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COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2011-2012 #90

MOTION FOR REHEARING

Petitioner Mile High Racing and Entertainment, through Bruce Seymore, submits this Motion for Rehearing on proposed Ballot Initiative 2011-2012 #90, and as grounds therefore states as follows:

I. Introduction

The Colorado Constitution and the Colorado Revised Statutes prohibit the presentation of an initiative to the voters that contains more than a single subject. Colo. Const. art. V, § 1(5.5); C.R.S. § 1-40-106.5. It is forbidden for a measure to contain “incongruous subjects that have no necessary or proper connection.” *Id.* at § 1-40-106.5(e)(I). Likewise, the requirement prevents surreptitious measures that are not clearly reflected in the Title to prevent voter surprise. *Id.* at § 1-40-106.5(e)(II). The Colorado Supreme Court on numerous occasions has reaffirmed the requirement for a necessary and proper connection between all issues contained in a single measure, sometimes rephrasing the test as prohibiting initiatives that have separate purposes that are “not dependent upon or connected with each other.” *See, e.g., In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006). Likewise, the Supreme Court has reinforced that the principal goal is to prevent situations where “voters would be surprised to learn” the multiple effects or consequences of what they were voting for. *Id.* (quoting *In re Proposed Initiative for 1997-98 Nos. 84 & 85*, 961 P.2d 456, 460 (Colo. 1998)).

This measure contains three separate and distinct subjects.

II. Grounds for Reconsideration

A. The First Subject Creates A New Exception to the Constitutional Prohibition On Lotteries.

The proposed measure allows voters to approve the use of Video Lottery Terminals (“VLTs”). The measure does not define VLTs (which are not defined in any existing Colorado constitutional provision, statute, or regulation). However, based on the inclusion of the word “lottery” in VLTs, and on the common meaning of VLTs, *see, e.g.*,

http://en.wikipedia.org/wiki/Video_Lottery_Terminal, a VLT is a form of lottery game. The Colorado Constitution currently prohibits lotteries, with two limited exceptions. Const. art. 18, § 2. The first exception is for bingo and similar games at churches, lodges and fraternal organizations. Const. art. 18, § 2(2). The second exception is the specific grant of authority to the General Assembly to create the state-supervised lottery, as operated by the Lottery Department and Lottery Commission. Const. art. 18, § 2 (7).

The proposed initiative would amend Article 18 by creating a broad new exception to the general prohibition on lotteries. It provides only that voter approval must be obtained for any person wishing to operate VLTs. The measure contains no mention of the existing state lottery, and thus appears to be outside of that structure. The measure also contains no restrictions on the persons who can petition the voters for approval to operate VLTs, or the locations where VLTs can be located. The provision, as worded, allows any person or business in any location to operate VLTs as a new form of private lottery, so long as the operator obtains voter approval. This is an expansive new exception to the constitutional prohibition on lotteries, which is undisclosed in the wording of the measure and in the Title.

B. The Second Subject Allows For A Dramatic Expansion of Limited Gaming.

The measure is not limited to VLTs, but also permits a private party to offer for play “any slot machine,” so long as the required voter approval is obtained. While a VLT is a new form of private lottery under the measure, “slot machine” is defined as one type of limited gaming that is authorized in the three limited gaming towns. Const. art 18, § 9(c). That fact alone creates separate subjects—the measure applies to both private lotteries and limited gaming. Measures affecting them should be considered separately and not intermingled.

The measure’s impacts on limited gaming could be significant. On its face, the measure allows any person to petition the voters to operate slot machines in any location so long as the requested operation is approved by voters statewide at a general election held during an even-numbered year, followed by approval at the local level in a subsequent election.

This procedure is different than the existing constitutional procedure for expansion of limited gaming (of both slot machines and other identified games). For example, the Constitution currently provides that voters can approve an expansion of limited gaming beyond the three mountain towns in general, regular, or special elections, whereas the measure allows for expansion only in a general election. Const. art. 18, § 9(6)(a). The Constitution currently provides for a four-year waiting period after the voters reject a measure to expand limited gaming, but the proposed measure contains no such provision. Const. art. 18, § 9(d)(III). The Constitution currently limits limited gaming to historical buildings, in order to achieve historical preservation and to improve the economies in certain mountain communities (Const. art. 18, § 9(3)(a)-(b), (5)(b)(II)), but the measure makes no reference to the existing regulation of limited gaming, suggesting that none of these provisions would apply to this new form of voter-approved slot machines.

In the end, by defining all VLTs as slot machines, and seeking to regulate both VLTs and slot machines, the proponents have collapsed private lotteries and limited gaming into a single measure. Providing voters with power to alter both programs in a single measure constitutes two subjects. The measure fails the requirement that those subjects be necessarily related. A measure could achieve the purpose of requiring voter approval of certain types of lottery games without also requiring voter approval of all slot machines. The converse is also true. A measure that seeks to do both violates the constitutional prohibition on two or more subjects.

C. The Measure's Third Subject Creates New County Elections Not Authorized by the Constitution.

The measure contains a third subject unrelated to the other two. The Colorado Constitution provides that initiative powers are reserved for voters of every "city, town or municipality." Colo. Const. art. 5, § 19. The provision contains no mention of elections at the county level. The omission of the reference to counties in the Constitution prohibits county-level elections related to ballot initiatives. *Dellinger v. Bd. of Cty. Commissioners*, 20 P.3d 1234 (Colo. App. 2000) (*cert. denied* April, 9, 2001).

Despite this prohibition, the measure specifically provides for approval of new lottery and slot machines in county elections. This is an implicit expansion of Section 19 to permit elections on initiated measures at county elections, at least when the county election would occur in order to obtain voter approval of slot machines. This a separate subject. The voters would be surprised to learn that they had expanded the powers to approve initiatives beyond the current constitutional limits.

D. The Title Is Misleading.

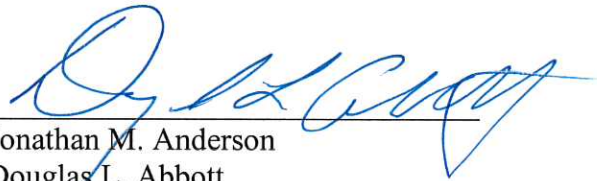
The Title does not disclose the that the effect of the measure is to amend three existing constitutional provisions, or that it gives voters expansive powers to create a new private lottery,

expand limited gaming in ways not contemplated when the Limited Gaming Amendment was adopted, and authorize initiative elections at the county level.

III. Conclusion.

Because the measure contains separate subjects that are not necessarily related, the Title Board lacks jurisdiction to set a Title. To the extent the Title Board determines that it does have jurisdiction, the Title as set does not convey all of the proposed measure's implications and is thus misleading. Accordingly, Petitioner requests the Title Board grant the Motion for Rehearing and reject the proposed measure, or, alternatively, amend the Title in such a manner as to reflect the concerns expressed above.

Dated this 25th day of April, 2012.



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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, a true and correct copy of the foregoing MOTION FOR REHEARING was **emailed** to the following with a hard copy placed in the United States mail, postage prepaid:

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A handwritten signature in blue ink, appearing to read "Jude Paul", is written over a horizontal line.

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