

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

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 Initiative 2013-2014 #141

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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▲ COURT USE ONLY ▲

Case No. _____

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CO-COUNSEL FOR PETITIONERS

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2013-2014 #141
("PROHIBITION ON GAMBLING MONOPOLIES")**

Petitioners, Vickie L. Armstrong and Bob Hagedorn (jointly, “Petitioners”), registered electors of the State of Colorado, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2) (2013), to review the action of the Title Board with respect to the title, ballot title, and submission clause (the “Title”) set for Initiative 2013-2014 #141 (“Prohibition on Gambling Monopolies”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #141

Richard Evans and Stephen Roark (jointly, “Proponents”) filed Initiative 2013-2014 #141 (the “Proposed Initiative”) with the Directors of the Legislative Council and the Office of Legislative Legal Services on March 21, 2014. The legislative staff provided Proponents with its review and comment memorandum for the Proposed Initiative on April 2, 2014, and conducted the associated review and comment meeting on April 4, 2014.

Proponents filed an amended version of the Proposed Initiative with the Secretary of State’s office on April 4, 2014. At a hearing conducted on April 17, 2014, the Title Board found that the Proposed Initiative contained a single subject and set the Title.

On April 23, 2014, Petitioners filed a motion for rehearing (the “Motion”) regarding the Title. In the Motion, Petitioners explained that the Proposed Initiative (a) improperly addresses 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 (b) is misleading, does not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion, in violation of C.R.S. §§ 1-40-106 and 1-40-107 (2013). On April 24, 2014, the Title Board granted the Motion, in part, to cure one deficiency in the original Title. The Title Board, however, denied the Motion in other respects, some of which are at issue in this appeal.

B. Jurisdiction

Petitioners are entitled to a review of the Title before the Colorado Supreme Court pursuant to C.R.S. §1-40-107(2) (2013). Petitioners timely filed the Motion with the Title Board. *See* C.R.S. § 1-40-107(1) (2013). Additionally, Petitioners timely filed this Petition for Review within seven days from April 28, 2014, the date on which the Secretary of State furnished Petitioners with certified copies of the Proposed Initiative, the Title, the Motion, and the Title Board's ruling on the Motion. *See* C.R.S. § 1-40-107(2) (2013).

As required by C.R.S. § 1-40-107(2) (2013), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the Proposed Initiative; (2) the original Title; (3) the Motion; and (4) the ruling on the Motion as reflected by the title and ballot title and submission clause that the

Board set. Petitioners respectfully submit that the Title Board erred in denying the Motion.

ADVISORY STATEMENT OF GROUNDS FOR APPEAL

The Title Board erred in finding that the Proposed Initiative concerns a single subject, pursuant to article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5 (2013). In addition, in violation of C.R.S. §§ 1-40-106 and 1-40-107 (2013), the Title is misleading, does not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion.

The following is an advisory list of issues that Petitioners expect to address in their brief:

1. The Proposed Initiative relates to the following multiple subjects, among others:
 - (a) Prohibiting gambling monopolies within a county;
 - (b) Potentially nullifying Initiatives 2013-2014 #80, #81, #134, and #135;
 - (c) Prohibiting the expansion of “casino-style gambling” into any county in which it is not already approved because the first “casino-style gambling” license granted in any such county would necessarily constitute a prohibited monopoly under the Proposed Initiative;

(d) Prohibiting the expansion of limited gaming under the Colorado Constitution, article XVIII, section 9, to any county that intends to approve fewer than two limited gaming establishments; and

(e) Reducing the authority of the executive branch.

2. In addition, the Title does not fairly express the true meaning and intent of the Proposed Initiative, and, therefore, violates C.R.S. §§ 1-40-106 and 1-40-107 (2013), for the reasons set forth below:

(a) The Title does not disclose the multiple subjects of the Proposed Initiative set forth in Paragraph 1 above;

(b) “Legalized gambling” and “monopoly” are impermissible catch phrases or slogans;

(c) The phrase “legalized gambling” is misleading because it has no established meaning; and

(d) The Title fails to disclose that, although the Proposed Initiative purports to apply to all forms of “legalized gambling” within the state of Colorado, the Proposed Initiative could not prohibit or regulate any form of gambling conducted on “Indian lands,” as defined in 25 U.S.C. § 2703(4).

