

<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 #138</p> <p><b>Petitioners: VICKIE ARMSTRONG and  BOB HAGEDORN</b></p> <p>v.</p> <p><b>Respondents: RICHARD EVANS and  STEPHEN ROARK*</b></p> <p><b>and</b></p> <p><b>Title Board: SUZANNE STAIERT;  DAVID BLAKE AND SHARE EUBANKS</b></p>	<p style="text-align: right;">DATE FILED: May 29, 2014 4:05 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Respondents:  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: <a href="mailto:mark@rechtkornfeld.com">mark@rechtkornfeld.com</a></p>	<p><b>Case No. 2014SA142</b></p>
<p style="text-align: center;"><b>RESPONDENTS' ANSWER BRIEF</b></p>	

\* The name of Stephen Roark, a designated representative of Initiative #138, was inadvertently omitted in the original caption.

**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 1,492 words.

It does not exceed 30 pages.

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

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 Respondent*

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## INTRODUCTION

Most of Armstrong's arguments about the title set for Initiative 2013-2014 #138, concerning the naming of gaming jurisdictions in the Constitution, were adequately addressed with appropriate legal authority in the Respondents' Opening Brief. Respondents will not restate that legal analysis or reexamine the legal authority that rebutted the claims in the Notice of Appeal. Only a few of the remaining arguments that could not be fully anticipated in the simultaneously filed Opening Brief warrant a short response here.

## LEGAL ARGUMENT

### **A. Initiative #138 comprises a single subject.**

Of all the claims in Armstrong's Opening Brief, only the issue of whether nullification of another proposed initiative even deserves a response here.

Petitioner's Opening Brief at 7-8.

The fact that measures may conflict is no reason that they cannot both be on the same ballot. A possible conflict with other existing laws does not comprise a single subject violation. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 255*, 4 P.3d 485, 496 (Colo. 2000). Certainly, a possible conflict with an initiative that may never qualify for the 2014 ballot is not a second subject. Armstrong argues otherwise, relying on *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 # 43*, 46 P.3d 438, 446

(Colo. 2002). But there is a critical difference between that case and this one: voters there were considering “a seemingly innocuous initiative” that purported to “relax the procedural requirements” for a ballot measure’s qualification. *Id.* In fact, what that initiative did was eliminate the **already-enacted** single subject requirement, protection against measures that either deceived voters or amalgamated disparate groups, each concerned about different issues, to achieve a majority vote. *Id.*

In contrast, Armstrong’s measures are only proposals. She may never gather a single signature on any of them. She is apparently serious about only one, based on the Secretary of State’s website which indicates she obtained petition format approval for #135 but has done nothing with her other measures. *See Exhibit A* attached hereto. In light of the precedent-setting loss suffered by racetrack casino proponents in 2003 on a similar gambling expansion measure,<sup>1</sup> the possibility that Armstrong may never pursue any of these initiatives is real. Given the speculative nature of Armstrong’s concerns, this is certainly no reason to prevent the Petitioners from proceeding ahead with their concept.

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<sup>1</sup> Amendment 33 received just 19% of the statewide vote (180,959 “yes” votes to 766,893 “no” votes). Colorado Secretary of State, *Official Publication of the Abstract of Votes Cast for the 2003 Coordinated, 2004 Primary, and 2006 General Elections* at 46.

<http://www.sos.state.co.us/pubs/elections/Results/2003/Abstract2003-2004.pdf>

If Armstrong is correct, an entire substantive field of political debate can be occupied by the first designated representatives who submit a proposal on that topic. The right of initiative and referendum is a fundamental right to be liberally construed, and a “first in” construction is plainly inconsistent with the exercise of that right. Armstrong’s single subject argument is unsustainable.

**B. The Title Board developed a legally sufficient title for #138.**

1. *“Specific geographic site”*

Armstrong wonders if this phrase refers to a building, a piece of land, or even an entire town. Petitioner’s Opening Brief at 11. She misses the point. The title is accurate insofar as it summarizes what the initiative says, and the initiative does not define this phrase. Armstrong can raise her questions in a campaign as this Court does not assess the measure’s merits. #43, *supra*, 46 P.3d at 443.

