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SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
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 (Case No. 2014SA099) and In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #81 (Case No. 2014SA106) (Consolidated) **Petitioner:** Richard Evans v. **Respondents:** Vicki Armstrong[1] and Bob Hagedorn, and **Title Board:** Suzanne Staiert, Daniel Domenico and Jason Gelender[2]	▲ COURT USE ONLY ▲ Case No. 2014SA106

[1] Ms. Armstrong's name is misspelled in the caption. Her name should appear as Vickie L. Armstrong.

[2] Although the caption identifies Jason Gelender as a member of the Title Board, Sharon Eubanks served on the Title Board for purposes of Initiatives #80 and #81 as the designee of the Director of the Office of Legislative Legal Services.

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RESPONDENTS' 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).

It does not exceed 30 pages.

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, not to an entire document, where the issue was raised and ruled on.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 32.

/s/ Lino S. Lipinsky de Orlov
Lino S. Lipinsky de Orlov

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Proponents, Vickie L. Armstrong and Bob Hagedorn (jointly, "Proponents" or "Respondents"), respectfully submit this opening brief in support of the titles, ballot titles, and submission clauses (jointly, the "Titles") that the Title Board set for Proposed Initiative 2013-2014 #80 ("Initiative #80") and for Proposed Initiative 2013-2014 #81 ("Initiative #81") (jointly, the "Initiatives").

STATEMENT OF ISSUE

Do the Titles correctly and fairly express the true intent and meaning of the Initiatives in compliance with C.R.S. § 1-40-106 (2013)?

STATEMENT OF THE CASE

This is an appeal from the Title Board's setting of Titles for the Initiatives. On February 21, 2014, Proponents filed the Initiatives with the directors of the Legislative Council and the Office of Legislative Legal Services. The legislative staff provided Proponents with its review and comment memoranda for the Initiatives on March 5, 2014, and conducted the associated review and comment meetings on March 7, 2014.

Proponents revised the Initiatives in response to the staff's comments, and filed amended versions of the Initiatives with the Secretary of State's office on March 7, 2014. At hearings conducted on March 19, 2014, the Title Board found that each Initiative contained a single subject, as required pursuant to article V,

section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5 (2013). The Title Board set the Titles for the Initiatives.

On March 26, 2014, petitioner, Richard Evans ("Evans"), filed motions for rehearing to challenge the Titles. Evans did not, however, challenge the Title Board's finding that each Initiative addresses a single subject. On April 2, 2014, the Title Board revised the Titles to their current form. Evans filed this appeal, pursuant to C.R.S. § 1-40-107(2) (2013), on April 9, 2014.

STATEMENT OF THE FACTS

The Initiatives would amend the Colorado Constitution to impose a new tax on authorized gaming to create a K-12 education fund for the purpose of improving the education of children in Colorado public schools. Initiative #80, § 17(1); Initiative #81, § 17(1).[3] The K-12 education fund would provide the state with additional revenue to address the needs of its public schools, including reduction of class sizes, acquisition of technology for teachers and students, enhancement of school safety and security, and improvement of school facilities. Initiative #80, § 17(1); Initiative #81, § 17(1).

[3] Evans submitted to this Court copies of the Initiatives and the Titles together with his Petition for Review of Final Action of Ballot Title Setting Bond Concerning Proposed Initiative 2014-2014 #80 ("Proceeds from Video Lottery Terminals for K-12 Education") ("Pet. for Review for Initiative #80") and his Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2013-2014 #81 ("Horse Racetrack Limited Gaming Proceeds for K-12 Education") ("Pet. for Review for Initiative #81").

