

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 #138

Petitioners:

Vickie L. Armstrong and Bob Hagedorn

v.

Respondents:

Richard Evans and Stephen Roark

and

Title Board:

Suzanne Staiert, David Blake, and Jason Gelender

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Case No. 2014SA142

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 498 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*_____

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Suzanne Staiert, David Blake, and Jason Gelender, as members of the Ballot Title Setting Board (“Title Board”), hereby submit their answer brief. The Title Board’s opening brief anticipated many of the arguments that Petitioners have raised in their own opening brief. In the interest of brevity, issues that have already been thoroughly addressed will not be discussed here.

I. The single-subject rule does not prohibit initiatives that may affect other contemporaneous ballot measures.

Petitioners contend that #138 contains three¹ distinct subjects: 1) a prohibition on the “granting of an exclusive license to conduct casino-style gambling, including video lottery terminals, at any specific geographic site identified in a statewide ballot measure adopted on or after November 4, 2014;” 2) the “possible nullification or Proposed Initiatives 2013-2014 #80, #81, #134, and #135;” and 3) a “surreptitious purpose and effect of prohibiting the future expansion of limited gaming beyond the three mountain towns in which limited gaming is currently allowed.”

¹ The Petition identified a fourth purported subject – a limitation on the scope of future initiatives – but the Petitioner’s opening brief does not contain any argument on this point.

As the Title Board argued in its opening brief, Petitioners' single-subject arguments turn largely on a misinterpretation of the text of #138. Petitioners' opening brief confirms this misunderstanding, but just as importantly, it confuses the subject of a measure with its potential effects. This Court has long maintained that the title setting process does not extend to the potential effects that a ballot initiative might have on the existing statutory or constitutional scheme.

Nor does Petitioners' reliance on *Jones v. Polhill* (2001-2002 #43), 46 P.3d 438, 446 (Colo. 2002), change this analysis. *Jones* involved a ballot measure that was, among other things, intended to eliminate the single-subject requirement itself. The Court found that the initiative contained multiple subjects, noting in part that "[i]t is ironic that in approving a seemingly innocuous initiative proposing to relax the procedural requirements for placing a measure on the ballot, voters may inadvertently nullify" the single-subject rule. *Id.* at 446. But the potential inadvertent nullification of an existing law was not the problem. Rather, the Court invoked the single-subject rule because the measures would affect not only procedural requirements for ballot initiatives (*how*

a proponent exercises his right to petition”) but also substantive ones (“*what* an initiative placed on the ballot may contain”). *Id.* (emphasis added).

#138 does not suffer from the problems that the Court pointed out in *Jones*. While the initiative could potentially have some effects on other aspects of Colorado law, those subsidiary effects should not be confused with its single subject – a prohibition on casino-style gambling at sites specifically named in a ballot measure.

II. The title for #138 is not misleading.

For the reasons outlined in the Title Board’s opening brief, the title for #138 does not contain catchphrases, and sufficiently balances the need to explain the meaning of the measure with the requirement of brevity and clarity in the title.

III. Conclusion

Based on the foregoing reasoning and authority, as well as that in its opening brief, the Title Board respectfully requests that this Court affirm the title set for #138.

Respectfully submitted this 29th day of May 2014.

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CERTIFICATE OF SERVICE

This is to certify that, on May 29, 2014, I duly served this
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