SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 8, 2026 3:38 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 OPENING 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).

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X It contains 7,625 words.

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X For the party raising the issue:

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, not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's 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. 28 and C.A.R. 32.

/s Nathan Bruggeman
Nathan Bruggeman
Attorney for Petitioner

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INTRODUCTION

Proposed Initiative 2025-2026 #416 (the "Proposed Initiative" or "Initiative") seeks to amend the Constitution to make gambling legal across Colorado following only local votes in expansion jurisdictions. "Notwithstanding" current law, any local jurisdiction can have gaming and unlimited gaming at that.

In crafting this Initiative, however, Proponents have violated the single subject requirement by coiling three subjects in its folds: elimination of the current voting procedure for authorizing new gaming jurisdictions; changing gaming from "limited gaming" to unlimited gambling in expansion jurisdictions; and overriding local TABOR decisions regarding new gaming revenue with a statewide vote.

The Board also erred in setting titles. First, it did so by failing to include TABOR's mandatory tax increase language where the measure unquestionably taxes expansion jurisdiction gaming revenue and does so via a tax scheme contained solely within the Proposed Initiative that operates independently of the current tax for limited gaming. That omission renders the titles constitutionally deficient. Second, the titles tell voters five times that expansion gambling will be "limited gaming" despite the measure's explicit preclusion of the limitations on gaming that currently exist in law. That is misleading.

Accordingly, Petitioner respectfully requests that the Court reverse the Title Board for lack of jurisdiction or, in the alternative, reverse and remand with instructions to set a constitutionally compliant and clear title.

ISSUES PRESENTED

1. Whether the Proposed Initiative impermissibly contains multiple subjects by:

   a. eliminating the requirement that statewide voters first approve the expansion of gaming to a new, specifically named locality;

   b. removing the constitutional restriction that such gambling activities in new jurisdictions be only "limited gaming" as defined in the Constitution; and

   c. modifying the Taxpayer Bill of Rights such that statewide voters, rather than local voters, will decide to suspend revenue limits for localities that authorize gaming under this measure?

2. Whether the ballot titles set are inherently flawed and legally inadequate because the Board failed to use the mandatory language from section 20 of article X of the Colorado Constitution "SHALL STATE TAXES BE

INCREASED" where the Proposed Initiative authorizes the imposition of a state tax on gaming authorized under the measure?

3. Whether the titles are inaccurate and misleading by describing the expansion of gaming as "limited gaming" when the Proposed Initiative makes the constitutional definition of "limited gaming" inapplicable to newly authorized jurisdictions and, as a result, authorizes unlimited gaming?

STATEMENT OF THE CASE

A. Statement of Facts.

Suzanne Taheri and Sandrea Robnett ("Proponents") proposed the Initiative. A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services on April 3, 2026. Following that hearing, on April 3, 2026, Proponents submitted a final version of the Initiative to the Secretary of State for purposes of submission to the Title Board.

1. The Initiative.

The Proposed Initiative seeks to displace the current constitutional scheme governing which local jurisdictions may have limited gaming ("limited gaming" is a defined term referring to, essentially, specifically authorized types of casino games and bets, *see* Colo. Const., art. XVIII, sec. 9(4)(b)). The current constitutional provision permits limited gaming in three jurisdictions: Black Hawk,

Central City, and Cripple Creek. *Id.*, sec. 9(1) & (3)(a). It creates a regulatory structure, imposes default limits on gaming activities through the definition of "limited gaming," taxes gaming proceeds, and establishes a process for expanding limited gaming to other jurisdictions that requires a jurisdiction-specific statewide vote and a confirming vote by the local jurisdiction.

The Proposed Initiative seeks to displace the strictures of the current gaming provision in the Constitution, such that any local jurisdiction in the State may authorize any form of gambling. It does so in the following ways:

- First, "notwithstanding subsections (1) through (7)" of the current constitutional provision, "any" local jurisdiction can authorize gaming through a local election and without a prior, jurisdiction-specific statewide vote;
- Second, as a consequence of its "notwithstanding" clause, the measure precludes the application, only as to expansion jurisdictions, of the definition of "limited gaming" found in subsection 9(4)(b) and, therefore, eliminates the default limitations on gaming for expansion jurisdictions;
- Third, it omits any limit on local jurisdictions in terms of what forms of new gaming can be allowed in the new jurisdiction; and,

- Fourth, it permits regulation of gaming under "this subsection (8)" only as to "subsection (2)" of the current constitutional provision, which establishes the Limited Gaming Control Commission.

(CF p. 12-13 (proposed sec. 9(8)(a)-(b)).) But the measure does not stop there, as it turns its attention to taxation. The Proposed Initiative:

- imposes a tax of up to 40%, as set by the Commission, on "gross proceeds" for the "privilege of conducting limited gaming under this subsection (8)";
- creates a distribution scheme for the tax proceeds generated from the gaming tax created under subsection (8); and,
- exempts gaming tax revenue from "any limitation" under section 20 of Article X of the Constitution ("TABOR"), which is a so-called "de-Brucing" of gaming tax revenue for any jurisdictions' spending/revenue limit under TABOR.