2. *“Casino-style gambling”*

Armstrong raises concerns about “casino-style” and “gambling.” Petitioner’s Opening Brief at 12. She asserts that “many voters will mistakenly assume that the Proposed Initiatives would prohibit only Las Vegas-style casino gaming, when, in fact, they would also prohibit the more limited scope of gaming within the Proposed Initiatives’ definition.” *Id.* at 12-13.

There is not a shred of proof that any voter would make this leap. And it is certainly not a legitimate legal presumption that this Court would adopt. The

accurate legal presumption is just the contrary. “The electorate... must be presumed to know the existing law at the time they amend or clarify that law.”

*Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo.2000). Thus, Armstrong’s concern over “casino-style” is misplaced as a matter of law, as voters would be presumed to understand the legal parameters for such existing gambling.

As to the term “gambling,” Armstrong argues that it is a catch phrase and perceived by “many voters” to be on par with “drinking, drug use, and adultery.” Petitioner's Opening Brief at 14.

First of all, how does Armstrong know what “many voters” think? She certainly did not provide any proof in her presentations to the Title Board.

Second, the notion that voters view “gambling” in this way is rooted in a bygone era. Compare *Murphy v. People of State of California*, 225 U.S. 623, 629 (1912) (“That the keeping of a billiard hall has a harmful tendency is a fact requiring no proof”) with *Estevanovich v. City of Riverside*, 81 Cal.Rptr.2d 684, 696 (Cal. App. 4th Dist. 1999) (“We do not doubt that in 1909, there was ‘Trouble, right here in River City—that starts with “T,” and that rhymes with “P,” and that stands for Pool’” but “times are different today”). Without a century’s evolution of



thought on this topic, the mere mention of a racetrack might be viewed as a negative political statement in a ballot title.<sup>2</sup>

Third, Armstrong and Hagedorn are parties in several pending ballot title cases as well as this one. In fact, they have been proponents of multiple gambling expansion proposals this year (Initiatives 2013-2014 #80, #81, #95, #96, #134, and #135), which makes their claim about societal concerns over “gambling” seem situational at best. *Cf. U.S. v. Southern Union Co.*, 2008 WL 2032097 fn. 1 (D.R.I. July 9, 2009) (“I’m shocked, shocked to find that gambling is going on in here,” citing Captain Louis Renault in the classic movie, *Casablanca*).

Finally, that view is out of sync with Colorado's recent political reality. As noted by this Court, “a ballot initiative allowing limited stakes gambling... passed overwhelmingly (in 1990).... **Colorado voters continued to support gambling** and in 2008 voted in favor of a constitutional amendment allowing the towns (Black Hawk, Central City, and Cripple Creek) to increase” bet limits, games, and hours of operation. *Webb v. Black Hawk*, 295 P.3d 480, 484 (Colo. 2013) (emphasis added).

“Gambling” is not the negative catch phrase asserted by Armstrong.

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<sup>2</sup> "We are not dealing with the operation of a business which is inherently lawful, but, on the contrary, with one which, at least in Colorado, has been historically and inherently a gambling enterprise and legalized only by virtue of the Racing Act. It definitely involves the public morals and general welfare and calls for an exercise of the police power in the public interest." *Cloverleaf Kennel Club v. Racing Com'n*, 277 P.2d 226, 231 (Colo. 1954) (Moore, J., dissenting).

### 3. “Video lottery terminals”

As to the clarity of “video lottery terminals,” *see* Respondents’ Opening Brief at 18, the Title Board does not need to, and cannot, define a term that is not defined in the initiative itself. “Video lottery terminals” is not defined in these measures, as Armstrong points out, *id.*, and the Board would have erred if it had developed a definition outside the terms of the measure itself.

Proponents may deliberately leave a measure’s phrase “vague so that the courts interpret its application.” *Matter of Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031, 1034 (Colo. 1992). Armstrong chose to define this phrase in her initiatives, and the Board correctly used those definitions to clarify her intent. There is no issue with having an undefined or even vague term in the title as long as that lack of definition or vagueness is true to the measure itself, and that is the case here.