The moneys for the K-12 education fund would be raised through a new tax on proceeds from video lottery terminals (Initiative #80) or from limited gaming (Initiative #81) (jointly, "New Gaming") at the locations specified in the Initiatives.[4] Initiative #80, § 17(8)-(9)(a); Initiative #81, § 17(5)-(6)(a). To accomplish this purpose, Initiative #80 would direct the Colorado Lottery Commission and the State Lottery Division to permit the operation of video lottery terminals at "exclusive locations," defined as one horse racetrack in each of Arapahoe, Mesa, and Pueblo Counties, and licensed limited gaming establishments in Cripple Creek, Black Hawk, and Central City, in which limited gaming is currently authorized. Initiative #80, § 17(1). Initiative #81 would direct the Limited Gaming Control Commission to authorize one horse racetrack in each of Arapahoe, Mesa, and Pueblo Counties to conduct limited gaming. Initiative #81, §§ 17(1), 17(2)(b), 17(2)(c), 17(4)(a).

Under Initiative #80, the exclusive locations would pay into the newly-created K-12 education fund a tax of thirty-seven percent of their net video lottery terminal proceeds. Initiative #80, § 17(8)(a)(I). Under Initiative #81, the tax on authorized horse racetracks, also to be paid into the K-12 education fund, would be

[4] Proponents use the term "New Gaming" in this brief to refer jointly to the video lottery terminals authorized in Initiative #80 and to the horse racetrack limited gaming authorized in Initiative #81.

thirty-four percent of their adjusted gross proceeds from horse racetrack limited gaming. Initiative #81, § (5)(b)(I).

In addition to the above taxes, under Initiative #80, each exclusive location would pay two percent of its net video lottery terminal proceeds to the exclusive location's "host community." Initiative #80, §§ 17(2)(e), (8)(a)(II). Under Initiative #81, each authorized horse racetrack would pay two percent of its adjusted gross proceeds from limited gaming to the racetrack's host community. Initiative #81, § (5)(b)(II). The Initiatives define "host community" as the single local jurisdiction that issues the permits and approvals necessary for the operations of New Gaming. Initiative #80, § 17(2)(e); Initiative #81, § (2)(e).

With the limited exception noted below, the moneys in the K-12 education fund would be distributed to school districts and to the Charter School Institute for the purpose of improving public K-12 education. Initiative #80, § 17(9)(c)-(e); Initiative #81, § 17(6)(c)-(e). In addition, the State Treasurer would pay from the K-12 education fund all administrative expenses of the relevant state agency incurred in implementing New Gaming. Initiative #80, § 17(9)(b); Initiative #81, § 17(6)(b).

The Titles, as amended on April 2, 2014, fairly capture these features of the Initiatives. The title for Initiative #80, as amended, reads:

> 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-site 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, Black Hawk, 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?

Title for Initiative #80, at 29. The title for Initiative #81, as amended, reads:

> Shall state taxes be increased $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?

Title for Initiative #81, at 25.

ARGUMENT

A. Summary of the Argument

The Title Board properly exercised its broad discretion in drafting the Titles. The Titles satisfy Colorado law because they fairly and accurately set forth the major features of the Initiatives. Accordingly, there is no basis for setting aside the Titles.

B. Standard of Review

The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the central features of the proposed measure." *Feazel v. Martinez* (*In re Proposed Initiative on "Trespass-Streams with Flowing Water"*), 910 P.2d 21, 24 (Colo. 1996). Titles are not required to "spell out every detail" or "describe every nuance and feature" of a proposed initiative. *Percy v. Fielder* (*In re Title, Ballot Title & Submission Clause, & Summ. for 1999-00 #256)*, 12 P.3d 246, 256 (Colo. 2000); *In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991). Rather, "the point of titles is to identify the proposal succinctly." *Howes v. Hayes* (*In re Title, Ballot Title & Submission Clause, & Summ. for 1997-1998 No. 74*), 962 P.2d 927, 930 (Colo. 1998). As explained further in Section C.7 below, the Title Board lacks the authority "to provide a title that includes more information than is contained in the initiative." *In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d at 1357.