(*Id*. (proposed sec. 9(8)(c)-(e)).)

B. Nature of the Case, Course of Proceedings, and Disposition Below.

The Title Board heard the measure on April 15, 2026, at which time it set titles. (CF p. 9.) On April 22, 2026, Petitioner filed a motion for rehearing, alleging

that the Board lacked jurisdiction to set titles and that the titles set by the Board are misleading and confusing as they do not fairly communicate the true intent and meaning of the measure. (CF pp. 2-7.) Petitioner further argued that the titles did not comply with the Taxpayer's Bill of Rights ("TABOR"), as the measure imposes a new state tax, which triggers the requirement under TABOR that the ballot titles begin, "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY ...?" *See* Colo. Const., art. X, sec. 20(3)(c).

The Title Board heard the motion for rehearing on April 24.[1] The Board rejected the single subject argument 2-1, with the Board Chair concluding the measure violates the single subject requirement. (*See* CF p. 11; Apr. 24 Hr'g at 2:30:10 to 2:30:17, 2:42:45 to 2:42:55.) The Board made several revisions to the titles but declined to remove the multiple references to "limited gaming" or to add

[1] Discussion from Initiative 2025-2026 #415, which was a related measure, was incorporated to the Proposed Initiative. (*See* Apr. 24, 2026, Title Board Hr'g ("Apr. 24 Hr'g") at 2:06:57 to 2:07:03, *available at* https://tinyurl.com/y3sapy54.)

TABOR's mandatory tax clause, though, as to the latter issue, the Board Chair acknowledged "the Board could be wrong."[2] (Apr. 24 Hr'g at 2:42:33 to 2:42:36.)

The Board set the following title and submission clause:

> Shall there be an amendment to the Colorado Constitution allowing the expansion of limited gaming to any city, town, city and county, or county upon local voter approval, and, in connection therewith, no longer restricting limited gaming to three communities or requiring a statewide vote to allow expansion to each new jurisdiction; requiring new limited gaming operators to pay a tax on limited gaming proceeds; allocating a portion of the tax revenues to community, junior, and local district colleges, to address limited gaming impacts within the local jurisdiction, and to school districts within the local jurisdiction; and allowing the tax revenues to be kept and spent as a voter-approved revenue change?

(CF p. 10.)

C. Jurisdiction

Petitioner is entitled to review before this Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed his motion for rehearing with the Board. *See* C.R.S. § 1-40-107(1). He timely filed his petition for review seven days from the date of the hearing on the motion for rehearing. *See id*. § 1-40-107(2).

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[2] The Board concluded that the titles for Initiative 2025-2026 #418 required the TABOR language. That measure is similar to the Proposed Initiative but with a different formulation of the tax. The Board nonetheless still erred in setting titles for #418 by failing to provide the constitutionally required fiscal estimate in the title in violation of this Court's precedent. *See* 2026SA160.

SUMMARY OF ARGUMENT

The Initiative violates the constitutional single subject requirement by combining three separate subjects. The first subject is the elimination of the two-step voting process, which requires jurisdiction specific votes, for authorizing gaming in new jurisdictions. That is a core feature of Colorado's gaming structure that was authorized by voters in 1992—in other words, it is its own subject. The second subject is removing the concept of "limited gaming" from expansion jurisdictions, which the Initiative accomplishes by making the definition of "limited gaming" inapplicable to expansion jurisdiction gaming. "Limited gaming" was a central feature of the initial authorization for casino-like gambling that voters authorized in 1990, that is, it is its own subject. Finally, the measure displaces the usual TABOR process for voter approved revenue changes, which questions are presented to a specific district's voters, with a statewide vote to de-Bruce any gaming tax revenue generated by the measure for local jurisdictions. These subjects are not necessarily and properly connected and violate the single subject requirement.

The Board also erred in title setting. Although the Initiative unquestionably taxes new gaming revenue, the Board decided that it was not a tax increase but

instead an extension of a current tax. But that is not true: the measure makes the current gaming tax inapplicable, given the "notwithstanding" clause at the beginning of the new subsection (8) and authorizes and establishes its own tax scheme. It may look similar to the current tax, but it is its own tax to be applied only to expansion jurisdictions, and it is not subject to the current tax's voter approval requirement, which provides that, absent a statewide TABOR vote, the top tax rate in Black Hawk, Central City, and Cripple Creek is 20% (vs. the top tax rate of 40% established in the measure for expansion jurisdictions). As such, TABOR requires the titles begin with the shall taxes be increased language, including a tax revenue estimate. Second, the titles tell voters multiple times that "limited gaming" is expanding—but the measure has no provision for limited gaming, as it makes inapplicable the provisions of law that create the concept of "limited gaming." Gaming is, to put it bluntly, unlimited under the measure. It is misleading to tell voters otherwise.

LEGAL ARGUMENT

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

A. Standard of Review; Preservation of Issue Below.

A proposed initiative must contain no more than one subject. Colo. Const., art. V, § 1(5.5). An initiative violates the single subject requirement "when it has at

least ***two distinct and separate purposes*** which are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #64*, 960 P.2d 1192, 1196 (Colo. 1998) (citation and internal quotation marks omitted) (emphasis added).

