SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 29, 2014 7:06 PM
Original Proceeding Pursuant to C.R.S. § 1-40-107(2) (2013) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013-2014 #139 and #140 **Petitioners:** Vickie L. Armstrong and Bob Hagedorn, v. **Respondents:** Richard Evans and Stephen Roark, and **Title Board:** Suzanne Staiert, David Blake, and Jason Gelender	▲ COURT USE ONLY▲ Supreme Court Case No. 2014SA147 and 14SA148
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PETITIONERS' 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 does not exceed 30 pages.

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

It contains, under a separate heading, a statement of whether the parties responding to the issue agree with the opponents' 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. 32.

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

Petitioners, Vickie L. Armstrong and Bob Hagedorn, respectfully submit this answer brief in support of their challenge to the titles, ballot titles, and submission clauses (the "Titles") that the Title Board set for proposed initiatives 2013-2014 #139 and #140 (jointly, the "Proposed Initiatives").

SUMMARY OF THE ARGUMENT

Contrary to Respondents' and the Title Board's arguments, the Title Board erred in setting the Titles because the Proposed Initiatives each improperly contains more than a single subject. In addition to the subject disclosed in the Titles, the Proposed Initiatives would nullify Petitioners' competing initiatives (the "Competing Initiatives"), modify the Constitutional requirement that initiatives take effect not later than thirty days following a statewide election, ban the expansion of "gambling" and "casino-style gambling" at the county level, and radically alter the relationship between home rule cities and their counties.

The Title Board further erred in setting misleading Titles. The Titles fail to express the intent of the Proposed Initiatives to nullify voter approval of the Competing Initiatives. In addition, due to Respondents' incomprehensible reference to "a county or counties' host community," the Titles fail to disclose the jurisdiction in which the "local vote" would occur – a key element of the Proposed Initiatives. The Titles also improperly use the misleading terms and catch phrases "local vote," "casino-style gambling," and "gambling."

STANDARD OF REVIEW

Petitioners agree with Respondents' statements concerning the standard of review. In addition, Petitioners incorporate by reference the Standard of Review section of their Opening Brief. *See* Petitioners' Opening Brief ("Pets.' Br.") 5-7.

ARGUMENT

I. THE PROPOSED INITIATIVES IMPROPERLY CONCERN FOUR DISTINCT AND SEPARATE SUBJECTS, IN ADDITION TO THE SUBJECT DISCLOSED IN THE TITLE.

A. The Second Subject of the Proposed Initiatives Is Nullification of Petitioners' Competing Initiatives.

Respondents insist that the Proposed Initiatives reflect nothing more than the promotion of good public policy, Respondents' Opening Brief ("Resps.' Br.) 3, but that is a smokescreen to hide the second subject of the Proposed Initiatives – invalidation of the Competing Initiatives.[1] The Proposed Initiatives fail for this reason alone. *See Howes v. Brown (In re Title, Ballot Title & Submission Clause for 2009-2010 #91)*, 235 P.3d 1071, 1079-80 (Colo. 2010) (striking proposed initiative containing multiple subjects).

[1] Respondents filed the Proposed Initiatives for the purpose of nullifying Competing Initiatives #80 and #81. *See infra* pp. 3-11, 14. On the same day that Respondents tendered the Proposed Initiatives, Petitioners submitted Competing Initiatives #134 and #135. The Proposed Initiatives would have the same impact on #134 and #135 as they would have on #80 and #81.

Despite Respondents' protestations, Respondents' opposition to the Competing Initiatives, the timing of the Proposed Initiatives, their hidden promoters, Respondent Evans's admissions in his filings with the Secretary of State's office, and the language of the Proposed Initiatives all demonstrate that the Proposed Initiatives are guided missiles headed straight for the Competing Initiatives. Specifically:

- Respondents cannot deny their opposition to the Competing Initiatives. Respondents challenged the Title Board's setting of titles for the Competing Initiatives, and have asked this Court to reverse the Title Board with respect to each of them. The Court has already rejected Evans's arguments on Competing Initiatives #80 and #81. *See Evans v. Armstrong (In re Title, Ballot Title, & Submission Clause for Proposed Initiatives 2013-2014 #80 & #81)*, No. 2014SA106 & 2014SA99 (Colo. May 22, 2014). The Court should also reject Respondents' arguments on Competing Initiatives #134 and #135. Assuming that occurs, Petitioners would be in a position to gather signatures for any or all of the Competing Initiatives. Respondents and their backers would then be forced to fight the measures on the merits – unless they short-circuit the process by persuading more voters to adopt their own Proposed Initiatives than the Competing Initiatives, which would have the surreptitious effect of nullifying the Competing Initiatives. Based on Respondents' opposition to the Competing Initiatives, the

Court may infer that the Proposed Initiatives are specifically directed to, and are intended to invalidate, the Competing Initiatives.

- Petitioners filed the final version of Competing Initiatives #80 and #81 with the directors of the Legislative Council and the Office of Legislative Legal Services on March 7, 2014. It is no coincidence that Respondents tendered the Proposed Initiatives (and their six other initiatives intended to nullify the Competing Initiatives) a mere fourteen days later, on March 21, 2014. The timing of the Proposed Initiatives – fresh on the heels of Competing Initiatives #80 and #81 – further establishes that those measures (and later Competing Initiatives #134 and #135) are the targets of the Proposed Initiatives.