PRAYER FOR RELIEF

Petitioners respectfully request that this Court determine (a) that no title for the Proposed Initiative may be set because the Proposed Initiative improperly

addresses multiple subjects, in violation of article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5 (2013), or (b) alternatively, that the Title is neither fair nor accurate, and remand the Proposed Initiative to the Title Board with instructions to redraft the Title to represent the text of the Proposed Initiative accurately and fairly.

Respectfully submitted this 1st day of May, 2014.

MCKENNA LONG & ALDRIDGE
LLP

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/s/ Marcy G. Glenn

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

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #141 (“PROHIBITION ON GAMBLING MONOPOLIES”)** was sent this 1st day of May, 2014, via first class U.S. mail, postage prepaid, to the proponents of the Proposed Initiative and their counsel of record at:

Mr. Richard Evans
1724 S. Unita Way
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Mr. Stephen Roark
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Maurice Knaizer, Esq.
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

/s/ Lisa F. King

Lisa F. King

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
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Original Proceeding Pursuant to C.R.S. § 1-40-
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Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2013-
2014 #141

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 ▲

Case No. _____

**EXHIBIT A
TO
PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2013-2014 #141
("PROHIBITION ON GAMBLING MONOPOLIES")**



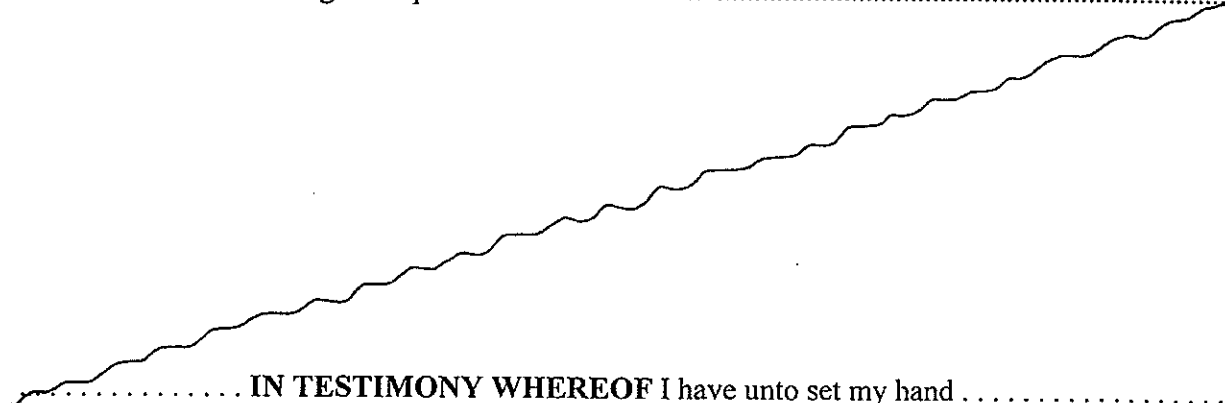
STATE OF COLORADO

DEPARTMENT OF
STATE

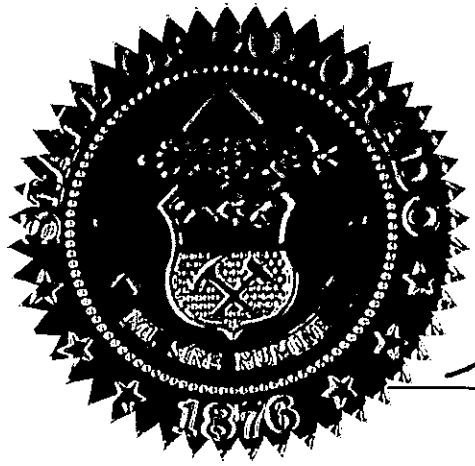
CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #141 'Prohibition on Gambling Monopolies'".....



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 28th day of April, 2014.



A handwritten signature in cursive script, reading 'Scott Gessler', written over a horizontal line.