The single subject requirement principally guards against two evils. First, it prevents so-called "logrolling," in which proponents combine "incongruous subjects in the same measure" "for the purpose of" creating a political coalition to support the measure that might not otherwise support the different elements of the measure. C.R.S. § 1-40-106.5(1)(e)(I). In other words, different subjects must be passed on their own merits. Second, it ensures that initiative proponents do not coil "surreptitious measures" together that would surprise voters—"that is, to prevent surprise and fraud from being practiced upon voters." *Id*. § 1-40-106.5(1)(e)(II). *See also generally, e.g., In re Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶¶ 11-15 (reviewing single subject limitation); *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 460-65 (Colo. 1999) (same).

A common thread between separate and distinct topics does not solve a single subject violation. "Where two provisions advance ***separate and distinct***

purposes, the fact that they both relate to ***a broad concept or subject*** *is* ***insufficient to satisfy the single subject requirement***." *1997-1998 # 64*, 960 P.2d at 1196 (emphasis added.) A "general theme" is not a single subject for constitutional purposes. *In re Title, Ballot Title & Submission Clause for 2019–2020 #315*, 2020 CO 61, ¶ 16. As a result, such "umbrella proposals" are "unconstitutional." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 10.

This Court reviews the Title Board's actions with "deference," *see In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 18, and it "employs all legitimate presumptions in favor of the propriety of the Board's actions," *see In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1076 (Colo. 2010).

Petitioner preserved this issue in his motion for rehearing and during the hearing on his motion. (CF pp. 2-5; Apr. 24 Hr'g at 2:06:57 to 2:13:05.)

B. The Proposed Initiative impermissibly contains multiple separate subjects that are coiled in its folds.

Although the overarching theme of the measure is to allow for expansion of gaming, it impermissibly pairs substantive alterations on allowable gaming with procedural changes in voter approval of gaming jurisdiction that prevents voters from understanding the changes being made. It then layers changes to TABOR's

voter-approval procedure into the mix as it replaces local TABOR decisions on gaming tax revenue impacts with a statewide TABOR vote.

1. The Initiative's first subject: elimination of the constitutional requirement for statewide voter approval of each new gaming jurisdiction.

The Colorado Constitution initially prohibited "lotteries or gift enterprises," and it directed the General Assembly to "pass laws to prohibit the sale of lottery or gift enterprise tickets in this State." Colo. Const., art. XVIII, sec. 2 (1876), *available at* https://tinyurl.com/5n7ukddu. Over the ensuing decades, some forms of gaming were eventually approved, such as pari-mutuel wagering, bingo, raffles, and, eventually by the 1980s, lottery. *See generally* Leg. Council of the Colo. Gen. Assembly, "An Analysis of 1990 Ballot Proposals" ["1990 Ballot Analysis"], Sept. 6, 1990, at 15 (summarizing the history of "gambling law in Colorado"), *available at* https://tinyurl.com/mrfxprj5. But casino-type gambling itself remained unlawful, with various efforts in the 1980s to allow such expanded gaming failing in the General Assembly and with voters. *Id.* at 15-16.

Voters then considered Amendment 4 at the 1990 election, which was an initiative to permit "limited gaming" in Black Hawk, Central City, and Cripple Creek. Among the concerns with Amendment 4 was that it was a "first step toward

legalized statewide casino gambling" that would be pursued by other communities. *Id.* at 18. It would, in other words, "lead to an effort to legalize casino gambling statewide which is not in the best interests of the state." *Id.*

At the next general election, the issue of controlling the expansion of casino gambling came back to voters—with four separate questions. The first—Referendum C—asked voters to add a new procedure to the Constitution on gaming expansion, specifically, to create a two-step process for gaming expansion: there would first be a vote statewide on a specific jurisdiction and then a local vote to confirm the locality wished to have casino gambling. Voters approved Referendum C, which became subsection (6) in the constitutional provision authorizing gaming. It provides in part:

> Except as provided in paragraph (e) of this subsection (6) [exempting Black Hawk, Central City, and Cripple Creek, and gaming on "Indian reservations pursuant to federal law"], limited gaming shall not be lawful within any city, town, or unincorporated portion of a county which has been granted constitutional authority for limited gaming within its boundaries ***unless first approved by an affirmative vote of a majority of the electors of such city, town, or county voting thereon***. The question shall first be submitted to the electors at a general, regular, or special election held ***within thirteen months after the effective date of the amendment which first adds such city, county, or town to those authorized for limited gaming pursuant to this constitution***; and said election shall be conducted pursuant to applicable state or local government election laws.

Colo. Const., art. XVIII, sec. 9(6)(a) (emphasis added). As the state ballot analysis explained, the arguments in favor of the two-step approval process reflected that any proposed expansion of gaming to new jurisdictions should be in the state's interest and the local community's interest. *See* Leg. Council of the Colo. Gen. Assembly, "An Analysis of 1992 Ballot Proposals," Sept. 3, 1992, at 4 ("The impact of gambling on a community is of such importance, with far-reaching implications, that the question of expansion into a new area should be determined by a local vote, ***which would follow an affirmative statewide vote***." (emphasis added)), *available at* https://tinyurl.com/4547uabx.

