

SUPREME COURT
STATE OF COLORADO
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Denver, CO 80203

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Original Proceeding Pursuant to
C.R.S. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2025-2026 #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, and Jennifer Sullivan.

PHILIP J. WEISER, Attorney General
LILY E. NIERENBERG, Senior Assistant
Attorney General*
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
Telephone: (720)508-6851
E-Mail: lily.nierenberg@coag.gov
Registration Number: 45451
*Counsel of Record
Attorney for the Title Board

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Case No. 2026SA159

TITLE BOARD’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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 3,543 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

The brief contains, under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Lily E. Nierenberg

LILY E. NIERENBERG, #45451

Senior Assistant Attorney General

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the Proposed Initiative 2025-2026 #416 (“Initiative #416”) contains a single subject: local control over limited gaming?

Whether the title for Initiative #416 is clear?

STATEMENT OF THE CASE

Proponent-Respondents Suzanne Taheri and Sandra Robnett (“Proponents”) proposed Initiative #416 to amend section 9 of article XVIII of Colorado’s Constitution to permit local jurisdictions to vote to approve limited gaming in their jurisdictions. *See Record* (Apr. 27, 2026), pp 12-13. Initiative #416 provides that the Limited Gaming Control Commission shall administer and regulate this local limited gaming. *Id.*, p 12. Initiative #416 provides that licensees shall pay up to forty percent of their adjusted gross proceeds into a local limited gaming fund, which shall distribute funds available after administrative costs to public community colleges, junior colleges, and local district colleges; to the local jurisdictions to address local gaming impacts; and to local school districts. *Id.*, pp 12-13. The Initiative included language to exempt this collection of taxes from TABOR. *Id.*, p 13.

The Ballot Title Board (“Board”) held an initial hearing on Initiative #416 on April 15, 2026. *Id.* at 9.¹ The Board concluded that the measure contained a single subject, held that the measure proposed the addition of language to the Colorado Constitution and therefore required 55% voter approval, and set a title, as follows:

An amendment to the Colorado Constitution allowing voters in any city, town, city and county, or county to approve limited gaming within its boundaries, and, in connection therewith, requiring 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 government, and to school districts within the local government; and allowing the tax revenues to be kept and spent as a voter-approved revenue change.

Id.

Petitioner filed a Motion for Rehearing on April 22, 2026. *Id.* at 2-7. The Board conducted a rehearing on Initiative #416 at its April 24, 2026 hearing. *Id.* at 10-11. During that hearing, both the Petitioner and the Proponents had an opportunity to be heard. *See Rehearing Before*

¹ *Hearing Before Title Board on Proposed Initiative 2025-2026 #416* (Apr. 15, 2026), <https://csos.granicus.com/player/clip/559>.

Title Board on Proposed Initiative 2025-2026 #416 (Apr. 24, 2026)

(“Rehearing”), <https://csos.granicus.com/player/clip/572>.²

Specifically, Petitioner argued that Initiative #418 contains more than one subject because (1) it authorizes “unlimited” gaming statewide, (2) removes the requirement of a statewide vote from subsection 6 of section 9 of article XVIII, (3) uses gaming taxes to fund for K-12 education, and (4) de-Bruces all revenue for TABOR purposes rather than leaving that question to the local voters. *Id.* at 2:06:44-2:13:16. Petitioner also outlined a number of related concerns with clear title. *Id.* at 2:13:16-2:18:29; *see also* Record, p 4-6. *Id.* Proponents explained that the initiative did not contain multiple subjects and that it did not increase existing taxes. *Id.* at 2:18:29-2:24:18.

The Board granted the motion for rehearing in part and modified the title by inserting the following bolded language, and deleting the struck through language, in order to make it more clear and address concerns regarding the possibility of a single subject violation:

² The Board incorporated its prior discussion concerning #415 into its discussion of #416.

An amendment to the Colorado Constitution allowing **the expansion of limited gaming to voters in any city, town, city and county, or county upon local voter approval to approve limited gaming within its boundaries**, 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 government**, and to school districts within the local **jurisdiction government**; and allowing the tax revenues to be kept and spent as a voter-approved revenue change.

Record, pp 10-11 (emphasis added); Rehearing at 2:24:50-2:45:21.

Otherwise, the Board denied the motion. Record, p 11.

Petitioner initiated this Court's review under C.R.S. § 1-40-107(2), arguing that the title contains multiple subjects; requires additional "shall state taxes be increased..." language under TABOR; and is inaccurate and misleading by authorizing unlimited, rather than limited, gaming. Pet. for Review (May 1, 2026), pp 3-4.