- Evans revealed his true agenda for filing the Proposed Initiatives in his political organization's public filings with the Colorado Secretary of State. "Don't Turn Racetracks into Casinos" identifies Evans as its "Designated Filing Agent," and states that its purpose is "to oppose initiatives 95 and 96 [variants of Competing Initiatives #80 and #81 that Petitioners chose not to pursue] for the November 2014 ballot." *See* Mar. 10, 2014 Committee Registration Form, Ex. A.[2]

[2] Respondent Evans's committee's forms are available at the Secretary of State's website. *See* http://tracer.sos.colorado.gov/PublicSite/SearchPages/FilingAmendmentSelect.aspx?FilingID=176894 (last visited May 28, 2014); http://tracer.sos.colorado.gov/PublicSite/SearchPages/CommitteeDetail.aspx?OrgID=27021 (last visited May 28, 2014).

Evans's political committee filed an amended Registration on May 19, 2014, which reveals its updated purpose "to oppose initiatives #80, #81, #134 and #135 for the November 2014 ballot and to support initiatives #138, #139, #140, #141, #142, #143, #144 and #145." *See* May 19, 2014 Committee Registration Form, Ex. B. Initiatives #80, #81, #134, and #135 are the Competing Initiatives; Initiatives #139 and #140 are the Proposed Initiatives; Initiatives #138, #141, #142, #143, #144, and #145 are Respondents' additional measures to effectively annul the Competing Initiatives.

The Report of Contributions and Expenditures that Evans's political committee filed on May 19, 2014 reveals, unsurprisingly, that Evans is a front for the mountain casino lobby. "Don't Turn Racetracks into Casinos" garnered more than $3 million in funding from the Colorado casino gambling industry within a six-day period this month. *See* Report of Contributions and Expenditures, Ex. C.

The moneyed interests that Evans represents have every right to participate in the political process. However, they have no right to bamboozle the voters by hiding the true subject of their Proposed Initiatives.

Respondents reveal their hand by admitting that the Proposed Initiatives are targeted at "gaming entrepreneurs" who do not seek local approval for expansion of limited gaming in Colorado. Resps.' Br. 3. Those "gaming entrepreneurs" include the owner of "the Arapahoe Park racetrack," one of the beneficiaries of the

Competing Initiatives. *See* Ex. 1 to Resps.' Br. 9:5-17 (counsel for Respondents' statements regarding the owner of Arapahoe Park at the April 24, 2014 rehearing on the Proposed Initiatives). There can be no question that the Proposed Initiatives are intended to hinder the owner of Arapahoe Park from competing with the mountain casinos by requiring a second election to effectuate the Competing Initiatives.

- Not only did Evans concede in his Secretary of State filings that his goal is the defeat of "initiatives #80, #81, #134 and #135 for the November 2014 ballot," but a careful reading of the Proposed Initiatives also reveals the subject of nullifying the Competing Initiatives. The Proposed Initiatives would prevent the Competing Initiatives from taking effect unless the Competing Initiatives are approved at a second election conducted by the "county or counties' host community." Moreover, the second vote requirement would wreak havoc with the timetable for the authorization of expanded limited gaming set forth in the Competing Initiatives. *See infra* pp. 14-15.

- The "gambling" that the Proposed Initiatives would restrict is identical to the "gambling" addressed in the Competing Initiatives. *Compare* Proposed Initiative #140 ("casino-style gambling" means "slot machines, poker, blackjack, craps, roulette, or video lottery terminals, or any combination above") *with* Competing Initiative #80 (authorizing the use of video lottery terminals) *and*

Competing Initiative #81 (authorizing "slot machines, the card games of blackjack and poker, and the games of roulette and craps"). If the Proposed Initiatives and the Competing Initiatives all passed on Election Day 2014, they would be the only provisions in either the Colorado Constitution or statutes that referenced "casino-style gambling" or "video lottery terminals."

Respondents contend that the Proposed Initiatives would merely "conflict" with the Competing Initiatives, Resps.' Br. 6, and, therefore, the clash between the measures is not a separate subject. Respondents rest their argument, however, on a case that pre-dates the adoption of the single-subject rule for initiated ballot measures and, therefore, is irrelevant to a single-subject analysis. *See In re Title, Ballot Title & Submission Clause, & Summ. Approved Apr. 20, 1994 & May 4, 1994, for the Proposed Initiated Constitutional Amendment Concerning the "Fair Treatment II*," 877 P.2d 329, 332 (Colo. 1994) (discussing proposed initiatives for the November 1994 general election); *Howes*, 235 P.3d at 1079 (the voters approved the single-subject requirement at the 1994 election).