The Court affords the Title Board "considerable discretion in setting the titles for a ballot initiative." *Kemper v. Hamilton* (*In re Title, Ballot Title, & Submission Clause for 2011-2012* #3), 274 P.3d 562, 565 (Colo. 2012). Accordingly, the Court should resolve all "legitimate presumptions" in the Title Board's favor, should invalidate a title only in a clear case, and should not interfere with the Title Board's choice of language unless it is "clearly misleading." *In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d at 1355. The Court "will not re-write the titles and summary to achieve the best possible statement of the proposed measure's intent." *See Percy*, 12 P.3d at 255.

Moreover, the Court construes the "constitutional and statutory provisions governing the initiative process in a manner that facilitates the right of initiative . . . ." *Id.* (quoting *Armstrong v. Davidson*, 10 P.3d 1278, 1282 (Colo. 2000)). The Court avoids "hampering [initiatives] with technical statutory provisions or constructions." *Id.*

C. Evans's Challenges to the Titles Lack Merit.

Evans's Petitions for Review present substantially similar challenges to the Titles for both Initiatives, with only minor differences. Accordingly, Respondents concurrently address the challenges to both Titles.

Under the deferential standard of review applicable to the Title Board's setting of titles, the Court should reject Evans's seven challenges to the Titles.

Four of his objections concern alleged omissions from the Titles, but none of the omitted information is central to the Initiatives. Evans's remaining objections are to specific language in the Titles, or, in one instance, to the physical placement of that language. Those objections are equally insubstantial.

The Titles address all major elements of the Initiatives and correctly and fairly express their true intent and meaning. This Court should therefore affirm.

1. The Titles Do Not Contain Political Statements.

Evans contends that the phrases "to increase K-12 education" (in both Initiatives), "allocating approximately 95 percent" (in Initiative #80), and "allocating approximately 94 percent" (in Initiative #81) are "political statements" that do not accurately or fairly inform voters of the actual wording and intent of the Initiatives. Pet. for Review for Initiative #80, at 4 ¶ 1; Pet. for Review for Initiative #81, at 4 ¶ 1. Evans, however, misquotes the Titles, which do not contain the phrase "to increase K-12 education." Rather, they say "to increase funding for K-12 education." Pet. for Review for Initiative #80, at 29; Pet. for Review for Initiative #81, at 25. Evans's "political statement" attack fails regardless of whether the Court considers the actual language in the Titles or Evans's inaccurate language.

Evans appears to challenge the quoted language as political slogans or catch phrases that could be used to Respondents' advantage in a political campaign. *See*

Sarchet v. Hobbs (In re Title, Ballot Title & Submission Clause, & Summ. for 1999-2000 # 227 & # 228), 3 P.3d 1, 6-7 (Colo. 2000) ("A 'catch phrase' consists of 'words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment.'") (quoting *Rice v. Brandon (In re Title, Ballot Title, Submission Clause, & Summ. for 1997-1998 # 105)*, 961 P.2d 1092, 1100 (Colo. 1998)).

Neither "to increase funding for K-12 education" nor "allocating approximately 95 percent" nor "allocating approximately 94 percent" is an impermissible political slogan or catch phrase. "Slogans are brief, striking phrases designed for use in advertising or promotion that encourage prejudice in favor of the proposal, impermissibly distracting voters from the merits of the proposal." *Earnest v. Gorman (In re Ballot Title & Submission Clause for 2009-2010 # 45)*, 234 P.3d 642, 649 (Colo. 2010). Similarly, "[c]atch phrases are words that work in favor of a proposal without contributing to voter understanding." *Id.* "By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *See Garcia v. Chavez (In re Title, Ballot Title & Submission Clause, & Summ. for 1999–2000 No. 258(A))*, 4 P.3d 1094, 1100 (Colo. 2000).