SUMMARY OF ARGUMENT

Initiative #416 contains a single subject: local control over limited gaming. Petitioner's arguments to the contrary misconstrue the Board's obligations. The Board is not required to consider the possible effect of

the initiative. To the extent that any of Petitioner’s concerns result, those are not single subject concerns. These items are necessarily and properly connected to the single cohesive subject.

Next, the title does not misconstrue the effect of this initiative. Voters will understand they are authorizing an expansion of *limited*, rather than *unlimited* gaming by local vote, and the title clearly sets forth the primary provisions of Initiative #416. Further, as Proponents argued, and the Board agreed, TABOR language (“shall taxes be raised”) was not necessary because an equivalent tax is already imposed by section 9 of article XVIII of the Colorado Constitution.

The Court should affirm the Board’s title on Initiative #416.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Board’s jurisdiction is limited to proposed initiatives containing a single subject. Colo. Const. art. V, § 1(5.5). Section 1(5.5) of article V provides in relevant part:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title;

but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

Id. In 1994, the General Assembly enacted C.R.S. § 1-40-106.5 to implement the single subject requirement. The General Assembly intended “[t]o forbid the treatment of incongruous subjects in the same measure” and prevent voter fraud and surprise. *Id.* § 1-40-106.5(1)(e)(I), (II). The General Assembly stated its intent that article V, section 1(5.5) “be liberally construed, so as to avert the practices against which [it is] ... aimed and, at the same time, to preserve and protect the right of initiative and referendum.” *Id.* § 1-40-106.5(2).

The Court begins by examining the initiative’s wording to determine whether it comports with constitutional requirements. *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶ 9. The Court employs the general rules of statutory construction, giving words and phrases their plain and ordinary meanings. *Id.*

The Court liberally construes the single subject requirement. *In re Title, Ballot Title & Submission Clause for 2019–2020 #315*, 2020 CO 61, ¶ 17 (“We liberally construe the single subject requirement both because of the Title Board’s considerable discretion in setting the title and the ballot title and submission clause and in order to avoid unduly restricting the initiative process.”); *see also* C.R.S. § 1-40-106.5(2) (“It is the intent of the general assembly that section 1(5.5) of article V ... be liberally construed, so as to avert the practices against which [it is] aimed and, at the same time, to preserve and protect the right of initiative”).

The Court also affords the Board with considerable discretion and entertains all legitimate presumptions in favor of the Board’s actions. *In re Title, Ballot Title & Submission Clause for 2015–2016 #156*, 2016 CO 56, ¶ 8 (quotations omitted) (“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause.”); *In re Title, Ballot Title & Submission Clause for 2009–2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010) (“[W]e employ all legitimate presumptions in favor of the propriety of the Board’s

actions.”). The Court will only overturn an action of the Title Board when it clearly violates the constitutional single-subject requirement. *In re Title, Ballot Title, & Submission Clause for 2011–2012 #45*, 2012 CO 26, ¶ 8; *In re Title, Ballot Title, & Submission Clause for 2013–2014 #76*, 2014 CO 52, ¶ 8 (noting that the Court will overturn the Board's finding that an initiative contains a single subject only in a “clear case”).

In its review, the Court does not consider the initiative’s efficacy, construction, or the future application of the initiative. *In re 2011–2012 #45*, ¶ 9; *In re Title, Ballot Title, & Submission Clause for 2013–2014 #129*, 2014 CO 53, ¶ 18 (“[W]e cannot consider ‘[t]he effects this measure could have on Colorado ... law if adopted by voters.’ Those concerns, however valid, ‘are irrelevant to our review of whether [the proposed initiative] and its Titles contain a single subject.’”) (citing *In re Title, Ballot Title, & Submission Clause for 2011–2012 #3*, 2012 CO 25, ¶ 20 n.2).

The choice of particular language is the sort of decision where the Board is owed the greatest deference. *See, e.g., In re 2019–2020 #315*, ¶

27 (“We will generally defer to the Board’s choice of language unless the titles set contain a material and significant omission, misstatement, or misrepresentation.”) (quotations omitted).

Petitioner preserved his objection to Initiative #416 based on the single subject requirement. Record, p 2-4.

B. The various challenged “subjects” are necessarily and properly connected to the single subject of local control of limited gaming.

