

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 #143, #144 and #145

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. 2014SA151

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 552 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. In the interest of brevity, issues that the Title Board addressed in its opening brief will not be discussed here.

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

Petitioners contend that #143, #144, and #145 each contain three¹ distinct subjects: 1) a prohibition on casino-style gambling, including video lottery terminals, within a certain distance of a public school; 2) the “potential 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.” *Pet. Open. Br.* at 9-10.

As the Title Board argued in its opening brief, Petitioners’ single-subject arguments confuse 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

¹ The Petition identified three additional purported subjects, for a total of six, but the Petitioner’s opening brief discussed only three.

the existing statutory or constitutional scheme. *Blake v. King* (2007-2008 #62), 184 P.3d 52, 59 (Colo. 2008) (“[i]n determining whether a proposed initiative comports with the single subject requirement, we do not address the merits of a proposed initiative, *nor do we interpret its language or predict its application if adopted by the electorate*”) (emphasis in original), quoting *In re Proposed Initiative for 1997-1998* #64, 960 P.2d, 1192, 1197 (Colo. 1998). Yet Petitioners’ arguments are based largely on what they believe the potential effects of #143, #144, and #145 will be.

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).

#143, #144, and #145 do not suffer from the problems that the Court pointed out in *Jones*. While the initiatives 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 the placement of gambling facilities within certain specified distances from public schools.

II. The titles for #143, #144, and #145 are not misleading.

For the reasons outlined in the Title Board’s opening brief, the titles for #143, #144, and #145 do not contain catchphrases, and sufficiently balance 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 titles set for #143 , #144, and #145.

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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