This Court "approach[es] the potential existence of a catch phrase cautiously." *Id.* The Court "must be careful to recognize, but not create, catch phrases." *Rice,* 961 P.2d at 1100. Rather, the burden is on the opponent to "offer evidence beyond the 'bare assertion that political disagreement currently exists' regarding the challenged phrase." *See Earnest*, 234 P.3d at 649 (quoting *Sarchet*, 3 P.3d at 7).

Language that is "merely descriptive of the proposal" is not an impermissible catch phrase or slogan. *See Garcia*, 4 P.3d at 1100. Thus, the Court has held that none of the following was a prohibited catch phrase:

- "[R]ight of health care choice," *Earnest*, 234 P.3d at 650;
- "[C]oncerning the management of growth," *Percy*, 12 P.3d at 257;
- "[T]o preserve . . . the social institution of marriage," *Sarchet*, 3 P.3d at 7;
- "[S]chool impact fees," *In re Ballot Title & Submission Clause, & Summ. for No. 26 Concerning Sch. Impact Fees,* 954 P.2d 586, 593 (Colo. 1998); and
- "[P]ublic's interest in state waters," *Macravey v. Hubbord* (*In re Title, Ballot Title, Submission Clause & Summ. Adopted March 20, 1996, by the Title Bd. Pertaining to Proposed Initiative "1996-6"),* 917 P.2d 1277, 1281 (Colo. 1996).

In each case, the Title Board committed no error in including the challenged phrase in the title because the phrase accurately described the initiative.

In this case, "to increase funding for K-12 education" is neither a catch phrase nor a slogan because it is "merely descriptive of the proposal[s]," *Garcia,* 4 P.3d at 1100, which would establish a new K-12 education fund through the proceeds generated from New Gaming at authorized locations. *See generally* Initiative #80; Initiative #81. The Initiatives provide for the creation of the K-12 education fund; for the distribution of funds on a per pupil basis to each K-12 public school district and the state Charter School Institute; and for each school district and each institute charter school's use of moneys received from the K-12 education fund to address local needs to improve the education of children in grades K-12 in Colorado public schools. *Id.* Monetary support for K-12 education is a central feature of the Initiatives. Accordingly, the phrase to "increase funding for K-12 education" is appropriately part of the Titles.

The phrases "allocating approximately 94 percent" and "allocating approximately 95 percent" are also neither catch phrases nor slogans because they merely describe the approximate portion of increased tax revenues that would be distributed to the K-12 education fund. The phrases have no potential political connotation; they are merely objective quantifications.

In short, the Titles do not contain improper political statements.

2. The Titles Will Not Mislead Voters Regarding the Amount of Taxes That Will Benefit K-12 Education.

Evans argues that the statement in each Title of the approximate percentage[5] of tax revenues to be allocated to the K-12 education fund, in combination with the designation of the total annual tax increase amount,[6] will mislead voters into thinking that K-12 education would benefit from the entire stated percentage of tax revenues. Pet. for Review for Initiative #80, at 4 ¶ 2; Pet. for Review for Initiative #81, at 4 ¶ 2. To the contrary, the challenged language has no potential to mislead because it accurately describes the Initiatives.

In quantifying the increased tax revenues from New Gaming in the first full fiscal year, the Titles use the state economist's fiscal impact estimates. Ex. 1, Revenue Impact Mem. for Proposed Initiative #80, ¶ 2; Ex. 2, Revenue Impact Mem. for Proposed Initiative #81, ¶ 2. Evans does not challenge the state economist's numbers as inaccurate or misleading. The Titles state the approximate percentage of those revenues that would be allocated to the new K-12 education fund, to reflect the distribution of the remaining revenues to the "host

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[5] This statement is "approximately 95 percent" for Initiative #80 and "approximately 94 percent" for Initiative #81.

[6] For Initiative #80, the total annual tax increase amount is $107,600,000. For Initiative #81, the total annual tax increase amount is $120,700,000.

communities." Those statements accurately describe the intended fiscal distribution ratios of the Initiatives.