SECRETARY OF STATE

RECEIVED

APR 04 2014

Colorado Secretary of State

S. WARD 1:58 P.M.

#141 Original

Be it Enacted by the People of the State of Colorado:

Section 1. In the constitution of the state of Colorado, **add** section 20 to article XVIII as follows:

Section 20. Prohibition on gambling monopolies.

- (1) NO STATE AGENCY MAY ISSUE OR RENEW A LICENSE TO CONDUCT LEGALIZED GAMBLING IF THE GRANTING OR RENEWAL OF THAT LICENSE WOULD RESULT IN THE LICENSEE'S MONOPOLY WITHIN ANY COUNTY ON ONE OR MORE TYPES OF GAMBLING TO BE OFFERED BY THE LICENSEE.
- (2) THIS PROHIBITION APPLIES TO ALL FORMS OF LEGALIZED GAMBLING OTHER THAN BINGO, RAFFLES, AND LIVE HORSE RACING INCLUDING ON-TRACK AND OFF-TRACK BETTING ON SUCH RACES.
- (3) THIS PROHIBITION IS EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

RECEIVED

APR 04 2014

Colorado Secretary of State

S.WARD 1:58 P.M.

#141 Amended

Be it Enacted by the People of the State of Colorado:

Section 1. In the constitution of the state of Colorado, **add** section 20 to article XVIII as follows:

Section 20. Prohibition on gambling monopolies.

(1) NO STATE AGENCY MAY ISSUE ~~OR RENEW~~ A LICENSE TO CONDUCT LEGALIZED GAMBLING IF THE GRANTING ~~OR RENEWAL~~ OF THAT LICENSE WOULD ~~RESULT IN GIVE~~ THE LICENSEE'S A MONOPOLY WITHIN ANY COUNTY ON ONE OR MORE TYPES OF GAMBLING TO BE OFFERED BY THE LICENSEE.

(2) THIS PROHIBITION APPLIES TO ALL FORMS OF LEGALIZED GAMBLING OTHER THAN BINGO, RAFFLES, ~~AND LIVE HORSE RACING, AND SIMULCAST RACING INCLUDING ON-TRACK AND OFF-TRACK BETTING ON SUCH RACES.~~

(3) THIS PROHIBITION IS EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

RECEIVED

APR 04 2014

Colorado Secretary of State

SWARD 1:58 P.M.

#141 Final

Be it Enacted by the People of the State of Colorado:

Section 1. In the constitution of the state of Colorado, add section 20 to article XVIII as follows:

Section 20. Prohibition on gambling monopolies.

(1) NO STATE AGENCY MAY ISSUE A LICENSE TO CONDUCT LEGALIZED GAMBLING IF THE GRANTING OF THAT LICENSE WOULD GIVE THE LICENSEE A MONOPOLY WITHIN ANY COUNTY ON ONE OR MORE TYPES OF GAMBLING TO BE OFFERED BY THE LICENSEE.

(2) THIS PROHIBITION APPLIES TO ALL FORMS OF LEGALIZED GAMBLING OTHER THAN BINGO, RAFFLES, LIVE RACING, AND SIMULCAST RACING.

(3) THIS PROHIBITION IS EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #141¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting the granting of a license to conduct legalized gambling if the granting of the license would give the licensee a monopoly within any county on one or more types of gambling to be offered by the licensee other than bingo, raffles, live racing, and simulcast racing.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting the granting of a license to conduct legalized gambling if the granting of the license would give the licensee a monopoly within any county on one or more types of gambling to be offered by the licensee other than bingo, raffles, live racing, and simulcast racing?

Hearing April 17, 2014:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:34 a.m.

