SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 15, 2026 4:36 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative #416 ("Limited Gaming Expansion and Local Control") **Petitioner:** Ronald R. Kammerzell, **v.** **Respondents:** Suzanne Taheri and Sandrea Robnett, **and** **Title Board:** Christy Chase, Theresa Conley & Jennifer Sullivan	**▲COURT USE ONLY▲**
Attorneys for Petitioner: Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com; nate@rklawpc.com;	Case Number: 2026SA159
PETITIONER'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).

Choose one:

It contains 1950 words.

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 Nathan Bruggeman
Nathan Bruggeman
Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

Petitioner Ronald Kammerzell by and through counsel, Recht Kornfeld, P.C., respectfully submits his Answer Brief, and states:

LEGAL ARGUMENT

I. Initiative #416 violates the constitutional single subject limitation.

A. Neither the Board nor the Court can simply adopt Proponents' preferred construction of their measure.

The Board argues that "[a]ccording to the Proponents, the initiative does not abandon the definition of 'limited gaming' and in fact uses that term." (Title Bd.'s Br. at 10.) It also argues that whether the measure allows unlimited gaming is simply an "effect" of the measure that the Court cannot consider. (*Id.* at 13.) These arguments suffer from the same flaw: the Board is asking the Court to ignore the deliberate drafting and plain language of the measure.

Proponents begin their proposed measure with the phrase "notwithstanding subsections (1) through (7) of this section." (CF p. 12.) That is language (1) neither the Board nor the Court can ignore and (2) is easily understandable, as the word "notwithstanding" has a commonly accepted meaning in statutory construction. (*See* Pet.'s Br. at 16-17 (discussing authority).) While some deference is due to initiative proponents' intent, that deference does not come at the expense of the Board or the Court "neglecting" their responsibilities to ensure single subject or

clear title compliance. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 25*, 974 P.2d 458, 465 (Colo. 1999). Whatever Proponents meant in terms of whether gaming would be "limited" or not, they cannot change the meaning of the word they in fact used.

Nor is it an "effect" to apply the common meaning of the words that proponents use. While the Board and the Court's interpretive role is limited, this Court "must sufficiently examine an initiative to determine whether [it] violates the single subject rule" and "will, when necessary, characterize a proposal sufficiently to enable review of the Board's actions." *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 278 (Colo. 2006). "Notwithstanding" appears on the face of the Proposed Initiative, and the Court can apply the common meaning of the word to understand that, in their choice to use it, Proponents eliminated the limitations that exist on gaming for expansion jurisdictions.

B. The Board improperly relies on a general theme to avoid the Proposed Initiative's single subject violation.

The Board's primary single subject argument is that the measure's different subjects all relate to "local control of limited gaming." (Title Bd.'s Br. at 10.) The Board, however, misapprehends the single subject inquiry. It is not whether some tenuous thread is woven among the various subjects of the measure or whether

subjects can be connected in some global fashion. It is, instead, an inquiry driven by ***voter protection*** and ***voter understanding***, rooted in avoiding logrolling (asking voters to trade off votes to build a coalition) and voter surprise and fraud. *See* C.R.S. § 1-40-106.5(e); *see, e.g.*, *In re Titles, Ballot Titles, and Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, and #128*, 2022 CO 37, ¶¶ 19-23 (looking beyond the thematic connections between subjects to analyze whether and how voters would perceive the different subjects contained within a measure). The Board's brief nowhere addresses the contested history of gaming expansion in Colorado, or the logrolling attendant to the distinct and "unsettled" policy questions, *see id.*, around (1) which jurisdictions should have gaming and (2) what limitations, if any, are employed to protect consumers when existing limits on gaming are lifted.