Even if a case decided prior to the single-subject era could be authoritative on whether a proposed initiative contains multiple subjects, *Fair Treatment II* concerned a title that expressly revealed its subject of superseding competing measures. Accordingly, the Court concluded that the title did not fail to inform the

voters that the measure conflicted with two other proposed initiatives. *See Fair Treatment II*, 877 P.2d at 329.[3]

The Proposed Initiatives fail under *Jones v. Polhill (In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43)*, 46 P.3d 438, 446 (Colo. 2002), in which this Court found that the measure at issue contained more than a single subject because it would have effectively eliminated a prior amendment to the Colorado constitution. In *Jones*, the proposed initiative contained numerous procedures addressing the exercise of the right to petition. *Id.* at 444. In addition, the proposed initiative would have nullified the single subject requirement for initiatives that the voters had added to the Constitution only eight years before. *Id.* at 445. The Court found that the elimination of the single subject requirement was an additional subject, explaining that "[o]bfuscating the repeal of such a fundamental requirement within the folds of a complex initiative purporting

[3] Respondents cite only a portion of footnote 3 of *Fair Treatment II* to make it appear as though this Court will not consider whether two proposed initiatives conflict. *See* Resps.' Br. 6, quoting *Fair Treatment II*, 877 P.2d at 332 n.3. When read in its entirety, however, the language of the footnote discusses the undisputed point that this Court will not address merits challenges to an initiative in a title case. The petitioners in *Fair Treatment II* had asserted that the initiative "violate[d] Article III of the Colorado Constitution by usurping the judiciary's exclusive function of interpreting the laws." *Id*. The Court merely stated that this type of merits analysis went "far beyond the scope of our review in this proceeding." *Id.*

to deal only with the procedural right to petition violates [the single-subject requirement]." *Id.* at 447.

As here, the proposed initiative reviewed in *Jones* was "seemingly innocuous," but could have fooled voters into "inadvertently nullify[ing]" another amendment. Like the measure in *Jones*, the Proposed Initiatives nowhere state what Evans revealed in his May 19 filing with the Secretary of State – that his ultimate goal is nullification of the Competing Initiatives. Rather, the Titles and the Proposed Initiatives are cloaked in appealing language of a "local vote," even though the Proposed Initiatives would shift key powers from local communities to counties.[4] *See infra* pp. 12-13.

Not only does *Jones* compel a finding that the Proposed Initiatives contain an improper second subject, but public policy requires such a determination. Voters' discovery the day after the election that they had unwittingly voted to nullify measures for which they had also cast ballots would increase the public's cynicism regarding the political process. *See, e.g., Cal. Pro-Life Council, Inc. v.*

[4] In applying the single-subject rule to a proposed initiative, this Court must conduct a preliminary interpretation of the measure. *Garcia v. Montero (In re Title, Ballot Title & Submission Clause for Proposed Initiatives 2001-2002 #21 & #22) ("English Language Educ.")*, 44 P.3d 213, 215-16 (Colo. 2002) . While the Court typically "will not interpret or construe the future legal effects of a proposed initiative . . . , [the Court] will engage in a limited inquiry if necessary to ascertain whether the single-subject requirement has been violated." *Id.*

Getman, 328 F.3d 1088, 1106 n.24 (9th Cir. 2003) (discussing how the "wolf can masquerad[e] in sheep's clothing when voters are uninformed regarding the "real purpose" of an initiative); *see also Howes*, 235 P.3d at 1079 ("[t]he single-subject rule . . . serves to prevent voter surprise by prohibiting proponents from hiding effects in the body of a complex proposal").

The integrity of the political process demands that the proponents of a ballot measure not be permitted to skirt the single-subject rule by hiding their proposed initiative's nullification objective behind a separate subject with greater voter appeal. This Court should strike the Proposed Initiatives because they improperly contain a second subject – nullification of the Competing Initiatives.[5]

B. The Third Subject of the Proposed Initiatives Is Modification of the Constitutional Requirement That Initiatives Take Effect Not Later Than Thirty Days Following a Statewide Election.

Another surreptitious subject of the Proposed Initiatives is the modification of the constitutional requirement that initiatives take effect not later than thirty days following a statewide election. Respondents assert that, although the Proposed Initiatives do not "generally invalidate the constitutional provisions

[5] Respondents suggest that Petitioners' use of "potentially" in describing the possible effects of the Proposed Initiatives undercuts their single-subject argument. Resps.' Br. 6. While it is difficult to predict the impact of the Proposed Initiatives, if approved by the voters, due to Respondents' use of vague and misleading terms, *see infra* pp. 15-22, there can be no question that the Proposed Initiatives contain multiple subjects.

regarding the effective date of an adopted measure," if they did, the impact would merely affect "decisions about whether statewide voters should be able to tell voters of a county that their community will be the home of a major casino."[6] Resps.' Br. 6-7. Delaying the effective date of initiatives is unrelated to Respondents' supposed single subject of granting county voters a say in the location of casinos.[7]

C. The Fourth Subject of the Proposed Initiatives Is a Ban on the Expansion of "Gambling" or "Casino-Style Gambling" at the County Level.

Another subject of the Proposed Initiatives is the preclusion of expansion of gambling at the local level. Counties do not have the same broad right of initiative as do the state and municipalities. *See* Pets. Br. 11. In their Opening Brief, Respondents address this issue only through the conclusory statement that "the

[6] This reference to a "major casino" is notable, given that the Proposed Initiatives would apply to any statewide authorization of gambling. The "major casino" comment underscores that the true purpose of the Proposed Initiatives is hindering Arapahoe Park's efforts to compete with the mountain town casinos. *See supra* pp. 5-11.

[7] Even if the Court finds that the Proposed Initiatives contain a single subject, the Titles fail to inform voters that, under the Proposed Initiatives, statewide elections on gambling could not take effect unless the required second vote occurred within Respondents' narrow thirteen-month window following the statewide vote. The Titles merely state that a "local vote" is required before the granting of a gambling license. The voters deserve to know that, for example, voting "yes" on the Proposed Initiatives would mean that affirmative votes authorizing gambling at concurrent state and county-wide elections would have no effect.

measure does not generally expand counties' authority to submit measures to voters [or] generally grant counties an expanded power of initiative . . . ." Resps.' Br. 6. Respondents further assert, "[h]ypothetically, if it achieves any of these ends, it does so only with regard to decisions about whether statewide voters should be able to tell voters of a county that their community will be the home of a major casino." *Id.* 6-7.