Coupled with Referendum C were three initiated measures to expand gaming to numerous additional cities and counties (Amendments 3, 4, 5, and 9.) *See id.* at 12-19, 28-29 (summarizing initiatives). Unlike Referendum C, which passed overwhelmingly, the Amendments to expand the number of jurisdictions allowing gaming failed convincingly:

- Referendum C:
  - Yes: 76.0%
  - No: 24.0%
- Amendment 3:
  - Yes: 29.7%
  - No: 70.3%
- Amendment 4:
  - Yes: 27.6%

    - No: 72.4%
- Amendment 5:
    - Yes: 27.6%
    - No: 72.4%
- Amendment 9
    - Yes: 19.6%
    - No: 80.4%

Colo. Secretary of State, "Historical Elections Database," *last visited* May 4, 2026, *available at* https://historicalelectiondata.coloradosos.gov/. Voters again exercised their right to a statewide vote on expanding gaming to additional jurisdictions in 1994 (Amendments 13 and 15), 1996 (Amendment 18), 2003 (Amendment 33), and 2014 (Amendment 68). *See id.* Additionally, statewide voters have also considered proposals to alter the limited gaming authorizations for the current gaming jurisdictions (Black Hawk, Central City, and Cripple Creek).

In short, the two-step voter approval process, in which gaming expansion occurs through statewide ***and*** local votes specific to the new jurisdictions where gaming is proposed, is a core feature of the constitutional structure around gaming in Colorado. Voters have regularly exercised their rights under the two-step provision to decide gaming expansion, and, indeed, they have exercised electoral control over gaming expansion in the current gaming jurisdictions.

2. The Initiative's second subject: exempting expansion jurisdictions from the constitutional restriction of "limited gaming."

The Proposed Initiative makes clear at the outset it is not authorizing gaming within the confines of the constitutional structures and restrictions that currently apply to gaming in the three constitutionally authorized towns. The measure authorizes expanded gambling "***notwithstanding*** subsections (1) through (7) of this section." (CF p. 12 (proposed sec. 9(8)(a)) (emphasis added).) That is, the Proposed Initiative's default for expansion gaming is that ***none*** of the provisions that currently apply to gaming apply in expansion jurisdictions, as it exempts the entirety of the current constitutional section regulating gaming.

The meaning of "notwithstanding" in statutory drafting and construction is well-established. "When used in a statute, 'notwithstanding' is intended 'to exclude—not include—the operation of other statutes.'" *Goodman v. Heritage Builders, Inc.*, 2017 CO 13M, ¶ 11 (quoting *Theodore Roosevelt Agency, Inc. v. Gen. Motors Acceptance Corp.*, 398 P.2d 965, 966 (Colo. 1965)); *Lanahan v. Chi Psi Fraternity (In re Lanahan)*, 175 P.3d 97, 102 (Colo. 2008) ("As we have explained, the term 'notwithstanding' means excluding, in opposition to, or in spite of other statutes."). By using the word "notwithstanding," Proponents "made clear"

that the expanded gaming they seek to authorize "need not comply" with the limitations on gaming contained in subsections (1) through (7) of the current constitutional language. *See Kopec v. Clements*, 271 P.3d 607, 611 (Colo. App. 2011) (analyzing effect of use of "notwithstanding" in a statutory scheme).

This is a significant change in gaming law. Under the current constitutional provision, "limited gaming" is restricted to "the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars, unless such games or single bets are revised as provided in subsection (7) of this section." Colo. Const., art. XVIII, sec. 9(4)(b). Subsection (7), in turn, allows voters in the current gaming towns to change hours of operation, "approved games," and the amounts of bets. *Id.* sec. 9(7)(a). The restrictions around the types of gaming allowed and the bets that can be placed were a critical component in voters' decision to allow limited gaming in 1990. As the ballot analysis summarizing the measure explained, gambling "would be restricted to blackjack, poker, and slot machines, and would be further limited to a single maximum $5 bet." 1990 Ballot Analysis at 14. While those restrictions can now be loosened under section 9(7)(a), the loosening of the gaming restrictions came only after the affected localities were approved for gaming by voters statewide. Only then were

local voters empowered to change limits so that state-licensed gaming establishments could offer the newly authorized forms of wagering.

But the Proposed Initiative dispenses with that structure by its exclusion of subsection (4) (defining "limited gaming") through its "notwithstanding" clause. There is no default or baseline definition of "limited gaming" that applies to restrict games and betting in casinos in expansion jurisdictions, and there is no limitation on expansion jurisdictions as to games and bets, given that it excludes the operation of subsection (7), which frees voters to authorize forms of gambling that are not permitted in the three current jurisdictions and may have nothing to do with what voters think of as casino gaming, let alone the current concept of "limited gaming." For example: betting in privately-run prediction markets—on world events and political developments at every level—as well as on high school sporting events and other currently prohibited gambling activities. *See, e.g.,* Limited Gaming Control Comm'n Sports Betting Rule 1.3, 1 CCR 207-2, *available at* https://tinyurl.com/ms9b6tuk. The concern regarding this type of expanded gaming is hardly hypothetical.[3]

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[3] *See, e.g.*, K. Sweet and C. Keller, "Newly created Polymarket accounts bet big on US-Iran ceasefire in hours before Trump's announcement," *The Denver Post*, Apr.

