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Colorado Secretary of State

S. WARD 2:24 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Richard Evans, Objector

vs.

Vickie Armstrong and Bob Hagedorn, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #134

Richard Evans, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #134 ("Proceeds from Video Lottery Terminals for K-12 Education").

On April 17, 2014, the Board set the following ballot title and submission clause:

SHALL STATE TAXES BE INCREASED \$102,100,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY IMPOSING A NEW TAX ON AUTHORIZED HORSE RACETRACKS' NET PROCEEDS FROM THE OPERATION OF VIDEO LOTTERY TERMINALS TO INCREASE STATEWIDE FUNDING FOR K-12 EDUCATION, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO PERMIT ONE QUALIFIED HORSE RACETRACK IN EACH OF THE COUNTIES OF ARAPAHOE, MESA, AND PUEBLO TO OPERATE VIDEO LOTTERY TERMINALS, INCLUDING VIRTUAL SLOT MACHINES AND VIRTUAL TABLE GAME DEVICES; ALLOCATING THE RESULTING TAX REVENUES TO A FUND TO BE DISTRIBUTED TO SCHOOL DISTRICTS AND THE CHARTER SCHOOL INSTITUTE FOR K-12 EDUCATION; AND AUTHORIZING HOST COMMUNITIES TO IMPOSE REASONABLE IMPACT FEES ON HORSE RACETRACKS AUTHORIZED TO OPERATE VIDEO LOTTERY TERMINALS?

ADVISORY GROUNDS FOR RECONSIDERATION

- A. Contrary to the requirement in Colo. Const. art. V, sec. 1(5.5), the Title Board set a ballot title for an initiative containing multiple subjects.

1. The legalization of casino-style gambling in three major counties is unrelated to funding mechanisms for public schools. *In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1077-80 (Colo. 2010 (initiative unconstitutionally combined a new tax on beverage containers and changes to water law administration)).

2. The limitation on the authority of overlapping local jurisdictions to issue permits and approvals for racetrack casinos is unrelated to funding mechanisms for public schools. *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Petition (Amend Tabor 25)*, 900 P.2d 121, 125-26 (Colo.1995) (initiative unconstitutionally combined tax cut with procedural changes for all future initiatives).

3. The initiative's waiver of any local government compliance with Article X, section 20 of the Colorado Constitution and any local restrictions, including spending and revenue limits and the requirement for voter approval in advance, is unrelated to legalizing casino-style gambling in three major counties or funding mechanisms for public schools. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 # 43*, 46 P.3d 438, 448 (Colo.2002) (initiative unconstitutionally combined reduction of local rights, assured under Article XX, section 6, with procedural changes for initiatives).

4. Constitutional authority for liquor service at racetrack casinos is unrelated to funding mechanisms for public schools. *Id.* at 442 (single subject requirement applied to prevent subterfuge in ballot measure development).

B. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred by setting titles that inaccurately reflect the measure.

1. The title incorrectly states that a host community has the authority to "impose" an impact fee on horse racetracks authorized to operate video lottery terminals when such fees need only be paid if they are agreed to, in advance, by a racetrack casino.

2. The title fails to disclose the new tax rate of 37% on net video lottery terminal proceeds.

3. The title fails to disclose that the definition of host community prohibits multiple local jurisdictions from having the authority to issue permits and approvals for racetrack casinos.

4. The title fails to disclose that the measure provides constitutional authority for liquor service at racetrack casinos.
5. Disclosure of the actual expansion sites to three major population centers is hidden between the titles references to education funding, the latter reference being unnecessary.
6. The title fails to disclose that the decision to expand beyond 2,500 video lottery terminals is vested in the Lottery director, not the Lottery Commission.
7. The title fails to disclose that no fewer than 2,500 video lottery terminals can be placed at the three racetrack casinos and there is no maximum number of gaming devices at any location.
8. The title fails to disclose that the measure permits local jurisdictions to expand gambling hours to 24 hours per day and seven days a week.
9. The title does not address the absence of local voter approval, either as a condition to licensing or as to any expansion to 24-hour gambling.
10. The title fails to disclose that continued operation as a horse racetrack and pari-mutuel wagering opportunities is not required after any of the three racetracks are licensed for video lottery terminals.
11. The title fails to disclose that state voters are waiving all state and local limits on spending and revenue, as well as any prior voter approval requirement, for host communities.

RESPECTFULLY SUBMITTED this 23rd day of April, 2014.

RECHT KORNFIELD, P.C.



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CERTIFICATE OF SERVICE

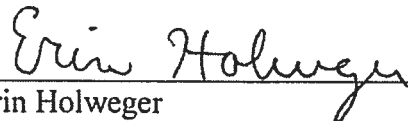
I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #134** was sent this day, April 23, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

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