The Proposed Initiatives, however, do not expand the right of initiative to counties; they merely refer to a second vote, apparently at the county level. *See supra* p. 17. Unless the voters within a county are granted the right to initiative through a future constitutional amendment, the county vote that the Proposed Initiatives require would be illusory. No proponent of gambling could ever obtain the required county-wide vote because the proponent could not place the gambling measure on the county ballot through the initiative process.

Alternatively, if this Court were to determine that the Proposed Initiatives grant the right of initiative to the voters of a county, then the impermissible fourth subject would be this fundamental expansion of the powers of Colorado counties.

D. The Fifth Subject of the Proposed Initiatives Is the Radical Alteration in the Relationship Between Home Rule Cities and Their Counties.

In response to Petitioners' argument that the Proposed Initiatives would grant counties the authority to submit measures to voters, grant counties an

expanded power of initiative, and allow counties to override home rule cities' decisions, Respondents state only that the Proposed Initiatives do "not generally" require the above. As with Petitioners' argument regarding how the Proposed Initiatives would change Colorado law governing the effective date of initiatives, *see supra* pp. 10-11, Respondents concede that, if the Proposed Initiatives altered the relationship between home rule cities and their counties, such impact would be limited to decisions regarding "major casino[s]." Resps.' Br. 6-7. As described in Petitioner's Opening Brief, the Proposed Initiatives would be meaningless unless they significantly expanded the election authority granted to counties, and stripped such power from cities, towns, and municipalities, including home rule cities. Pets.' Br. 12-13. Otherwise, the counties would lack the authority to conduct the second elections that the Proposed Initiatives require. This additional subject is unrelated to giving local voters a voice on where casinos may be located.[8]

[8] Even if this Court were to find that the Proposed Initiatives contain a single subject, the Proposed Initiatives' significant change in the relationship between counties and cities should have been reflected in the Titles. The Titles fail to inform the electorate that, by voting for the Proposed Initiatives, they would be granting counties the power to veto a city's decision regarding whether gambling should be allowed within city limits.

II. THE TITLES ARE MISLEADING TO VOTERS.

A. The Titles Do Not Express the Intent of the Proposed Initiatives To Nullify Voter Approval of the Competing Initiatives.

The Proposed Initiatives were designed to override each of the Competing Initiatives. *See supra* pp. 3-11. The Titles, however, fail to disclose Respondents' intent to nullify the Competing Initiatives.

For example, the Titles do not inform the voters that the Proposed Initiatives would override the specific deadlines built into the Competing Initiatives. Sections 3(a) and (b) of Competing Initiative #80 state:

> (3) (a) THE COMMISSION AND DIRECTOR SHALL ALLOW THE USE OF VIDEO LOTTERY TERMINALS TO COMMENCE NO LATER THAN NOVEMBER 1, 2015.
>
> (b) THE COMMISSION SHALL PROMULGATE ALL NECESSARY RULES TO REGULATE THE USE OF VIDEO LOTTERY TERMINALS IN ACCORDANCE WITH THIS SECTION NO LATER THAN JULY 1, 2015.

Those deadlines could not be met if a second vote were required. There would be insufficient time between November 4, 2014 and the date of the second election to allow the Colorado Lottery Commission to promulgate the necessary rules by July 1, 2015, and to allow the use of video lottery terminals by November 1, 2015. The voters deserve to know that, if they cast ballots for the Proposed Initiatives, the Competing Initiatives could not be implemented. The Titles are missing this crucial information, however.

B. No Matter How Drafted, the Titles Cannot State the True Intent and Meaning of the Proposed Initiatives Because Respondents' Reference to "a County Or Counties' Host Community" Is Incomprehensible.

Respondents' Opening Brief confirms that the language of the Proposed Initiatives is so hopelessly confusing that no title may be set for them. *See Outcelt v. Bruce (In re Title, Ballot Title & Submission Clause, & Summ. for 1999-2000 No. 37)*, 977 P.2d 845, 846 (Colo. 1999) (no title may be presented to the voters where language of the proposed initiative is "difficult to comprehend," such that titles and summary "fail to convey to voters the initiative's likely impact"). The Proposed Initiatives' references to "a county or counties' host community" fail to explain what jurisdiction or jurisdictions are to conduct the required second vote. *See* Pets.' Br. 18-23. As Petitioners explained in their Opening Brief, the language, "or counties' host community," would be superfluous if the Proposed Initiatives required second elections at the county level only. *See id.* at 20-21. Yet that is precisely how Respondents now characterize the Proposed Initiatives.

Contrary to both the language of the Proposed Initiatives and the Titles, Respondents assert in their Opening Brief that the required second vote would take place at the *county* level. Respondents state that the Proposed Initiatives are intended to ensure that "statewide voters" cannot "tell *voters of a county* that their community will be the home of a major casino." Resps.' Br. 7 (emphasis added). Later, Respondents concede that "the vote would occur *at the county level*" and

that "a county is deemed to be 'local.'" *Id.* 9 (emphasis added). Respondents devote more than a half page to their contention that a county-wide vote may be deemed to be a "local vote." *See id.* 9-10. Nowhere in their Opening Brief do Respondents even hint that the Proposed Initiatives would require a "local vote" in a jurisdiction other than a county. Respondents concede that the confusing language of the Proposed Initiatives refers exclusively to county-wide votes, even though neither the Proposed Initiatives nor the Titles clearly refer to county-wide elections.

