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MAR 26 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State  
S.WARD 4:01 P.M.

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Richard Evans, Objector

vs.

Vicki Armstrong and Bob Hagedorn, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2013-2014 #81**

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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 #81 ("Horse Racetrack Limited Gaming Proceeds for K-12 Education").

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

SHALL STATE TAXES BE INCREASED \$120.7 MILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY TAXING AUTHORIZED HORSE RACETRACKS' ADJUSTED GROSS PROCEEDS FROM LIMITED GAMING, AMENDING THE COLORADO CONSTITUTION TO PERMIT LIMITED GAMING AT SPECIFIED HORSE RACETRACKS IN ADDITION TO EXISTING PARI-MUTUEL WAGERING, ALLOCATING APPROXIMATELY 94 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 94 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 tax revenue resulting will increase per pupil funding by 2%.
3. The title omits any reference to the actual tax rate being imposed by the new tax (36%), which represents the triggering event for TABOR ballot question wording, in the initiative.
4. The title omits reference to fact that racetracks retain sixty-four percent (64%) of all player bets minus winnings.
5. The reference to taxes from "authorized" racetracks' limited gaming operations incorrectly implies that such gaming is already authorized, which is inaccurate.
6. The reference to taxes from "authorized" racetracks' limited gaming operations incorrectly implies all three such racetracks exist or have been identified specifically, which is inaccurate.
7. The reference to "authorized horse racetracks' adjusted gross proceeds from limited gaming" hides the "limited gaming" reference at the end of this phrase, when it should be placed at or near the front of it.
8. 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.
9. 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 omits any reference to fact that the measure places the three racetrack casinos in three named counties: Arapahoe, Mesa, and Pueblo.
2. The title's reference to "specified horse racetracks" is substantively inaccurate, as there are no operating racetracks now in Pueblo and Mesa Counties to be "specified."
3. 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.

4. The title omits reference to fact that the measure postpones two of the racetrack casinos (Pueblo and Mesa) for at least five years.
5. 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 proposed gaming operations**

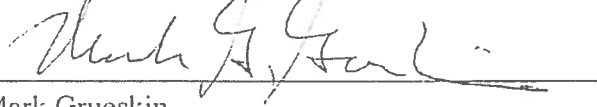
1. The title omits reference to the types of gaming ("at a minimum," slot machines, black jack, poker, craps, roulette) that will comprise the "limited gaming" that is being authorized.
2. The title omits reference to fact that the approved limited gaming will be subject to \$100 bet limits.
3. The title 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 incorrectly states the casino gambling will be "in addition to existing pari-mutuel wagering," as there is no "existing" pari-mutuel wagering in two of three counties authorized.
6. 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, making the reference to "in addition to existing pari-mutuel wagering" inaccurate.

**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 limited gaming in Art. XVIII, sec. 9.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of March, 2014.

RECHT KORNFELD, 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 #81** 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:

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