To satisfy the single subject requirement, the provisions of Initiative #416 must be “necessarily and properly connected rather than disconnected or incongruous.” *See In re 2011–2012 #3*, ¶ 9; *In re 2019–2020 #315*, ¶ 13 (quoting *In re Title, Ballot Title & Submission Clause for 2015–2016 #73*, 2016 CO 24, ¶ 14) (same); *accord In re 2009–2010 #91*, 235 P.3d at 1077 (“[W]hen an initiative’s provisions seek to achieve purposes that bear no necessary or proper connection to the initiative’s subject, the initiative violates the constitutional rule against multiple subjects.”). “Said another way, the single-subject requirement is not violated unless the text of the measure ‘relates to more than one subject and has at least two distinct and separate purposes which are not

dependent upon or connected with each other.” *In re Title, Ballot Title & Submission Clause for 2005–2006 #74*, 136 P.3d 237, 239 (Colo. 2006) (quoting *In re Pet. Procs.*, 900 P.2d 104, 109 (Colo. 1995)). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #25*, 974 P.2d 458, 463 (Colo. 1999).

Here, Initiative #416 addresses a single subject because the matters encompassed by it are necessarily and properly connected. The Initiative’s central subject is local control of limited gaming. According to the Proponents, the initiative does not abandon the definition of “limited gaming” and in fact uses that term. It further effectuates the requirement of Subsection (6) of section 9 of article XVIII requiring a statewide vote to expand limited gaming to additional localities. It specifically accounts for tax revenues and the impact on revenue and spending limits under TABOR. These provisions are not independent from the other provisions of the measure; they work in concert.

This Court has approved initiatives containing measures that implement their central theme, without finding that they violate the single subject requirement. For instance, in *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 No. 200A*, this Court noted that “[i]mplementation details that are ‘directly tied’ to the initiative’s ‘central focus’ do not constitute a separate subject,” 992 P.2d 27, 30 (Colo. 2000) (quoting *In re Title, Ballot Title & Submission Clause & Summary for 1997–1998 #74*, 962 P.2d 927, 929 (Colo. 1998)). It therefore held that information delivery, data gathering, and reporting requirements tied to an initiative that purported to require a women’s voluntary and informed consent prior to an abortion did not create a separate subject. *Id.* at 32.

Initiative #416 also does not create a risk of voter surprise. *Cf. In re Title, Ballot Title & Submission Clause for 2021–2022 #16*, 2021 CO 55, ¶ 16 (“our application of the necessarily-and-properly-related test has often taken into account whether voters might favor only part of an initiative and the potential for voter surprise”) (citations omitted). Here, there is no evidence that voters who support Initiative #416 because

they favor expanding limited gaming to local jurisdictions would not also favor these related provisions. *In re Title, Ballot Title, & Submission Clause for 2013–2014 #89*, 2014 CO 66, ¶ 19 (“Here, however, there is no serious risk that the voters will be unaware of the primary effects of Initiative # 89 because each of the sections relates to the same subject, the plain language of Initiative # 89 creates a public right and then lays out the procedures for implementing and enforcing that right, and the proposal is not particularly lengthy or complex.”).

In this case, the ballot title set by the Board also ensures that there is no voter confusion. In addition to describing that Initiative #416 amends section 9 of article XVIII to permit local jurisdictions to adopt limited gaming, the title specifies that Initiative #416 no longer requires a statewide vote to expand limited gaming into each new jurisdiction; requires new operators to pay a tax; allocates a portion of taxes to certain institutions of higher education, and to local jurisdictions to address the impacts of limited gaming; and to school districts; and de-Bruces. Record, p 10. Thus, the title resolves any concern that voters would not understand the initiative.

Finally, Petitioner’s concerns regarding the effect of the initiative are not proper for this Court’s consideration. *Cf.* Pet. at 3. This Court has repeatedly rejected the notion that “just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #256*, 12 P.3d 246, 254 (Colo. 2000) (citing *In re 1999–2000 #25*, 974 P.2d at 463); *see also In re Title, Ballot Title & Submission Clause for 2001-2002 #43*, 46 P.3d 438, 443 (Colo. 2002) (Court does not “address the merits of a proposed initiative or suggest how it might be applied if enacted”). Nor will an initiative be deemed to violate the single subject requirement because it “may have different effects” on other provisions of Colorado law. *In re 2013–2014 #90*, ¶ 17. Such effects are not relevant to whether the proposed initiative contains a single subject. *Id.*; *In re 2013–2014 #129*, ¶ 18. Here, the ultimate impact of the phrase “notwithstanding subsections (1) through (7) of this section” and other possible changes to Colorado law as a result of this initiative is not a relevant single subject concern.

In sum, Initiative #416 concerns a single subject: local control of limited gaming. To implement that subject, it includes several provisions pertaining to taxation and regulation of that local gaming. The impacts of these provisions are not relevant to single subject.