Respondents have changed their interpretation of the Proposed Initiatives since the rehearing before the Title Board, when their attorney engaged in this exchange with Chairman Staiert:

> CHAIRMAN STAIERT: So if Aurora annexed out 500 yards, then only people in Aurora would vote on it?
>
> MR. GRUESKIN: That's correct. That's correct. Which is why the local vote, I think, is accurate.

Tr. of Apr. 24, 2014 rehearing at 9:14-17. Respondents' statement at the rehearing was incorrect, given Respondents' assertions in their Opening Brief that the Proposed Initiatives would require county-wide votes only.

As Petitioners explained in their Opening Brief, it is impossible to determine from the text of the Proposed Initiatives where the second vote would take place – at the municipal level, the special district level, the county level, or some different

level of government. *See* Pets.' Br. 18-23. This distinction has huge significance. A voter may support a measure that would require a vote in his town if gambling were proposed within the town. The same voter, however, may oppose a requirement for a county-wide vote on the very same gambling measure, as the voter may not want individuals at the opposite end of the county to decide whether gambling should be allowed in the town. Neither the Proposed Initiatives nor the Titles would inform this voter whether to vote for or against the Proposed Initiatives. The language of the Proposed Initiatives is so muddled that the Title Board erred in setting any title for the Proposed Initiatives.

C. The Titles Impermissibly Use Undefined, Vague, and Misleading Terms and Catch Phrases.

The Titles include the misleading phrases "local vote," "casino-style gambling," and "gambling." This Court should reject the Titles to ensure that voters will not be misled into supporting the Proposed Initiatives "by reason of the words employed by the [Title] Board." *In re Title, Ballot Title & Submission Clause, & Summ. Adopted Feb. 3, 1993*, 852 P.2d 28, 32 (Colo. 1993).

1. "Local vote."

Respondents argue that "local vote" is not misleading because some statutes deem counties to be "local." Resps.' Br. 9-10. Respondents later assert that "local vote" is not a catch phrase because it is a term of art used in article XVIII, Section 9 of the Colorado Constitution. That term of art does not encompass county-wide votes, however.

Section 9 refers to a "local vote" conducted by a city, a town, or the unincorporated portion of a county.[9] Thus, under Section 9, an entire county would never vote to authorize gambling and, therefore, a county's voters could not overrule the will of the statewide or municipal voters. Thus, the use of the term "local vote" in the Titles, without an explanation that the term contemplates county-wide votes, is misleading.

The Title Board argues that the Titles were "sufficiently descriptive" because they "encapsulate[ ] the idea that, if a gambling expansion is favored by a statewide vote, host communities will have an opportunity to approve or disapprove of placing gambling facilities in their communities." Title Board's Opening Brief 11. However, this statement is incorrect in light of Respondents'

[9] The title set for the referendum that amended article XVIII, Section 9 of the Colorado Constitution to require a local vote expressly stated that the local vote was a "vote of the electorate of such city, town, or unincorporated portion of a county." Pets.' Br. 25 (quoting title for Ref. C (1992)).

concession that "host community" means "county." *See supra* p. 15. The Proposed Initiatives would allow county voters to make a decision on gambling on behalf of a city or a town, even though the city or the town would be the "host community" in which the gambling would take place. Thus, the Title Board is incorrect in creating the impression that the Proposed Initiatives would allow the "host community" to make the decision on gambling in every instance.

The Title Board also asserts that the term "local vote" is not a catch phrase because it is descriptive of the Proposed Initiatives. Title Board's Opening Brief 13-14. But, as noted above, at times, the "host community," *i.e.*, the local government most impacted by the proposed gambling, would have no say in the decision to allow gambling. Particularly given the convoluted language of the Proposed Initiatives, "local vote" is an oversimplified, non-descriptive term that Respondents could wield as a slogan to appeal to voters favoring local control. Pets.' Br. 25. Those voters seeking to strengthen the power of local communities would likely be appalled if they knew that the Proposed Initiatives surreptitiously gave county voters the authority to overrule the decisions of cities, town, and smaller local jurisdictions.

2. "Gambling" and "casino-style gambling."

Respondents argue that the term "casino-style gambling" is not misleading because the games identified in the Proposed Initiatives' definition of "casino-style

gambling" are authorized at existing casinos." While voters may not be surprised to learn that slot machines, poker, blackjack, craps, and roulette are included within the definition of "casino-style gambling," they would be quite surprised to discover that other types of games also played at casinos are excluded from this definition.[10] *See* Pets.' Br. 13; Tr. of Reh'g on Proposed Initiative #138-145, 134-135, at 17:4-8, Apr. 24, 2014 ("casino-style gambling" does not include sports betting). In addition, voters may not understand that a facility offering only a limited number of games would still be deemed to conduct "casino-style gambling."

