SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 15, 2026 4:29 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 #418 ("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: 2026SA160
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).

It contains 1929 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

Constitutional Provisions

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

LEGAL ARGUMENT

I. Initiative #418 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 11.) It also argues that whether the measure allows unlimited gaming is simply an "effect" of the measure that the Court cannot consider.[1] (*Id.* at 13-14.) 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. 11.) 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.

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[1] The Board cites to the petition for review as part of its effects argument, but the language it quotes does not concern the Proposed Initiative but a measure previously appealed to this Court. (*See* Title Bd.'s Br. at 13 (quoting language related to "fees").) Petitioner cannot respond to this point in the Board's brief.

(*See* Pet.'s Br. at 18 (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 10-11.) 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 12-13), 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" some seven times. (*See* CF pp. 9-10.)

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. 4.) 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 11.) 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 34-35.) 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 18.) 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's TABOR argument relies on justifications rejected by this Court in *Bickel*—and the Board has effectively conceded its error.

The Board correctly acknowledges that TABOR's title language—"Shall taxes be increased… ," *see* Colo. Const., art. X, sec. 20(3)(c)—is required for the Proposed Initiative, but the Board nonetheless argues in its opening brief that it need not comply with TABOR's requirement that the titles include a tax revenue estimate. (Title Bd.'s Br. at 19-20.) The Board justifies this omission because the tax revenue is "contingent" and "cannot be measured." (*Id.*)

It bears repeating that this Court has rejected precisely these arguments in *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994). The city there, like the Board here, argued it was "impossible to guess what that number would be," as "the amount of the tax increase is dependent upon a contingent event." *Id.* at 236. The difficulty in meeting TABOR's requirement did not excuse the city's noncompliance: "To create an exemption from the requirements of section 3(c) any time a district has difficulties estimating its proposed tax increases would undermine the primary purpose of Amendment 1's disclosure provisions: that is, to provide the electorate with the information necessary to make an intelligent decision on ballot issues involving debt and/or tax increases." The Court thus

"reject[ed] the City's claim in this regard," holding the titles violated TABOR and the tax increase was ineffective. *Id.* at 236-37. *Bickel*'s analysis and holding fully apply here, and the Board has offered no argument as to why it does not.[2]

Moreover, given that "all that is required by Amendment 1 is a good faith estimate of the dollar increase," *id*. at 236, basic steps could have provided the information to prepare an estimate. For instance, there is publicly available information on jurisdictions that might consider authorizing gaming.[3] Legislative staff at the Review and Comment hearing, as well as Title Board members at the initial title setting hearing on this initiative, could have asked the Proponents the same question or obtained pertinent information from "any interested party" about

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[2] During the rehearing, a Board member raised the "substantial compliance" standard as excusing the noncompliance with TABOR. The Board has abandoned that argument by failing to raise it in its opening brief. *See People v. Czemerynski*, 786 P.2d 1100, 1107 (Colo. 1990) (explaining that issues not raised in an opening brief will not be considered). Even if not abandoned, the Court held in *Bickel* that a title's failure to include the tax revenue estimate is not "substantially compliant" with TABOR. *Bickel*, 885 P.2d at 236-37 (title that lack tax revenue estimate "does not substantially comply with Amendment 1"). Substantial compliance does not, therefore, save the titles here.

[3] For example, the City of Pueblo is one such jurisdiction where local leaders have recently been discussing this idea. *See* https://www.mountainjackpot.com/2026/03/17/pueblo-may-compete-against-cripple-creek-as-a-new-gambling-town/ (last viewed May 15, 2026).

which jurisdictions were likely to use the authority granted by this measure. *See In re Title, Ballot Title, and Submission Clause for Proposed Initiatives 1999-2000 #255*, 4 P.3d 485, 500 (Colo. 2000). Such input could have been solicited from pertinent state agencies such as the Office of State Planning & Budget. *Id*.

In the past, this Court has only required that the Board "obtain reasonably available information" from state agencies about an initiative's possible fiscal impacts in order "to provide the electorate with adequate information to allow informed voting." *See In re Title, Ballot Title, and Submission Clause for #26 Concerning Sch. Impact Fees*, 954 P.2d 586, 594 (Colo. 1998) (initiative's fiscal impact statement, held invalid for failure to determine fiscal effect of proposed impact fees on school districts). What the Board cannot do is to make no inquiry at all and seek no fiscal estimate of the amount of new taxes to be collected under this Initiative, given the clear mandate that TABOR ballot titles provide the dollar amount of the tax increase being proposed.

In his opening brief, Petitioner discussed at length this Court's decision in *Bickel* and how the Board's title setting directly conflicts with and violates the Court's decision. (Pet.'s Br. at 28-34.) That issue should be dispositive of any dispute over whether these titles meet TABOR's very specific requirements.

Rather than explain the Board's justification for departing from TABOR's mandatory title format, the Board filed no answer brief and rested its defense of the title on non-responsive arguments in its opening brief. (*See* "Notice by the Title Board," May, 15, 2026.) The Board's silence regarding the clear holding this Court provided in *Bickel* is deafening, and, in deciding not to defend the lawfulness of its noncompliance with *Bickel*, the Board has effectively conceded that it violated TABOR and erred in setting these titles for the Proposed Initiative.

CONCLUSION

For the reasons given above and in Petitioner's opening brief, the Board erred in finding the measure had a single subject, and the Court should reverse for want of jurisdiction. In the alternative, the Court should reverse and remand to the Board to set a clear title.

Respectfully submitted this 15th day of May, 2026.

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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:

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