Without a definition of what the new subsection (8) calls "limited gaming," neither the Proponents nor the Title Board can argue that this measure's and the titles' use of "limited gaming" is accurate as it has no contours whatsoever. Initiative #416, in short, authorizes a substantively new type of gambling in Colorado: unlimited gambling.

3. The combing of the first and second subjects violates the single subject limitation.

Proponents and the Board will likely argue that eliminating the two-step voting process for gaming expansion and the change in what gaming is authorized fall within a single subject of "expanded gaming." But this is precisely the type of theme that is too general to save a measure from a single subject violation. Indeed, the situation here is substantially similar to that in *2021-2022 #67, #115, & #128*, where the Court considered a measure that would allow licensed food retailers to sell wine (basically, wine in grocery stores) ***and*** permitted third-party alcohol delivery. 2022 CO 37, ¶¶ 1, 17-18.

8, 2026, *available at* https://www.denverpost.com/2026/04/08/polymarket-us-iran-ceasefire/; J. Eisenberg, "Online sports betting has trickled down to high school football," *Yahoo!Sports*, Dec. 19, 2024, https://sports.yahoo.com/online-sports-betting-has-trickled-down-to-high-school-football-172604140.html.

In essence, the Court explained that the inquiry is not whether there is a thematic connection between subjects but, instead, whether the subjects being presented to voters are "too distinct to satisfy the single-subject requirement." *Id.* ¶ 20. The Court was troubled by the long and disputed history around expanding sales of alcohol, as each question in the measure presented "unsettled" policy choices. *Id.* ¶¶ 21-22. The Court rejected the argument that "the relaxation of restrictions on alcohol delivery sufficiently relates to grocery store sales of wine because each will increase the retail sale of alcohol." *Id.* ¶ 22. As the Court continued, voters may have different and conflicting opinions on the questions, as "some voters might well support home delivery of alcohol while preferring to keep wine out of grocery stores, and others might feel precisely the opposite." *Id.* ¶ 23. The themes of regulating alcohol or expanding the availability of alcohol were insufficient to bridge this divide, and, accordingly, the Court found a single subject violation and reversed the Title Board. *Id.* ¶ 24.

The Proposed Initiative presents the same problems as the alcohol measures in *2021-2022 #67, #115, & #128*. It embeds two separate questions that each present "unsettled" policy choices to voters: (1) whether there should be statewide control of the expansion of gaming and (2) what substantive limits should be

placed on gaming? The current constitutional construct exists based upon separate decisions by voters: in 1990, whether to allow limited gaming in the three named cities (Black Hawk, Central City, and Cripple Creek); in 1992, voters were asked if they wanted to allocate joint control of the expansion of gaming to the voters of new jurisdictions as well as to statewide voters. There have since been several different statewide ballot measures on whether to expand gaming to new locations and whether to allow changes in the jurisdictions where gaming is allowed. Beyond being "unsettled" policy choices, again as in *2021-2022 #67, #115, & #128*, voters can have different opinions on these questions—whether the state should forfeit its voice in gaming expansion to new jurisdictions and whether there should be any baseline restrictions at all that should apply to gaming. Just as wine in grocery stores and alcohol delivery could not be saved by a theme of "expanding the availability of alcohol," allowing new jurisdictions to have gaming and lifting the limits on gaming cannot be saved by the theme of "expanding gaming."

"Expanded gaming" is no more definite a subject than "water." *See In re Proposed Initiative on "Public Rights in Water II*" 898 P.2d 1076, 1080 (Colo. 1995). "An initiative does not satisfy the single-subject requirement if its provisions contain separate and unconnected purposes, despite the proponent's

efforts to unite them under the same general area of the law." *In re Proposed Initiative for 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000). Using a general topic of law as cover for multiple subjects is nothing more than "subterfuge." *In re Proposed Initiative for 2001-2002 #43 and #45*, 46 P.3d 438, 442 (Colo. 2002).

4. The Initiative's third subject: revoking local electors' authority to decide TABOR implications of new gaming revenue.

The Proposed Initiative imposes a new tax on gaming revenues generated by the expansion of gaming under its provisions. (CF p. 12 (proposed sec. 9(8)(c)).) It then distributes, after state expenses and under a restriction related to where gaming revenue is generated from, a significant portion of that revenue to local jurisdictions: ten percent to local jurisdictions to offset gaming impacts and twelve percent to school districts in expansion jurisdictions. (*Id.* (proposed sec. 9(8)(d)).) Recognizing this infusion of revenue will have spending/revenue implications under TABOR, Proponents included a provision for a voter-approved revenue change:

> Gaming tax revenues attributable to the operation of this subsection (8) shall be collected and spent as a voter-approved revenue change without regard to any limitation contained in section 20 of article x of this constitution or any other law.