### 4. “Existing license type”

Armstrong insists that the “existing license type” language in describing the types of entities that might seek to write themselves into the Constitution or a statute was important but omitted from the title. Respondents’ Opening Brief at 16. Armstrong made no oral argument on this point at the Title Board. Even had she done so, she misses the basic point of title setting. “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.”

*In re Title, Ballot Title and Submission Clause For Proposed Initiatives 2001-2002 No. 21 and No. 22*, 44 P.3d 213, 222 (Colo. 2002) (emphasis in original). This is one of those details that need not be restated in the title.

### **CONCLUSION**

Armstrong’s arguments simply do not rise to the level of a material error by the Title Board. Her appeal should be denied in its entirety.

Respectfully submitted this 29<sup>th</sup> day of May, 2014.

/s/ Mark G. Grueskin

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@rechkornfeld.com](mailto:mark@rechkornfeld.com)

**ATTORNEYS FOR RESPONDENTS**

**CERTIFICATE OF SERVICE**

I, Mark G. Grueskin, hereby affirm that a true and accurate copy of the **RESPONDENTS' ANSWER BRIEF** was sent this day, May 29, 2014, via ICCES to the Petitioners' counsel and to counsel for the Title Board at:

Matthew Grove  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

Marcy Glenn  
Holland & Hart  
555 17th St., #3200  
Denver, CO 80202

Lino Lapinsky DeOrlov  
McKenna Long & Aldridge  
1400 Wewatta St., #700  
Denver, CO 80202

/s/ Mark G. Grueskin

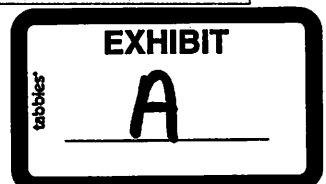
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**Petition Format Approved**

Initiative designated representatives contact list

\* Unofficial caption assigned by legislative staff for tracking purposes.

Proposed Initiative #	Caption *	Filings (PDF)	Agenda & Meeting Summary	Result	Timeline
3	Prohibit Cannabis Possession Penalties	<ul style="list-style-type: none"> <li><a href="#">Original text</a></li> <li><a href="#">Amended text</a></li> <li><a href="#">Final text</a></li> </ul>	January 15, 2014, 9:30 AM Commenced 9:30 AM; single subject approved; staff draft amended; titles set; adjourned 9:45 AM	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
12	Right to Health Care	<ul style="list-style-type: none"> <li><a href="#">Original text</a></li> <li><a href="#">Amended text</a></li> <li><a href="#">Final text</a></li> </ul>	April 17, 2013, 9:30 AM Commenced 3:38 PM; single subject approved; staff draft amended, titles set; adjourned 4:00 PM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
38	Right to Purchase and Possess Ammunition Storage and Feeding Devices	<ul style="list-style-type: none"> <li><a href="#">Final text</a></li> <li><a href="#">Motion for rehearing</a></li> </ul>	April 17, 2013, 10:00 AM Commenced April 18, 2013, 10:20 AM; single subject approved; staff draft amended, titles set; adjourned 10:31 AM  April 26, 2013, 9:00 AM - rehearing Commenced 11:15 AM; Motion for Rehearing denied except to the extent that the Board made changes to the title; adjourned 11:39 AM	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
41	Repeal Prohibition of Large-Capacity Ammunition Magazines	<ul style="list-style-type: none"> <li><a href="#">Original text</a></li> <li><a href="#">Amended text</a></li> <li><a href="#">Final text</a></li> <li><a href="#">Motion for rehearing</a></li> </ul>	April 2, 2014, 9:30 AM Single subject approved; staff draft amended; titles set; adjourned 3:12 PM.  April 16, 2014, 8:00 AM - rehearing Motion for rehearing granted; titles amended. Hearing adjourned 12:12 PM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
43	Marriage	<ul style="list-style-type: none"> <li><a href="#">Original text</a></li> <li><a href="#">Amended text</a></li> <li><a href="#">Final text</a></li> </ul>	August 7, 2013, 1:00 PM Commenced 1:05 PM; single subject approved; staff draft amended; titles set; adjourned 1:20 PM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
48	Labeling Genetically Modified Food	<ul style="list-style-type: none"> <li><a href="#">Original text</a></li> <li><a href="#">Amended text</a></li> <li><a href="#">Final text</a></li> <li><a href="#">Motion for rehearing</a></li> </ul>	December 4, 2013, 1:00 PM Commenced 1:00 PM; single subject approved; staff draft amended; titles set; adjourned 1:40 PM  December 18, 2013, 9:30 AM - rehearing Commenced 9:30 AM; Motion for Rehearing granted to the extent that the Board made changes to the title; denied in all other respects; adjourned 12:22 PM	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>