Respondents further argue that "gambling" and "casino-style gambling" are not catch phrases because voters in Rhode Island approved a measure that referred to "gambling" and "casino" and, therefore, did not find such terms noxious. Resps.' Br. 11. The Rhode Island constitutional amendment, however, concerned "state-operated casino gaming" and did not refer to "gambling." *See* Ex. 1 to Resps.' Br. at 26 (pages from Rhode Island Voter Information Handbook 2012). "State-operated casino gaming" and "casino-style gambling" conjure up very different images in voters' minds. The former implies a carefully supervised

[10] Given that the intent of the Proposed Initiatives is to nullify the Competing Initiatives, it is unsurprising that the definition of "casino-style gambling" includes exactly those games that the Competing Initiatives would authorize and no more. *See supra* pp. 3-11.

operation, while the latter invokes images of a permissive and free-wheeling environment – as in "what happens in Vegas, stays in Vegas." *See* Pets.' Br. 14.

Finally, Respondents claim that Petitioners offer only a "bare assertion" to support a finding that "gambling" and "casino-style gambling" are catch phrases. However, at the rehearings and in their Opening Brief, Petitioners provided specific reasons why Colorado voters could vote for or against the Proposed Initiatives based on the Titles' use of the terms "gambling" and "casino-style gambling." *Id.;* Tr. of Reh'g on Proposed Initiative #138-145, 134-135, at 6:15-22, Apr. 24, 2014.[11]

CONCLUSION

Petitioners respectfully request that this Court (a) strike the Proposed Initiatives because they improperly address multiple subjects, in violation of article V, section 1(5.5) of the Colorado Constitution and C.R.S § 1-40-106.5 (2013), and because Respondents' reference to "a county or counties' host community" is incomprehensible, or (b) alternatively, find that the Titles are neither fair nor accurate, and remand the Proposed Initiatives to the Title Board.

[11] The case Respondents cite for the proposition that allegations of a catch phrase must be supported by evidence does not require any specific form of evidence. *See* Resps.' Br. 10-11; *Macravey v. Hufford (In re Title, Ballot Title, Submission Clause, & Summ. Adopted Mar. 20, 1996, by the Title Bd. Pertaining to Proposed Initiative "1996-6")*, 917 P.2d 1277, 1281 (Colo. 1996).

Respectfully submitted this 29th day of May, 2014.

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HOLLAND & HART LLP

/s/ Marcy G. Glenn

Marcy G. Glenn, No. 12018
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WILLIAM A. HOBBS

/s/ William A. Hobbs

William A. Hobbs, No. 7753
1745 Krameria Street
Denver, Colorado 80220
Telephone: (303) 345-5541
Email: bill.hobbs@me.com

CO-COUNSEL FOR PETITIONERS, VICKIE L. ARMSTRONG AND BOB HAGEDORN

CERTIFICATE OF SERVICE

I hereby affirm that, on the 29th day of May, 2014, a true and accurate copy of the **PETITIONERS' ANSWER BRIEF** was sent to counsel for Respondents and to counsel for the Title Board via Integrated Colorado Courts E-filing System (ICCES) at:

Mr. Richard Evans
1724 S. Uinta Way
Denver, CO 80231

Mark Grueskin, Esq.
Recht Kornfeld, P.C.
1600 Stout Street, Suite 1000
Denver, CO 80202

Mr. Stephen Roark
2732 S. Fillmore St.
Denver, CO 80210

Matthew D. Grove, Esq.
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203

In addition, the **ANSWER BRIEF** will be delivered by hand to the above no later than noon on May 30, 2014.

/s/ Lisa F. King
Lisa F. King

DN 32269109.5

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 29, 2014 6:47 PM
Original Proceeding Pursuant to C.R.S. § 1-40-107(2) (2013) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013-2014 #139 and #140 **Petitioners:** Vickie L. Armstrong and Bob Hagedorn, v. **Respondents:** Richard Evans and Stephen Roark, and **Title Board:** Suzanne Staiert, David Blake, and Jason Gelender	▲ COURT USE ONLY▲ Supreme Court Case No. 2014SA147 and 14SA148
Lino S. Lipinsky de Orlov, No. 13339 Amy M. Siadak, No. 43702 McKenna Long & Aldridge LLP 1400 Wewatta Street, Suite 700 Denver, Colorado 80202 Telephone: (303) 634-4000 Facsimile: (303) 634-4400 Emails: llipinsky@mckennalong.com asiadak@mckennalong.com	

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EXHIBIT A
TO
PETITIONERS' ANSWER BRIEF

Colorado Secretary of State
Elections Division
1700 Broadway, Ste. 270
Denver, CO 80290
Ph: (303) 894-2200 x 6383
Fax: (303) 869-4861
www.sos.state.co.us

COMMITTEE REGISTRATION FORM

(C.R.S. 1-45-108)

Committee Name:	DON'T TURN RACETRACKS INTO CASINOS
Registration Date:	03/10/2014
Type:	ISSUE COMMITTEE
Physical Address:	1009 GRANT STREET, STE B06 DENVER CO 80203
Mailing Address:	P.O. BOX 18670 DENVER CO 80218
Phone Number:	(303) 839-8373
Alternate Phone:	
FAX Number:	
Web Address:	
Jurisdiction:	STATEWIDE
Purpose:	TO OPPOSE INITIATIVES 95 AND 96 FOR THE NOVEMBER 2014 BALLOT.
Party:	
Election Year:	
Office:	
District:	

Financial Institution	
Institution Name:	WELLS FARGO
Institution Address:	1740 BROADWAY DENVER CO 80274