And while the Board contends there would be no voter surprise, (*see* Title Bd.'s Br. at 11-12), that argument only has force by accepting Proponents' position that "notwithstanding" has a meaning in their measure that is different than what the dictionary and the opinions of this Court say the word means. Applying the plain and common meaning of "notwithstanding," voters will certainly be surprised to learn that the constraints on "limited gaming" with which they are familiar ***do***

not apply in expansion jurisdictions, a surprise that is reinforced by the fact that the Board's titles refer to "limited gaming" several times. (*See* CF pp. 10.)

C. The Board does not dispute that the measure displaces TABOR's local control provisions with a statewide vote.

In addition to mixing an unprecedented expansion of gaming to any locality in Colorado that wants it with no limitations on what gaming would be allowed, Petitioner also argued below (and in his petition for review and opening brief) that the Proposed Initiative displaces TABOR's local control over spending/revenue, in which the voters of each district must approve revenue changes. *See* Colo. Const., art. X, sec. 20. (CF p. 5.) The Board does not dispute that is what the Proposed Initiative seeks to do, arguing only that such a statewide vote on local TABOR decisions is "necessarily and properly" connected with "local control of limited gaming." (Title Bd.'s Br. at 10.) What the Board does not explain is how a "statewide" de-Brucing effectuates "local control," and that is because it does not. Taking away local voters decision-making over the TABOR implications of gaming tax revenue their local jurisdictions receive is antithetical to "local control," and that loss of local rights is coiled in the folds of the measure.

II. The titles set by the Board are incomplete and misleading.

A. The Board repeats its erroneous position that the measure only authorizes limited gaming.

As Petitioner explained, describing the Proposed Initiative in the titles as authorizing "limited" gaming is misleading and inaccurate. (Pet.'s Br. at 35-36.) The Board's only defense of the use of "limited gaming" is that the measure includes the phrase "limited gaming." (Title Bd.'s Br. at 17.) However, while that phrase appears in the measure, the use of it in the titles is inaccurate because of the Initiative's "notwithstanding" clause, which makes inapplicable to expansion jurisdictions the definition of "limited gaming" found in section 9(4) of Article XVIII of the Constitution. Based on the gaming currently allowed in Black Hawk, Central City, and Cripple Creek, voters have a specific understanding of what "limited gaming" means. Using the phrase here is, therefore, particularly misleading because the voters will think they are authorizing one thing but, in fact, approving something fundamentally different.

B. The Board has effectively offered no argument to this Court to defend its decision not to use TABOR's mandatory "Shall taxes be increased" language.

The ***entirety*** of the Board's substantive argument as to why TABOR's mandatory title language for a tax increase—"Shall taxes be increased … ," *see*

Colo. Const., art. X, sec. 20(3)(c)—does not apply here is this: Proponents said there isn't a new tax. (Title Bd.'s Br. at 18-19.) The Board's brief states:

> Here, the initiative provides for a tax on operators "up to a maximum of forty percent of the adjusted gross proceeds of limited gaming." Record, p 12. ***As the Proponents of the measure noted, this does not create a new tax, it merely expands the existing tax in subsection (5)(a) of section 9 of article XVIII to new operators***. Therefore, to the extent there is an increase in tax, it is incidental.

(*Id.* (emphasis added).)

The Board's defense of its title setting runs contrary to its duties. While it is appropriate for the Board to consider proponents' position, it is the Board's ***constitutional*** and ***statutory*** duty to set a legally compliant title, which obligations benefit and protect the public. *See* Colo. Const., art. V, sec. 1(5.5); C.R.S. § 1-40-106(3)(b); *In re 1999-2000 # 25*, 974 P.2d at 465 ("Likewise, the Board must give deference to the intent of the proposal as expressed by its proponent, ***without neglecting its duty to consider the public confusion that might result from misleading titles***." (emphasis added)). The Board's duties are heightened in this circumstance because TABOR imposes additional disclosure requirements for ballot issues proposing a tax increase. As the Court has explained, "the purpose of such a disclosure requirement is to permit the voters to make informed choices at the ballot." *Bickel v. City of Boulder*, 885 P.2d 215, 236 (Colo. 1994). This

effectuates TABOR's underlying purposes to "'protect citizens from unwarranted tax increases' and to allow citizens to approve or disapprove the imposition of new tax burdens." *Huber v. Colo. Mining Ass'n*, 264 P.3d 884, 890 (Colo. 2011) (quoting *In re Submission of Interrogs. on Senate Bill 93-74*, 852 P.2d 1, 4 (Colo. 1993)). It is the Board's obligation to determine whether TABOR's title requirement applies, and its reliance on "Proponents said so" in its opening brief falls short of that obligation.