The Titles further accurately state that the moneys deposited into the K-12 education fund would *both* "pay the state's administrative expenses" *and* "be distributed to school districts and the charter school institute for local K-12 education." This language eliminates any risk that voters would be misled into thinking that K-12 education would benefit from the entire approximate percentage of the tax revenues referenced in the Titles.

The definition of "approximately" is "close in value or amount but not precise." Merriam-Webster Dictionary, *available at* http://www.merriam-webster.com/dictionary/approximate. Voters will have no trouble understanding that "*about* 94 or 95 percent" – not "*exactly* 94 or 95 percent" – of the moneys in the K-12 education fund would be distributed to school districts and the state Charter School Institute under the Initiatives. The Titles are therefore not misleading. *See, e.g., In re Title, Ballot Title & Submission Clause, & Summ. Pertaining to the Proposed Tobacco Tax Amendment 1994*, 872 P.2d 689, 697 (Colo. 1994) ("The Board is not required to determine the exact fiscal impact of each proposed measure[.]").

3. The Sequence of the Language in the Titles Is Not Misleading.

Evans asserts that "[d]isclosure of the actual expansion of gaming to three major population centers in the State is hidden between the title's references to education funding . . . ." Pet. for Review for Initiative #80, at 4 ¶ 3; Pet. for Review for Initiative #81, at 4 ¶ 3. Nothing is hidden, however. To the contrary, the Titles plainly state that the Initiatives would permit New Gaming at "one qualified horse racetrack in each of the counties of Arapahoe, Mesa, and Pueblo . . . ." This phrase occupies more than one line of text in each of the Titles.[7]

In addition, the Initiatives' provisions addressing K-12 education funding and New Gaming at authorized locations are interconnected – neither feature of the Initiatives can occur without the other. Under these circumstances, the Titles' disclosure of the expansion of gaming is hardly surreptitious, hidden in the folds of the Titles. *See Kemper,* 274 P.3d at 566.

The clear title requirement does not mandate the specific placement of language within a title. Rather, if the language of the Titles, read "as a whole," adequately conveys the meaning of the Initiatives, the Titles are not misleading and this Court must affirm the Titles. *See Earnest*, 234 P.3d at 647. For the reasons

[7] The Title for Initiative #80 further states, accurately, that the measure would permit video lottery terminals at licensed limited gaming establishments in Cripple Creek, Black Hawk, and Central City.

stated above, the Titles read as a whole, fairly and accurately describe the Initiatives.

4. The Titles Adequately Describe the New Tax Under the Taxpayer's Bill of Rights ("TABOR").

Evans asserts that each "title omits any reference to the new tax and actual tax rate of thirty-nine percent (39%), which represents the triggering event for TABOR ballot question wording, in the initiative." Pet. for Review for Initiative #80, at 4 ¶ 4; Pet. for Review for Initiative #81, at 4 ¶ 4. These assertions are both inaccurate and misguided.

Evans's statement that the Titles "omit[ ] any reference to the new tax" is bewildering in light of this language in each of the Titles: "*Shall state taxes be increased* $[107,600,000 under Initiative #80, and $120,700,000 under Initiative #81] annually in the first full fiscal year, and by such amounts that are raised thereafter, *by imposing a new tax* . . . ?" (Emphasis added.) The Titles unambiguously disclose, in full compliance with TABOR, that each of the Initiatives would impose a new tax. *See* Colo. Const. art. X, § 20(3)(c); Title for Initiative #80; Title for Initiative #81.

Moreover, neither TABOR nor any other Colorado law requires that a title state the tax rate that would be imposed under an initiated measure. TABOR requires that the title include only the *amount* of the tax increase in the first fiscal

year, not the tax *rate*. *Id.*; see, *e.g.*, *Bickel v. City of Boulder*, 885 P.2d 215, 235-37 (Colo. 1994). The Titles fully satisfy this requirement.