Registered Agent		**Designated Filing Agent**	
Agent Name:	RICE, LOIS A.	**Agent Name:**	EVANS, RICHARD G.
Phone Number:	(303) 839-8373	**Phone Number:**	(303) 839-8373
Alternate Phone:		**Alternate Phone:**	
Agent Email:	COLOGAMING@GMAIL.COM	**Agent Email:**	RICHARD@REITER5280.COM
Alternate Email1:		**Alternate Email1:**	
Alternate Email2:		**Alternate Email2:**	

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 29, 2014 6:47 PM
Original Proceeding Pursuant to C.R.S. § 1-40-107(2) (2013) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013-2014 #139 and #140 **Petitioners:** Vickie L. Armstrong and Bob Hagedorn, v. **Respondents:** Richard Evans and Stephen Roark, and **Title Board:** Suzanne Staiert, David Blake, and Jason Gelender	▲ COURT USE ONLY▲ Supreme Court Case No. 2014SA147 and 14SA148
Lino S. Lipinsky de Orlov, No. 13339 Amy M. Siadak, No. 43702 McKenna Long & Aldridge LLP 1400 Wewatta Street, Suite 700 Denver, Colorado 80202 Telephone: (303) 634-4000 Facsimile: (303) 634-4400 Emails: llipinsky@mckennalong.com asiadak@mckennalong.com	

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EXHIBIT B
TO
PETITIONERS' ANSWER BRIEF

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COMMITTEE REGISTRATION FORM

(C.R.S. 1-45-108)

Committee Name:	DON'T TURN RACETRACKS INTO CASINOS
Registration Date:	05/19/2014
Type:	ISSUE COMMITTEE
Physical Address:	1717 DOWNING ST DENVER CO 80218
Mailing Address:	P.O. BOX 18670 DENVER CO 80218
Phone Number:	(303) 839-8373
Alternate Phone:	
FAX Number:	
Web Address:	
Jurisdiction:	STATEWIDE
Purpose:	TO OPPOSE INITIATIVES #80, #81, #134 AND #135 FOR THE NOVEMBER 2014 BALLOT AND TO SUPPORT INITIATIVES #138, #139, #140, #141, #142, #143, #144 AND #145.
Party:	
Election Year:	
Office:	
District:	

Financial Institution	
Institution Name:	WELLS FARGO
Institution Address:	1740 BROADWAY DENVER CO 80274

Registered Agent		**Designated Filing Agent**	
Agent Name:	RICE, LOIS A.	**Agent Name:**	EVANS, RICHARD G.
Phone Number:	(303) 839-8373	**Phone Number:**	(303) 839-8373
Alternate Phone:		**Alternate Phone:**	
Agent Email:	LARICE427@HOTMAIL.COM	**Agent Email:**	RICHARD@REITER5280.COM
Alternate Email1:		**Alternate Email1:**	
Alternate Email2:		**Alternate Email2:**	

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 29, 2014 6:48 PM
Original Proceeding Pursuant to C.R.S. § 1-40-107(2) (2013) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013-2014 #139 and #140 **Petitioners:** Vickie L. Armstrong and Bob Hagedorn, v. **Respondents:** Richard Evans and Stephen Roark, and **Title Board:** Suzanne Staiert, David Blake, and Jason Gelender	▲ COURT USE ONLY▲ Supreme Court Case No. 2014SA147 and 14SA148
Lino S. Lipinsky de Orlov, No. 13339 Amy M. Siadak, No. 43702 McKenna Long & Aldridge LLP 1400 Wewatta Street, Suite 700 Denver, Colorado 80202 Telephone: (303) 634-4000 Facsimile: (303) 634-4400 Emails: llipinsky@mckennalong.com asiadak@mckennalong.com	

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EXHIBIT C
TO
PETITIONERS' ANSWER BRIEF

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Fax: (303) 869-4861
www.sos.state.co.us

REPORT OF CONTRIBUTIONS AND EXPENDITURES

[C.R.S. 1-45-108]

Full Name of Committee/Person:	DON'T TURN RACETRACKS INTO CASINOS
Address of Committee/Person:	1717 DOWNING ST
City, State & Zip Code:	DENVER CO 80218
Committee Type:	Issue Committee
Financial Institution:	WELLS FARGO
Financial Institution Address:	1740 BROADWAY DENVER CO 80274
SOS ID NUMBER:	20145027021
Report Type:	MAY 19, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES
Electioneering Communication:	No

Reporting Period: Beginning Date: 05/01/2014 Ending Date: 05/14/2014

Declared Total Spending (if applicable): $575.00
[Art. XXVIII, Sec. 4(1)]

		Totals Detailed Summary Page
1	**Funds on Hand at the Beginning of Reporting Period** (monetary only)	$0.00
2	**Total Monetary Contributions** (line 11)	$3,034,000.00
3	**Total of Monetary Contributions & Beginning Amount** (line 1 + line 2)	$3,034,000.00
4	**Total Monetary Expenditures** (line 18)	$75.00
5	**Funds on Hand at the End of Reporting Period** (monetary) (line 3 - line 4)	$3,033,925.00

The appropriate officer shall impose a penalty of $50 per day for each day that a report is filed late.
[Art. XXVIII Sec. 10(2)(a)]