II. The title set by the Board is clear.

A. Standard of review and preservation.

In the Court’s “limited review” of the Board’s actions, it examines an “initiative’s wording to determine whether it and its title comport with the constitutional single subject and clear title requirements.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 14. In determining whether a title is clear, the Court “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed.” *Id.*, ¶ 17. The Court does not “consider whether the Title Board set the best possible title.” *Id.* The Court will reverse the title set by the Board only if it is “insufficient, unfair, or misleading.” *In re 2013-2014 #90*, ¶ 8.

“The Title Board is vested with considerable discretion in setting the title.” *Id.* That includes “discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.*, ¶ 24. Given this discretion, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.” *Id.*, ¶ 25.

The Board agrees this issue is preserved. Record, pp 4-6.

B. The title is clear, accurate, and in compliance with statutory requirements.

Clear expression in ballot titles “prevent[s] voter confusion and ensure[s] that the title adequately expresses the initiative’s intended purpose [such that] voters ... should be able to determine intelligently whether to support or oppose the proposal.” *In re 2015-2016 #156*, ¶ 11 (citation modified). “A perfect title is not necessary.” *Id.*, ¶ 10.

“An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title.” *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). “If the legislation is *germane* to the general subject expressed in the title; if it is relevant and

appropriate to such subject, it does not violate the clear expression requirement.” *Id.* (citation modified). But “[i]t is not essential that the title shall specify particularly each and every subdivision of the general subject. Such a requirement would lead to surprising and disastrous results.” *In re Breene*, 24 P. 3, 4 (Colo. 1890).

The initiative’s title clearly expresses its subject. As stated above, in addition to describing that the initiative permits local jurisdictions to adopt limited gaming, the title specifies that Initiative #416 no longer requires a statewide vote to expand limited gaming into each new jurisdiction; it requires new operators to pay a tax; it allocates a portion of taxes to certain institutions of higher education and to address the impacts of limited gaming in local jurisdictions; and it de-Bruces for the purpose of local revenue. Record, p 10. The title cannot (and need not) incorporate every detail of the measure. *In re Title, Ballot Title & Submission Clause, & Summary for 1997-1998 #62*, 961 P.2d 1077, 1083 (Colo. 1998) (stating “an item-by-item paraphrase” would undermine any effort for a “relatively brief and plain statement”); *In re Title, Ballot Title & Submission Clause, & Summary For 1999–2000*

#255, 4 P.3d 485, 497 (Colo. 2000) (noting that the title need only include salient characteristics of the measure, not every conceivable effect).

Plaintiff's concern that the title misleads voters because the initiative actually authorizes *unlimited* gaming, Pet. at 4, is not an accurate representation of the initiative's provisions which refer specifically to "limited gaming." Record, pp 12-13. But in any case, "[a]ny problems in the interpretation of the measure or its constitutionality are beyond the functions assigned to the title board, and outside the scope of [this Court's] review of the title board's actions". *In re Title, Ballot Title & Submission Clause, & Summary For 1997-1998 #10*, 943 P.2d 897, 901 (Colo. 1997) (citation modified).

In sum, the initiative's title clearly expresses the single subject of the measure and fairly reflects what voters would be asked to approve. The Court should affirm the Board and reject Petitioner's clear expression challenge. *In re Title, Ballot Title & Submission Clause for 1999-2000 ##227 & 228*, 3 P.3d 1, 5 (Colo. 2000) (title will be upheld "if ... not clearly misleading").

C. The proposed initiative is not legally flawed because it does not contain TABOR language.

TABOR imposes specific, mandatory language requirements for ballot titles involving tax increases, requiring that “[b]allot titles for tax or bonded debt increases shall begin, 'SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY?’” Colo. Const. art. X, § 20(3)(c). Additionally, for measures increasing tax revenue, the ballot title must include specific language after the TABOR-required language, stating the purpose of the increased revenue. C.R.S. § 1-40-106(3)(g)(I).

A “tax change” is defined as:

any initiated ballot issue or initiated ballot question that has a primary purpose of lowering or increasing tax revenues collected by a district, “Tax change” does not mean an initiated ballot issue or initiated ballot question that results in a decrease or increase in revenue to a district in which such decrease or increase is incidental to the primary purpose of the initiated ballot issue or initiated ballot question.

§ 1-40-106(3)(i)(II), C.R.S.

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.

CONCLUSION

This Court should affirm the title set by the Board on Initiative #416.

Respectfully submitted this 8th day of May, 2026.

PHILIP J. WEISER
Attorney General

/s/Lily E. Nierenberg

LILY E. NIERENBERG, 45451*
Senior Assistant Attorney General
Public Officials Unit
State Services Section
Attorneys for the Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **TITLE BOARD'S OPENING BRIEF** upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System, this 8th day of May, 2026.

s/ Bonnie Smith