49	Carrying Restrictions for Concealed Handguns on Campuses	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	January 2, 2014, 1:30 PM Commenced 1:37 PM; single subject approved; staff draft amended; titles set; adjourned 2:10 PM	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
79	Election of Justices and Judges	<ul style="list-style-type: none"> <li>• <a href="#">Waiver</a></li> <li>• <a href="#">Final text</a></li> <li>• <a href="#">Motion for rehearing</a></li> </ul>	March 19, 2014, 9:30 AM Commenced 9:32 AM; single subject approved; staff draft amended; titles set; adjourned 9:42 AM.  April 2, 2014, 9:30 AM - rehearing Motion for Rehearing denied. Hearing adjourned 9:56 AM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
106	Yes or No Elections	<ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 2, 2014, 9:30 AM Single subject approved; staff draft amended; titles set; adjourned 4:18 PM	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
107	Marijuana Tax Revenue to Establish Housing for Disabled	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 16, 2014, 8:00 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 8:45 AM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
111	State Representative Districts	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 16, 2014, 8:00 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 5:39 PM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
112	Two-Stage Election System	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 17, 2014, 8:30 AM Single subject approved; staff drafts amended; titles set. Hearing adjourned 9:11 AM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
113	Provisions for Reapportionment and Redistricting	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 17, 2014, 8:30 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 9:26 AM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
114	Appointment of Nonpartisan Secretary of State	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	April 17, 2014, 8:30 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 9:40 AM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
121	Distribution of Oil and Gas Revenue	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> <li>• <a href="#">Motion for rehearing</a></li> </ul>	April 16, 2014, 8:00 AM Single subject approved; staff draft amended; title set. Hearing adjourned 9:42 AM.  April 24, 2014, 8:30 AM - rehearing Motion for Rehearing denied except to the extent that the Board made changes to the titles. Hearing adjourned 2:42 PM.	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
122	Local Regulation of Oil and Gas Development	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> <li>• <a href="#">Motion for rehearing</a></li> </ul>	April 16, 2014, 8:00 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 5:10 PM.  April 25, 2014 - rehearing Motion for Rehearing denied except to the	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>

			extent that the Board made changes to the titles. Hearing adjourned 12:03 PM.		
124	School Board Open Meetings	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> <li>• <a href="#">Motion for rehearing</a></li> </ul>	<p>April 16, 2014, 8:00 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 4:34 PM.</p> <p>April 24, 2014, 8:30 AM - rehearing Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects. Hearing adjourned 4:35 PM.</p>	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
135	Horse Racetrack Limited Gaming Proceeds for K-12 Education	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> <li>• <a href="#">Motion for rehearing</a></li> </ul>	<p>April 17, 2014, 8:30 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 12:02 PM.</p> <p>April 24, 2014, 8:30 AM - rehearing Motion for Rehearing denied except to the extent that the Board made changes to the titles. Hearing adjourned 10:23 AM.</p>	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>
137	Fiscal Impact of Ballot Measures	<ul style="list-style-type: none"> <li>• <a href="#">Original text</a></li> <li>• <a href="#">Amended text</a></li> <li>• <a href="#">Final text</a></li> </ul>	<p>April 17, 2014, 8:30 AM Single subject approved; staff draft amended; titles set. Hearing adjourned 1:20 PM.</p>	Title set <a href="#">View full result</a>	<a href="#">View timeline</a>