 62*, 961 P.2d 1077, 1082 (Colo.1998) (emphasis added). Thus, the Board's decisions as to these titles must be overturned.

f. The title fails to disclose that the measure permits local jurisdictions to expand gaming hours to 24 hours per day.

Much like the title's silence about the high or unlimited number of devices at each racetrack casino, the title does not address the fact that these communities can become 24-hour gambling facilities. This silence was error.

As noted above, the Board errs where it **omits** a significant element of a ballot measure. *Id.* Titles that "create confusion and are misleading because they do not sufficiently inform the voters of" important aspects of the initiative must be rejected. *Initiatives 2001-2001 No. 21 and No. 22, supra*, 44 P.3d at 221.

The title's goal, after all, is to enable "informed voter choice." *In re Title, Ballot Title, Submission Clause, Summary for 1999–2000 No.29*, 972 P.2d 257, 266 (Colo.1999). The Board does not achieve that goal unless its title will "convey to voters the initiative's likely impact." *In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 No. 37*, 977 P.2d 845, 846 (Colo.1999).

The "likely impact" of these measures is very different if the casinos in three of the more populated counties are 24-hour enterprises. At bare minimum, voters should know that the initiatives contain express authority for this changeover from 18-hour gambling days to 24-hour gambling days. In truth, it is as important for supporters of the measure as it is for opponents. In either case, it is an important part of the gambling package they are being asked to accept. This element of the measures should be reflected in the ballot titles.

g. The titles are silent on the important issue of local voter approval.

Each ballot measure conceals the lack of voter approval in its own way. The title for Initiative #80 hides the fact that the local jurisdiction cannot weigh in, as currently required, after a statewide vote. And the title for Initiative #81 hides the fact that the local jurisdiction cannot weigh in, as currently required, to expand gaming to 24 hours a day in limited gaming jurisdictions. These errors can only be remedied by this Court.

This case is quite similar to *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). There, a ballot title reflected the language of the measure addressing judicial consideration of allegedly obscene materials. What it did not indicate was that the measure would actually undermine the extent of such judicial review, because the measure constrained state judicial interpretations to extend only as much protection as was allowed by the First Amendment rather than by the Colorado Constitution. *Id.* at 850. Because of what the ballot measure did not say, it was misleading to voters. *Id.* at 851. The Court crafted a ballot title to make it clear the measure actually was less protective of speech than voters would, based on previous court rulings, have had reason to suspect. *Id.*

The Colorado Constitution now requires all new limited gaming jurisdictions, authorized by statewide voters, to receive a vote of the local jurisdiction as well. Colo. Const., art. XVIII, § 9(6). Given the expanse of that provision, it is possible that a local vote would be mandated by Initiative #81 dealing with limited gaming at racetracks. However, Initiative #80 legalizes video lottery terminals, a slot machine look-alike. As those devices are not "limited gaming," no local vote would be permitted. Without notice in the ballot title, voters would not appreciate this legal nicety.

Initiative #80 is even more deceptive because it defines the "exclusive locations" for video lottery terminals to include "the licensed limited gaming establishments in the city of Central, the city of Black Hawk, and the city of Cripple Creek." Proposed Article XVIII, sec. 17(2)(d)(II). The ballot title for #80 also includes a specific reference to the "limited gaming establishments in Cripple Creek, Black Hawk, and Central City" as being eligible to "operate electronic game machines including virtual slot machines and virtual table game devices." Thus, a reader of this title would assume that other locations listed in the title, treated on par with limited gaming towns for all other purposes, would be subject to the local vote requirement. There is no such equivalency when the issue of local voter approval is considered, and voters would thus be misled.

The title for Initiative #80 does not even mention "video lottery terminals." For all voters know, the three tracks would be limited gaming locations as well – and thus subject to the local voter approval requirement. They are not. The title for #80 is inherently deceptive and must be struck.

In the same manner, the title for Initiative #81 is silent about the issue of voter approval for expanded gaming including the ability to conduct gaming activities 24 hours a day. In contrast, the Colorado Constitution is specific that expanded gaming is subject to voter approval. These provisions, however, are

specific to "the voters of the cities of Central, Black Hawk, and Cripple Creek." Colo. Const., art. XVIII, § 9(7)(a). Voters reading the title to #80 – "amending the Colorado constitution to permit limited gaming" at three horse racetracks in Arapahoe, Mesa, and Pueblo Counties – would have reason to think that the limited gaming requirement for a local vote applies to this "limited gaming." But they could not be more wrong. Or deceived. The ballot title should not foster or accommodate such deception, and the title should be returned to the Board for correction.

Initiative #80 also has no provision for a local vote to approve 24-hour gaming. Voters would not appreciate that fact any more than they would appreciate that the local voters could not approve gaming coming to their counties in the first instance. Thus, the ballot title for #80 is doubly flawed.

CONCLUSION

For the reasons stated herein, the ballot titles for Initiatives #80 and #81 should be returned to the Title Board for correction.

Respectfully submitted this 29th day of April, 2014.

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