As to Initiative #81, Evans further errs in his assumption of an "actual tax rate of thirty nine percent (39%)." Initiative #81 requires each authorized horse racetrack to pay to the State Treasurer thirty-four percent of its adjusted gross proceeds of horse racetrack limited gaming for deposit into the K-12 education fund. Initiative #80, § 17(5)(b)(I). Each authorized horse racetrack must also pay its host community an additional two percent of its adjusted gross proceeds derived from horse racetrack limited gaming. *Id.* § 17(5)(b)(II). The total tax rate is therefore thirty-six percent, not thirty-nine percent, as Evans's Petition for Review erroneously assumes.

There is also no merit to Evans's additional challenge that the Title to Initiative #81 should refer to "the fact that the track operator retains sixty-one percent (61%) of net proceeds." Pet. for Review for Initiative #81, at 4, ¶ 4. TABOR requires disclosure only of the amount expected to be *paid* as new taxes, and not the amount (whether as an absolute number or as a percentage) that the taxpayer may *retain*. Therefore, omitting the 61 percent figure does not make the Title misleading. Even if Initiative #81 did refer to 61 percent, that figure would not be a central feature that would require inclusion in the title.

5. The Title Board Reasonably Omitted Reference in the Titles to the Number of Authorized Slot Machines.

In his fifth challenge, Evans states that "[t]he title omits reference to fact [*sic*] that no fewer than 2,500 slot machines can be placed at the three racetrack casinos and there is no maximum number of gaming devices." Pet. for Review for Initiative #80, at 4 ¶ 5; Pet. for Review for Initiative #81, at 5 ¶ 1. Once again, Evans misunderstands both the Initiatives and the requirements for title-setting.

The relevant language of Initiative #80 provides:

> . . . the director *shall approve* the use of the greater of two thousand five hundred video lottery terminals or such other number as requested by the operator of a licensed exclusive location *and as determined by the director to maximize revenue to the K-12 education fund.*

See Initiative #80, § 17(4)(b) (emphases added).

The relevant language of Initiative #81 provides:

> Horse racetracks licensed to conduct horse racetrack limited gaming are *authorized* to have the greater of two thousand five hundred slot machines or such other number of slot machines as requested by the horse racetrack *and as determined by the commission to maximize revenue to the K-12 education fund.*

See Initiative #81, § 17(4)(b) (emphases added).

Evans mischaracterizes the Initiatives in two respects. First, Evans errs in summarizing these provisions as requiring the placement of at least 2,500 machines at each authorized location. Neither Initiative specifies the number of slot machines that must be "*placed*" at an authorized location, but only the number

that must be "*approved*" or "*authorized.*" *See* Initiative #80, § 17(4)(b); Initiative #81, § 17(4)(b). This distinction is significant because an authorized location is free to decide to operate fewer than the approved number.

Second, Evans errs in stating that "there is no maximum number of gaming devices" at horse racetracks. To the contrary, the Initiatives limit the number of video lottery terminals or slot machines to 2,500 unless the licensing authority approves a greater number to maximize the tax revenue paid to the K-12 education fund. *See* Initiative #80, § 17(4)(b); Initiative #81, § 17(4)(b). For example, additional machines could not be authorized if they would remain idle due to a lack of demand.

Beyond Evans's mischaracterization of the Initiatives, the Title Board reasonably omitted information relating to the number of authorized machines because that implementation provision is not a central feature of the Initiatives. Titles are required to be brief, and thus are not required to "spell out every detail" or "describe every nuance and feature" of a proposed initiative. *Percy*, 12 P.3d at 256, *see Feazel,* 910 P.2d at 24; *In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d at 1355. To require that a title describe every feature of an initiative would "transform what the General Assembly intended — a relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters — into an item-by-item paraphrase of the proposed constitutional

amendment . . . ." *Outcelt v. Schuck (In re Title, Ballot Title & Submission Clause, & Summ. for 1997-98 #62)*, 961 P.2d 1077, 1083 (Colo. 1998).