(*Id.* at 13 (proposed sec. 9(8)(e)).) This provision not only de-Bruces revenue at the state level (for money spent on state administration and certain post-secondary education funding), but it also de-Bruces the new tax revenues that will go to local governments and school districts in expansion jurisdictions.

This is a change to TABOR procedures, under which the voters of each district decide their own TABOR questions. While there is nothing unusual about a statewide vote for a ***state*** revenue change, the Proposed Initiative is working a change on local voter rights by substituting a local decision with a statewide vote on a ***local*** revenue change. The measure therefore makes a change to TABOR procedures in addition to its provisions on whether to authorize gaming expansion and changes to the type of gaming allowed.

This adds yet another "unsettled" policy choice to the equation. With respect to the local jurisdictions that receive tax revenue under the Initiative, the measure strips the electors of those local jurisdictions of the authority to decide for themselves whether this new revenue counts against their district's TABOR cap. Indeed, voters in jurisdictions that do not even authorize gaming are making the TABOR decision for jurisdictions that will, in the future, authorize it.

This transfer of authority over lifting local TABOR restrictions from the locality itself to statewide voters is a departure from voters' current rights and their TABOR understanding. As a matter of state law, "local government matters arising under section 20 of article X of the state constitution [include]… [a]pproval of the weakening of a local limit on revenue, spending, and debt pursuant to section 20(1) of article X of the state constitution." C.R.S. § 1-41-103(4)(f). Statewide voters, casting ballots on this initiative, certainly would have no reason to think they were engaged in fiscal policy-making for unnamed cities, towns, and counties across the state. Nor would their decision take into account, much less necessarily be consistent with, the wishes of those local voters.

Mixing these types of subjects violates the single subject requirement. For example, the Court considered an initiative that proposed a $40 tax credit and in turn imposed procedural requirements on future ballot titles. The Court explained that the theme of "revenue" was too general to connect the subjects. *In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X (Amend Tabor 25)*, 900 P.2d 121, 125 (Colo. 1995). Similarly, *In In re Title, Ballot, and Submission Clause for 2003-*

2004 # 32 & # 33, 76 P.3d 460 (Colo. 2003), the Court found that an initiative that changed certain petition procedures around the initiative and referendum process but also prohibited all attorneys from being involved in the title setting process comprised two subjects. *Id*. at 462. Here, the same type of problem is present, as the Proposed Initiative mixes procedural changes (eliminating two-step voting) and new substantive standards (authorizing unlimited gaming) with the alteration of constitutional rights (dispensing with local votes on TABOR changes).

Accordingly, the Board erred in its single subject determination, and this Court should reverse with directions to return the Initiative to Proponents for lack of jurisdiction.

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

A. Standard of Review; Preservation.

An initiative title must "fairly summarize the central points" of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be "fair, clear, accurate, and complete" but are not required to "set out every detail of the initiative." *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006).

Although this Court reviews titles set by the Board "with great deference," it will reverse where "the titles are insufficient, unfair, or misleading." *Id*. The Court will amend titles where they "contain a material and significant omission, misstatement, or misrepresentation." *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62*, 961 P.2d 1077, 1082 (Colo. 1998). A title fails the clear title standard where "the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b).

In other words, the clear title requirement "prevent[s] voter confusion and ensure[s] that the title adequately expresses the initiative's intended purpose." *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 11. A clear title "allow[s] voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal." *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 22.

Petitioner preserved his clear title arguments in the motion for rehearing and during the hearing on his motion. (CF pp. 5-7; Apr. 24 Hr'g at 2:13:13 to 2:16:16.)

B. The Proposed Initiative establishes a new tax on gaming revenues generated by it, and, therefore, the title must comply with TABOR.

TABOR is clear: where a district seeks to impose a new tax or a tax increase, the question must be (1) submitted to voters and (2) comply with TABOR's ballot issue directives. As relevant here, the Constitution provides:

> Ballot titles for tax … increases shall begin, "**SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?**" …

Colo. Const., art. X, sec. 20(3)(c). The use of "shall" makes it mandatory to include the introductory clause in a measure with a tax increase. *See People v. Dist. Court, Second Judicial Dist.*, 713 P.2d 918, 921 (Colo. 1986) ("The generally accepted and familiar meanings of both 'shall' and 'require' indicate that these terms are mandatory. Moreover, this court has consistently held that the use of the word 'shall' in a statute is usually deemed to involve a mandatory connotation.").

As this Court has explained, an initiative contains a "tax increase" where it "will impose a greater cost on the taxpayer." *Bruce v. City of Colo. Springs*, 129 P.3d 988, 995 (Colo. 2006). Further given meaning to a tax increase triggering the ballot language is the underlying concern of TABOR, which is the "unchecked government growth contemplated by Amendment 1." *Id.* at 995; *see also* Colo.

Const., art. X, sec. 20(1) ("Its preferred interpretation shall reasonably restrain most the growth of government."). "Its purpose is 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)).

