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Colorado Secretary of State

S.WARD 4:01 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Richard Evans, Objector

vs.

Vicki Armstrong and Bob Hagedorn, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #80

Richard Evans, through his legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #80 ("Proceeds from Video Lottery Terminals for K-12 Education").

On March 19, 2014, the Board set the following ballot title and submission clause:

SHALL STATE TAXES BE INCREASED \$107.6 MILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY TAXING AUTHORIZED HORSE RACETRACKS' AND LIMITED GAMING ESTABLISHMENTS' NET PROCEEDS FROM VIDEO LOTTERY TERMINALS, AMENDING THE COLORADO CONSTITUTION TO PERMIT VIDEO LOTTERY TERMINALS TO BE OPERATED IN SPECIFIED LIMITED LOCATIONS, ALLOCATING APPROXIMATELY 95 PERCENT OF THE RESULTING TAX REVENUES TO A NEW K-12 EDUCATION FUND TO BE DISTRIBUTED TO SCHOOL DISTRICTS AND THE CHARTER SCHOOL INSTITUTE FOR LOCAL K-12 EDUCATION, AND ALLOCATING THE REMAINDER TO HOST COMMUNITIES?

ADVISORY GROUNDS FOR RECONSIDERATION

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

A. Title is misleading to voters concerning tax and licensee revenue

1. "Allocating approximately 95 percent of the resulting tax revenues to a new K-12 education fund" is a political statement that does not inform voters of the wording of the measure.
2. The title should state that the resulting tax revenue will increase per pupil funding by less than 2%.
3. The title omits any reference to the imposition of a new tax and the actual tax rate of thirty-nine percent (39%), both of which represent triggering events for a TABOR ballot and the ballot question's wording.
4. The title omits reference to fact that racetracks retain sixty-one percent (61%) of all player bets minus winnings.
5. The title omits reference to fact that the measure vests sole discretion in the local school districts concerning the manner of expenditure of these funds.
6. The title should write out the tax increase numerically as other TABOR titles have done (" \$120,700,000" rather than "\$120.7 million").

B. Title is misleading to voters concerning tracks' location and operations

1. The title simply refers to "specified limited locations" and omits any reference to existing gaming towns and three named counties to which this form of gaming will expand: Arapahoe, Mesa, and Pueblo.
2. The title omits reference to fact that the measure gives one (1) existing racetrack the exclusive ability to apply for a license and operate as the sole limited gaming facility in the Denver metro area.
3. The title omits reference to fact that the measure postpones two of the racetrack casinos (Pueblo and Mesa) for at least five years.
4. The title omits reference to fact that the measure provides for constitutional authority for alcohol service at racetrack casinos.

C. Title is misleading to voters concerning the actual gaming being authorized

1. The title omits reference to the types of gaming devices that will be offered to the public and does not otherwise describe the open-ended definition of "video lottery terminals"

(including "virtual slot machine games and virtual table games including poker, blackjack, roulette, and craps").

2. The title omits reference to fact that the approved limited gaming will be subject to \$100 bet limits.
3. The title omits reference to fact that no fewer than 2,500 slot machines can be placed at the three racetrack casinos and there is no maximum number of gaming devices.
4. The title omits reference to fact that the measure permits local jurisdictions to expand gaming hours to 24 hours per day.
5. The title fails to state that the initiative does not require operation of the facility as a racetrack after a limited gaming license is granted.
6. Title omits reference to fact that the measure provides for constitutional authority for alcohol service at racetrack casinos.

D. Title is misleading to voters concerning voter approval

1. The title omits reference to fact that the measure creates an exception from the requirement in Art. XVIII, sec. 9, for local voter approval for limited gaming and does so solely for the one existing racetrack in Arapahoe County and two possible racetracks in Pueblo and Mesa Counties.
2. The title omits reference to fact that authorization of expanded gaming hours does not require local voter approval, unlike the local voter approval requirement that applies to limited gaming in Art. XVIII, sec. 9.

RESPECTFULLY SUBMITTED this 26th day of March, 2014.

RECHT KORNFIELD, P.C.



Mark Grueskin
1600 Stout Street, Suite 1000
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rechtkornfeld.com

Objector's Address:

Richard Evans
1724 S. Uinta Way
Denver, CO 80231

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #80** was sent this day, March 26, 2014, via first class U.S. mail, postage pre-paid to the proponents and their counsel of record at:

Vickie Armstrong
678 W. 11th Street
Akron, CO 80720

Bob Hagedorn
1278 Sable Blvd.
Aurora, CO 80011

Marcy Glenn, Esq.
Holland & Hart
555 17th St #3200
Denver, CO 80202

Lino Lapinsky, Esq.
McKenna Long & Aldridge
1400 Wewatta St #700
Denver, CO 80202