The central features of the Initiatives are the imposition of a new tax, the creation of a new K-12 education fund, and the approval of New Gaming to generate revenues for that fund. Details regarding implementation of New Gaming are not central features and need not be described in the Titles. The Court should defer to the Title Board's considerable discretion and uphold the Title Board's decision to keep the Titles as concise as is reasonable and not to include these administrative details in the Titles. *See Kemper,* 274 P.3d at 565.

6. The Title Board Reasonably Omitted from the Titles Reference to Provisions Related to Hours of Operation.

In his sixth challenge to the Initiatives, Evans contends that "[t]he title omits reference to fact [*sic*] that the measure permits local jurisdictions to expand gaming hours to 24 hours per day." Pet. for Review for Initiative #80, 5, ¶ 1; Pet. for Review for Initiative #81, 5, ¶ 2. As explained in Section C.5 above, however, the Title Board must keep titles brief and is not required to describe every detail of a proposed initiative. The provision of the Initiatives allowing host communities to extend the hours of New Gaming concerns the implementation of New Gaming, and is not a central feature of either Initiative.

If the Titles were to state that the Initiatives would allow host communities to extend the hours of New Gaming, they would need to further explain that the

Initiatives prohibit New Gaming between the hours of 2 a.m. and 8 a.m., unless extended. Initiative #80, § 17(5)(a); Initiative #81, § 17(4)(d). This would add length to the Titles to describe relatively minor implementation details, without enhancing voter understanding of the Initiatives, contrary to the Title Board's statutory duty to draft brief titles that state only the central features of the measures. *See* C.R.S. § 1-40-106(3)(b) (2013).

Additionally, the hours in which authorized locations may allow New Gaming under the Initiatives is consistent with the existing constitutional provisions governing limited gaming. *See* Colo. Const. art. XVIII, § 9(7) (allowing local elections to extend the hours of limited gaming in Cripple Creek, Black Hawk, and Central City). Significantly, the title of the 1990 initiative that established limited gaming in those three communities made no mention of hours of operation. *See* Legislative Council's Analysis of the 1990 Ballot Proposals (the "Blue Book"), at 14, *available at* http://www.law.du.edu/images/uploads/library/CLC/350.pdf. Voters are likely to assume this information, and, at the very least, would not be misled by its omission from the Titles.

Deferring to the Title Board's considerable discretion, the Court should uphold the Title Board's reasonable decision to omit from the Titles information regarding hours of operation. *See Kemper*, 274 P.3d at 565.

7. The Title Board Correctly Omitted from the Titles a Statement that the Initiatives Do Not Require a Second Vote Prior to Taking Effect.

In his final argument, Evans asserts that the Titles should address a feature not included in the Initiatives— that they do not require a second vote for authorization of New Gaming. This information has no lawful place in the Titles, however.

The Title Board lacks the authority to include information in a title that does not appear in the initiative itself. *See In re Proposed Initiative on Educ. Tax Refund*, 823 P.2d at 1357. Here, the Initiatives do not require a second vote prior to implementation of New Gaming. Accordingly, it would have been improper for the Title Board to have included in the Titles a reference to local voter approval. *See id.* Accordingly, this argument is also without merit.

CONCLUSION

The Title Board fully discharged its constitutional and statutory responsibilities when it set the Titles for the Initiatives. Those Titles set forth, in plain language and concisely, the central features of the Initiatives. The Titles are clear and not misleading. They comply fully with TABOR. For the reasons stated above, Proponents respectfully request that the Court affirm the Titles.

Respectfully submitted this 29th day of April, 2014.

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **RESPONDENTS' OPENING BRIEF** was sent this 29th day of April, 2014, by Integrated Colorado Courts E-filing System (ICCES) or by providing copies of same via first class U.S. mail, postage prepaid to the following:

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