Registered Agent: LOIS A. RICE **Filed Date:** 05/19/2014

DETAILED SUMMARY

Full Name of Committee/Person: DON'T TURN RACETRACKS INTO CASINOS

Reporting Period: Beginning Date: 05/01/2014 Ending Date: 05/14/2014

6	**Monetary Itemized Contributions of $20 or More** [C.R.S. 1-45-108(1)(a)] (Please list on Schedule "A")	$3,034,000.00
7	**Total Monetary Non-Itemized Contributions** (Contributions of $19.99 and Less)	$0.00
8	**Loans Received** (Please list on Schedule "C")	$0.00
9	**Total Other Receipts** (Interest, Dividends, etc.)	$0.00
10	**Returned Contributions (to donor)** (Please list on Schedule "D")	$0.00
11	**Total Monetary Contributions** (Total of lines 6 - 10)	$3,034,000.00
12	**Total Non-Monetary Contributions** (From Statement of Non-Monetary Contributions)	$0.00
13	**Total Contributions** (Line 11 + line 12)	$3,034,000.00
14	**Monetary Itemized Expenditures of $20 or More** [C.R.S. 1-45-108(1)(a)] (Please list on Schedule "B")	$75.00
15	**Total Monetary Non-Itemized Expenditures** (Expenditures of $19.99 and Less)	$0.00
16	**Loan Repayments Made** (Please list on Schedule "C")	$0.00
17	**Returned Expenditures (from recipient)** (Please list on Schedule "D")	$0.00
18	**Total Monetary Expenditures** (Total of lines 14 - 17)	$75.00
19	**Total Non-Monetary Expenditures** (From Statement of Non-Monetary Expenditures)	$500.00
20	**Total Expenditures** (Line 18 + line 19)	$575.00

Schedule A - Itemized Contributions Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: DON'T TURN RACETRACKS INTO CASINOS

1. Date Accepted 05/14/2014	4. Name	AFFINITY GAMING BLACK HAWK
2. Contribution Amount $1,048,241.00	5. Address	300 MAIN STREET
	6. City/State/Zip	BLACK HAWK CO 80422
3. Aggregate Amount* $1,048,241.00	7.Description	
	8. Employer	
Electioneering Comm? **No**	9. Occupation	

1. Date Accepted 05/14/2014	4. Name	AMERISTAR CASINO RESORT SPA BLACK HAWK
2. Contribution Amount $756,870.00	5. Address	111 RICHMAN STREET, PO BOX 45
	6. City/State/Zip	BLACK HAWK CO 80422
3. Aggregate Amount* $756,870.00	7.Description	
	8. Employer	
Electioneering Comm? **No**	9. Occupation	

1. Date Accepted 05/14/2014	4. Name	CENTURY CASINOS INC.
2. Contribution Amount $50,000.00	5. Address	2860 S CIRCLE DR # 350
	6. City/State/Zip	COLORADO SPRINGS CO 80906
3. Aggregate Amount* $50,000.00	7.Description	
	8. Employer	
Electioneering Comm? **No**	9. Occupation	

1. Date Accepted 05/09/2014	4. Name	COLORADO GAMING ASSOCIATION
2. Contribution Amount $100,000.00	5. Address	1009 GRANT ST, STE B06
	6. City/State/Zip	DENVER CO 80203

3. Aggregate Amount*	7.Description
$100,000.00	8. Employer
Electioneering Comm?	9. Occupation
No	

1. Date Accepted		
05/14/2014	4. Name	ISLE OF CAPRI CASINOS, INC.
2. Contribution Amount	5. Address	401 MAIN STREET
$591,174.00	6. City/State/Zip	BLACK HAWK CO 80422
3. Aggregate Amount*	7.Description	
$591,174.00	8. Employer	
Electioneering Comm?	9. Occupation	
No		

1. Date Accepted		
05/14/2014	4. Name	JACOBS ENTERTAINMENT
2. Contribution Amount	5. Address	17301 W COLFAX AVE
$487,715.00	6. City/State/Zip	GOLDEN CO 80401
3. Aggregate Amount*	7.Description	
$487,715.00	8. Employer	
Electioneering Comm?	9. Occupation	
No		

* For contribution limits within a committee's election cycle or contribution cycle, please refer to the following Colorado Constitutional cites: Candidate Committee Art. XXVIII, Sec. 2(6); Political Party Art. XXVIII, Sec. 3(3); Political Committee Art. XXVIII, Sec 3(5); Small Donor Committee Art. XXVIII, Sec. 2(14).

Schedule B - Itemized Expenditures Statement ($20 or more)

[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: DON'T TURN RACETRACKS INTO CASINOS

1. Date Expended		
05/14/2014	4. Name	WELLS FARGO BANK
2. Amount	5. Address	1740 BROADWAY
$75.00	6. City/State/Zip	DENVER CO 80274
Electioneering Comm?	7.Purpose	
No	8. Type	Bank Fees

No data for Schedule C - Loans

Schedule D - Returned Contributions and Expenditures

Full Name of Committee/Person: DON'T TURN RACETRACKS INTO CASINOS

Returned Contributions

Returned Expenditures

No data for Schedule E - Non-Monetary Contributions

Schedule E - Statement of Non-Monetary Expenditures

[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: DON'T TURN RACETRACKS INTO CASINOS

1. Date Expended	4. Name	COLORADO GAMING ASSOCIATION
05/14/2014	5. Address	1009 GRANT ST, STE B06
2. Fair Market Value	6. City/State/Zip	DENVER CO 80203
$500.00	7.Purpose	Rent & Utilities
Electioneering Comm?		
No	8. Coordinated?	No