¹ Unofficially captioned “Prohibition on Gambling Monopolies” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

APR 23 2014

Colorado Secretary of State

5:45 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

In re Title and Ballot Title and Submission Clause for Initiative 2013-2014 #141 ("Prohibition on Gambling Monopolies")

**MOTION FOR REHEARING
ON INITIATIVE 2013-2014 # 141**

Objectors, Vickie L. Armstrong and Bob Hagedorn (jointly, "Objectors"), move (a) for a finding that no title can be set for Initiative 2013-2014 #141 ("Prohibition on Gambling Monopolies") (the "Proposed Initiative"), on the grounds that the Proposed Initiative violates the single-subject requirement set forth in Article 5, Section 1(5.5) of the Colorado Constitution and in C.R.S. § 1-40-106.5, or, alternatively, (b) for correction and clarification of the title set for the Proposed Initiative, for the reasons set forth below:

1. At a hearing conducted on April 17, 2014, the Title Board found it had jurisdiction to set a title for the Proposed Initiative and that the Proposed Initiative addressed a single subject. Accordingly, the Title Board set the following title (the "April 17 Title") for the Proposed Initiative:

An amendment to the Colorado constitution prohibiting the granting of a license to conduct legalized gambling if the granting of the license would give the licensee a monopoly within any county on one or more types of gambling to be offered by the licensee other than bingo, raffles, live racing, and simulcast racing.

2. For the following reasons, the Proposed Initiative contains more than a single subject, in violation of Article V, Section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5. The Proposed Initiative relates to the following multiple subjects, among others:

- (a) Prohibiting gambling monopolies within a county;
- (b) Potentially nullifying Initiatives 2013-2014 #80, #81, #134, and #135;
- (c) Prohibiting the expansion of gambling into any county in which it is not already approved because the first gambling license granted in any such county would necessarily constitute a prohibited monopoly under the Proposed Initiative;
- (d) Prohibiting the expansion of limited gaming under the Colorado Constitution, Article XVIII, Section 9, to any county that intends to approve fewer than two limited gaming establishments; and
- (e) Reducing the authority of the Colorado Limited Gaming Control Commission.

3. The April 17 Title does not fairly express the true meaning and intent of the Proposed Initiative, and, therefore, violates C.R.S. § 1-40-106(3)(b), for the reasons set forth below:

(a) The April 17 Title does not disclose the multiple subjects of the Proposed Initiative set forth in Paragraph 2 above;

(b) “Legalized gambling” and “monopoly” are impermissible catch phrases or slogans;

(c) The phrase “legalized gambling” is misleading to voters because it has no established meaning; and

(d) The April 17 Title fails to disclose that, although the Proposed Initiative purports to apply to all forms of “legalized gambling” within the state of Colorado, the Proposed Initiative could not prohibit or regulate any form of gambling conducted on “Indian lands,” as defined in 25 U.S.C. § 2703(4).

4. For these reasons, Objectors request that the Title Board conduct a rehearing for the purpose of (a) striking the April 17 Title, and declining to set a new title for the Proposed Initiative, on the grounds that the Proposed Initiative violates the single-subject requirement set forth in Article V, Section 1(5.5) of the Colorado Constitution and in C.R.S. § 1-40-106.5, or, alternatively, (b) revising the April 17 Title to fairly express the true meaning and intent of the Proposed Initiative.

Respectfully submitted this 23rd day of April, 2014.

MCKENNA LONG & ALDRIDGE LLP

s/ Lino S. Lipinsky de Orlov

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*Co-Counsel for Objectors, Vickie L.
Armstrong and Bob Hagedorn*

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #141** was sent this 23rd day of April, 2014, via first class U.S. mail, postage prepaid, to the proponents of the Proposed Initiative and their counsel of record at:

Mr. Richard Evans
1724 S. Unita 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

/s/ Sally Kline

Sally Kline

DN 32267554.4

Ballot Title Setting Board

Proposed Initiative 2013-2014 #141¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting the granting of a license to conduct legalized gambling if the granting of the license results in the licensee having a monopoly within any county on one or more types of gambling to be offered by the licensee other than bingo, raffles, live racing, and simulcast racing.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting the granting of a license to conduct legalized gambling if the granting of the license results in the licensee having a monopoly within any county on one or more types of gambling to be offered by the licensee other than bingo, raffles, live racing, and simulcast racing?

Hearing April 17, 2014:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:34 a.m.

Hearing April 24, 2014:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 9:34 a.m.

¹ Unofficially captioned “Prohibition on Gambling Monopolies” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.