As Petitioner explained in detail in his opening brief, the Proposed Initiative is not an extension of the tax that currently exists in Section 9 of Article XVIII of the Constitution. (*See* Pet.'s Br. at 27-34.) The Initiative's proposed tax:

- Exists "notwithstanding" the tax that exists in the Constitution;
- Has its own express authorization;
- Applies specifically to gaming revenues derived from the Proposed Initiative;
- Segregates the revenue generated by the tax in its own fund; and
- Creates its own distribution scheme for tax revenues.

(CF p. 12 (proposed section 9(8)(c)-(d)).) Beyond its independent existence and operation, the measure's tax authorizes a ***different—and higher—tax rate*** than currently applies. Under Section 9(7)(e) of Article XVIII of the Constitution, the current tax rates applicable to limited gaming in Black Hawk, Central City, and

Cripple Creek are frozen, with the highest rate being 20%, *see* Limited Gaming Control Comm'n Rule 14(1), 1 CCR 207-1, absent statewide voter approval, *see* Colo. Const., art. XVIII, sec. 9(7)(e) ("If local voters in one or more cities revise any limits on gaming as provided in paragraph (a) of this subsection (7), any commission action pursuant to subsection (5) of this section ***that increases gaming taxes from the levels imposed as of July 1, 2008***, ***shall be effective only if approved by voters at a statewide election held under section 20(4)(a) of article X of this constitution***." (emphasis added)). The Proposed Initiative, in contrast, authorizes a tax rate up to 40%—double the current highest rate—with no requirement that the Limited Gaming Control Commission set the tax rate(s) in expansion jurisdictions at the same rate as the legacy gaming jurisdictions. (*See* CF p. 12 (proposed subsection 9(8)(c)(I)).) It cannot be the case that a newly authorized tax that has a tax rate twice as high as a current tax is a "mere[] expan[sion] the existing tax." (*See* Title Bd.'s Br. at 19.)

Despite Petitioner's detailed analysis of the Proposed Initiative's new tax, the Title Board chose not to file an answer brief. (*See* "Notice by the Title Board," May, 15, 2026 (providing notice that the Board was resting on its opening brief).) The Board had a full opportunity to rebut or dispute Petitioner's explanation of the

Proposed Initiative's tax and the case law cited by Petitioner demonstrating that it is a "tax increase" within the meaning of TABOR that triggers the "Shall taxes be increased …" title requirement. Given the Board gave no analysis of the proposed tax in its opening brief beyond providing Proponents' position, (*see* Title Bd.'s Br. at 18-19), the only explanation for its decision not to address the tax in an answer brief is that it had no basis to dispute Petitioner's argument.

Having failed to, in effect, offer any argument to this Court as to why the TABOR language does not apply, the Court should deem the Board to have conceded the issue.

CONCLUSION

Petitioner respectfully requests that this Court determine that the titles are legally flawed and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 15th day of May, 2026.

s/ Nathan Bruggeman
Mark G. Grueskin, #14621
Nathan Bruggeman, #39621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
mark@rklawpc.com
nate@rklawpc.com
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Leni Charles, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 15, 2026, to the following:

Counsel for the Title Board:

Kyle Holter
Lily Nierenberg
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:

Suzanne Taheri
West Group
6501 E. Belleview Ave., Suite 375
Denver, CO 80111

/s Leni Charles