The mandatory TABOR tax clause for ballot issues—"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?"—fulfills an important voter education role. 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). And the Court has enforced compliance with this title requirement. For example, a city's failure to state in the title the specific dollar amount to be raised by a new tax or tax increase was, as this Court has held, in violation of TABOR and not in substantial compliance with its requirements. Instead, it was "an open-ended tax increase" where a governmental body "failed to give any indication of the potential magnitude of that tax increase." *Id.* at 236-37. The inescapable legal result is also clear. "Without some estimate as to the upper

limits of this possible tax increase, ***the ballot title for*** [the ballot measure] ***is constitutionally deficient***." *Id.* at 237 (emphasis added). In other words, failing to comply with TABOR's ballot title requirement renders a title "constitutionally deficient."

Neither the Board nor Proponents dispute that the Proposed Initiative taxes gaming revenue. They appeared to reason that the measure did not impose a tax but instead extended the existing gaming tax to expansion jurisdictions, which did not require the mandatory TABOR language. In reaching this conclusion, the Board overlooked the plain language of the measure.

First, as explained above, the measure includes a broad "notwithstanding" clause that, by its terms, makes the existing tax in subsection 9(5) ***inapplicable*** to gaming authorized by the Initiative. The measure states that gaming is authorized "notwithstanding subsections (1) through (7) of this section." (CF p. 12 (proposed sec. 9(8)(a)).) The current tax scheme for gaming revenue exists in subsection (5) with modification by subsection (7) of "this section," *see* Colo. Const., art. XVIII, sec. 9, subsections that the measure's notwithstanding clause unambiguously states that is applies to. The measure thus says that the current tax scheme does ***not*** apply to expansion gaming.

Second, far from indicating an application of the current gaming tax, the measure is specific that the tax it is imposing applies specifically to expansion gaming: "Up to a maximum of forty percent of the adjusted gross proceeds of limited gaming shall be paid by each licensee, in addition to any applicable license fees, for the privilege of conducting limited gaming ***under this subsection (8)***." (CF p. 12 (proposed sec. 9(8)(c)(I)) (emphasis added).) If Proponents intended to apply the current tax, they would have said, "Limited gaming revenue generated pursuant to this subsection (8) shall be subject to the tax provided for under subsection (5) of this section" (or similar verbiage). Proponents chose not to do that and opted instead to impose a tax specific to the revenues generated from "this subsection (8)." As it derives from "this subsection (8)," which does not exist but for this measure, it is a new tax. *See TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, ¶ 24 (explaining that the "word 'new' in 'new tax' suggests creation").

Third, although the measure permits the Limited Gaming Control Commission to adjust the tax rate up to 40%, the Initiative does ***not*** require that the Commission apply the same tax rate to expansion jurisdictions as it does to gaming revenues generated in Black Hawk, Central City, or Cripple Creek. (*See* CF p. 12 (proposed sec. 9(8)(c)(I)).) The Commission, in other words, is empowered under

the Proposed Initiative to treat expansion jurisdictions differently, including by setting different and higher tax rates than currently exist.[4]

Fourth, the Proposed Initiative's gaming revenue goes to a new fund. Instead of the "limited gaming fund" that exists in current law, the measure creates a new fund called the "local limited gaming fund." This new fund is specific to "revenues attributable to the operation of this subsection (8)." (*Id*. (proposed sec. 9(8)(c)(II)).) In short, the revenue generated by the measure's tax is segregated from other gaming revenue.

Fifth, the measure establishes its own distribution scheme for the use of gaming revenue from expansion jurisdictions. It states: "From gaming tax revenues ***attributable to the operation of this subsection (8)***, the treasurer shall pay …" (*Id.* (proposed sec. 9(8)(d)) (emphasis added).)

Sixth, the Commission can increase gaming taxes on casinos in the three existing gaming towns, if local voters act "as provided in paragraph (a) of this

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[4] For the legacy gaming jurisdictions, the Commission uses a tiered tax rate, in which the highest rate is currently 20%. *See* Limited Gaming Control Comm'n Rule 14(1), 1 CCR 207-1, *available at* https://tinyurl.com/mrbb29pn. As explained below, subsection 9(7) has locked the rates in absent a statewide approval. Colo. Const., art. XVIII, sec 9(7)(e).

subsection (7),” beyond “the levels imposed as of July 1, 2008,… ***only if approved by a voters at a statewide election held under section 20(4) of article X*** of this constitution”—in other words, with a statewide TABOR vote. Colo. Const., art. XVIII, sec. 9(7)(e) (emphasis added). Even though the authorized highest gaming tax rate for these towns is 40%, *see id.* sec. 9(5)(a), the actual highest rate is only 20%. *See* Limited Gaming Control Comm’n Rule 14(1), 1 CCR 207-1; Colo. Leg. Council Staff, “Gaming: Tax Rates,” https://tinyurl.com/4nhwmu35, last visited May, 8, 2026. That top rate can’t be increased to even 20.0000000001% without a statewide vote. Neither can intermediate rates and tax thresholds since the Constitution requires a TABOR vote if there is a Commission decision “that increases gaming taxes ***from the levels*** imposed as of July 1, 2008.” Colo. Const., art. XVIII, sec. 9(7)(e) (emphasis added). However, for the expansion jurisdictions, the Commission can increase taxes to whatever levels it chooses, whenever it chooses, as long as it does not exceed 40% of adjusted gross proceeds of gaming. (CF p. 12 (proposed sec. 9(8)(c)(I)).) Thus, the taxing scheme for new jurisdictions is wholly different from the gaming tax imposed on licensees in the three existing gaming towns.

In sum, the tax under the Proposed Initiative has (1) its own, standalone authorization; (2) an explicit limitation that it applies to revenue attributable to expansion jurisdictions; (3) no requirement that the Commission structure the tax rate in the same manner as it is in Black Hawk, Central City, and Cripple Creek; (4) direction that the funds are segregated from current gaming tax revenue; (5) its own distribution scheme that, whatever similarities exist to current law, is separate from what the Constitution currently provides and specific to "revenues attributable to the operation of this subsection (8)"; and (6) can be adjusted by the Commission at its discretion to a maximum tax rate that is double that which applies in Black Hawk, Central City, and Cripple Creek. Nothing in the measure relies upon the existing tax authorization—it is its own complete, free-standing authorization that operates independently of existing law and is specific to expansion jurisdictions.

The imposition of this tax rests on a "legislative" act and "discretionary decision" of voters to come to fruition. *See Huber*, 264 P.3d at 890-91 (distinguishing a pre-TABOR, non-discretionary administrative tax adjustment from a tax increase subject to TABOR). It is not, in other words, a simple extension of an existing tax, in particular since the actual maximum tax imposed

today is only 20% of adjusted gross proceeds. *Compare Bruce*, 129 P.3d at 995 (holding that an initiative that extended the term of a local tax was not a "tax increase" and explaining that it was "a continuation of the status quo" that only "lengthens the time period of the tax and directs the tax revenue to the same expenditures approved by the voters in the original ballot proposal"). To reduce it to mathematical terms, the proposed tax is a maximum of 40%, whereas the existing tax is locked into a maximum rate of 20%. A tax that is double the amount of another tax is not "the same" or an extension.

Nor is this some "incidental and de minimis revenue increase" from a tax modification. *Compare TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29 (holding that adjustments to tax exemptions did not violate TABOR. Its purpose is to raise tax revenue (as reflected by its creation of its own distribution scheme for the tax revenue), and its effect, as the Board recognized with Proponents' companion measure, #418, will be to generate new tax revenue in the tens or hundreds of millions of dollars. (*See* Apr. 24 Hr'g at 5:20:30 to 5:21:28.)

What the Proposed Initiative provides for is a new tax—new authority, new scope of application, new expenditures, new maximum amount, new revenue—and the Board erred by not using TABOR's mandatory introductory clause and

estimated first year of tax collections for the Initiative's "tax increase" in the ballot title.[5]

C. The Board erred in using the phrase "limited gaming" in the titles as expansion gambling is not subject to the limitations that currently exist in the Constitution.

As noted previously, the phrase "limited gaming" finds its genesis in the definitions currently provided for in the Constitution:

> "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars, unless such games or single bets are revised as provided in subsection (7) of this section.

Colo. Const., art. XVIII, sec. 9(4)(b). Subsection (7), in turn, allows voters in the current gaming jurisdictions to authorize changes in the types of games allowed (e.g., to permit roulette) and/or the amount of bets. This structure is, indeed, limited, as the default sets significant guardrails on allowed games and bets, which can only be altered by voter approval.

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[5] Because the Board determined that it was not a tax increase, it did not reach the question of whether the mandatory language in C.R.S. § 1-40-106(3)(g)(I) applies ("after the language required by section 20 (3)(c) of article X of the state constitution, the ballot title shall state 'in order to increase or improve levels of public services, including (the public service specified in the measure)...'"). In Proponents' companion measure, #418, after determining 3(c) of TABOR applied, the Board concluded that this language was required. (*See* 2026SA160, Certified Record at 9-10; Apr. 24 Hr'g at 5:21:44 to 5:22:26.)

The Proposed Initiative deviates from this concept of limited gaming. Although using the phrase "limited gaming," the measure nonetheless exempts expansion gaming from the limitations on gaming that currently exist through its "notwithstanding" clause. The default limitation on gaming exists in subsection (4), and the authorization to deviate from the default exists in subsection (7). The "notwithstanding" clause, by its plain language, captures both subsections: "notwithstanding subsections (1) through (7) of this section." (CF p. 12 (proposed sec. 9(8)(a)).)

To conclude that expansion gaming is subject to the limitations in subsections (4) and (7), "notwithstanding" would be required to mean, "excluding all of the provisions except for (4) and (7)." But that is not what the Proposed Initiative says. Had it intended for subsections (4) and (7) to apply, Proponents would have said so. But they did not and, instead, excluded those subsections.

The title is, therefore, misleading and inaccurate when it states that the measure allows for "the expansion of limited gaming" to any local jurisdiction. That error is compounded by the Board's use of the phrase "limited gaming" an additional ***four*** times in the titles. The titles will mislead voters as to the nature of the expansion of gaming in Colorado, and, respectfully, the Court should reverse.

See In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs, 830 P.2d 963, 969 (Colo. 1992) (reversing Board upon determining that the title misstated applicability of amendment to new gaming provisions in constitution and was thus misleading).

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 8th day of May, 2026.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 8, 2026, to the following:

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