IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2025 -2026 #415 ("LIMITED GAMING EXPANSION AND LOCAL CONTROL")

Initiative Proponents: Suzanne Taheri and Sandrea Robnett

&

Objector: Ronald R. Kammerzell

MOTION FOR REHEARING

By undersigned counsel, Ronald R. Kammerzell, a registered voter of the County of Jefferson, objects to the titles set for Initiative #415, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 15, 2026, the Title Board set the following ballot title and submission clause for Initiative #415:

> *Shall there be an amendment to the Colorado Constitution allowing voters in any city, town, city and county, or unincorporated portion of a county to approve limited gaming within its boundaries, and, in connection therewith, limiting when local governments may seek local voter approval; allowing local control over games, hours of operation, and allowable single bet amounts; requiring limited gaming operators to pay a tax on limited gaming proceeds; allocating a portion of the tax revenues to community, junior, and local district colleges, to address limited gaming impacts within the local government, and to school districts within the local governments; and allowing the tax revenues generated from limited gaming to be kept and spent as a voter-approved revenue change?*

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #415 because it comprises multiple subjects.

A. *The first subject*: Initiative #415 authorizes unlimited gaming – both in terms of the amount of bets as well as the type of gaming which, because the constitutional definition of "limited gaming" is expressly excluded from this measure, could be any game or subject on which money can be wagered.

The new subsection (8) of section 9 of article XVIII specifies that "gaming expansion" is authorized "[n]othwithstanding subsections (1) through (7) of this section." "Limited gaming" is defined in subsection 4, subparagraph (c) of which reads as follows: "'Limited gaming' means the use of slot machines and the card games of blackjack and poker, each game having a

maximum single bet of five dollars, means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars, unless such games or single bets are revised as provided in subsection (7) of this section." Under subsection (7), voters of Black Hawk, Central City, and Cripple Creek were authorized to change any limits on games, the amount of single bets, and casino hours.

Because of the "notwithstanding" clause, neither of these provisions apply to the new locales where gaming could be conducted—and any limits on gaming must be authorized by voters ("voters within any city, town, city and county, or unincorporated portion of a county ***may***, but are not required to limit: (a) approved games; (b) hours of operation; and (c) allowable single bet amounts" (emphasis added)). Thus, the default rule under this initiative is that there are no limits on gaming that would be authorized. Various new localities could choose to allow unlimited bets on gaming that has not been approved in these three cities including wagers on otherwise prohibited proposition bets in sports betting, *see* Colorado Limited Gaming Control Commission Sports Betting Rule 1.3, 1 CCR 207-2 (https://sbg.colorado.gov/sites/sbg/files/documents/SBRule1-011426.pdf) , as well as domestic political developments, world events, and stock market swings or other economic occurrences anywhere in the world. *See, e.g.,* www.polymarket.com.

This is a marked shift from the existing commercial gaming structure that voters approved in the current three gaming towns. If proponents were unaware that they eliminated the definition of "limited gaming" from applying to their amendment, it is no excuse because that is what their measure accomplishes. Any consideration of the measure must be framed in that context.

B. *The second subject*: Initiative #415 alters the authorization for gaming in the three current gaming towns of Black Hawk, Central City, and Cripple Creek.

Initiative #415 surreptitiously alters the current constitutional authorization for limited gaming in Black Hawk, Central City, and Cripple Creek. It does this in two ways.

First, the measure requires voters in Black Hawk, Central City, and Cripple Creek to reauthorize gaming in those towns. The initiative provides that the provisions of subsection 8 apply "notwithstanding" subsections 1 to 7 of section 9 of article XVIII, which authorize gaming in those cities. *See Goodman v. Heritage Builders, Inc.*, 2017 CO 13M, ¶ 11 ("When used in a statute, 'notwithstanding' is intended 'to exclude—not include—the operation of other statutes.'" (internal citation omitted)). The measure continues that gaming is authorized "in ***any*** city, town, city and county, or unincorporated portion of a county in the state," and "any," of course, means "all." *See Stamp v. Vail Corp.*, 172 P.3d 437, 447 (Colo. 2007). "All" would include Black Hawk, Central City, and Cripple Creek, and it makes those towns subject to the measure's requirement that "limited gaming ***shall not be lawful*** within ***any*** city, town, city and county, or unincorporated portion of a county ***unless first approved*** by an affirmative vote of a majority of the electors of such city, town, city and county, or unincorporated portion of a county voting thereon." The relevant election under the measure is one that occurs within 13 months of the measure's passage.

This measure does not include a savings clause for the previous authorizations to conduct gaming in Black Hawk, Central City, and Cripple Creek, as the 1992 referred measure approved by voters to require local votes on new gaming jurisdictions did. In 1992, voters adopted subsection (6)(e) of Article XVIII, section 9 to provide: "Nothing in this subsection (6) shall be construed to affect the **authority granted upon the initial adoption of this section at the 1990 general election**, or the conduct and regulation of gaming on Indian reservations pursuant to federal law." (Emphasis added.) The phrase "authority granted upon the initial adoption of this section at the 1990 general election" or another savings clause is conspicuously omitted by the proponents of Initiative #415. Instead, the measure only carries over the direction that it does not affect gaming on Indian reservations. *See* Subsection (8)(c)(IV). Thus, the measure imposes the requirement that gaming in the existing three gaming towns be re-approved in order for it to continue to be offered to the public. Initiative #415's requirement for new approval elections in Black Hawk, Central City, and Cripple Creek is a hidden means of potentially obtaining a competitive advantage or even monopoly for a new gaming jurisdiction if these votes are taken without reauthorizing gaming in Black Hawk, Central City, and Cripple Creek that was not bound by the original limits in the gaming provisions of the Constitution.

Second, the measure revokes the limitation in subsection 4 on the types of "limited gaming" allowed in Black Hawk, Central City, and Cripple Creek. As explained above, the measure makes Black Hawk, Central City, and Cripple Creek subject to the same provisions as a new jurisdiction. And as explained in single subject issue #1, Initiative #415 imposes no limits on the types of gaming or bets that are allowed. In other words, gaming in Black Hawk, Central City, and Cripple Creek would be allowed "notwithstanding" the constitutional limit in subsection 4 on what constitutes "limited gaming." Anything will now go in those towns unless their electors exercise discretion to re-impose those limits that currently exist.

Thus, voters will be told they are voting on gaming for only new jurisdictions, but they are actually voting to repeal or revoke the "limited gaming" authorization in Black Hawk, Central City, and Cripple Creek and make the entire state presumptively limit-free when it comes to gambling. Mixing the authorization of new gaming and changing the rules on existing gaming are two unrelated subjects. *See In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13. Therefore, no title can be set for this measure.

C. *The third subject*: Initiative #415 removes the existing constitutional requirement that statewide voters approve gaming as a constitutional amendment before a local vote is held to authorize gaming in a new local jurisdiction.

Subsection (6) of section 9 of article XVIII requires that any local jurisdiction that will offer gaming must first be approved by statewide voters in the form of a constitutional amendment, restricting gaming to "any city, town, or unincorporated portion of a county **which has been granted constitutional authority for limited gaming** within its boundaries" so long as that jurisdiction is "first approved by an affirmative vote of a majority of the electors of such city, town, or county voting thereon." (Emphasis added.) Subsection (6) goes on to state that the timing of a local vote must be "within thirteen months after the effective date of **the amendment which first adds such city, county, or town to those authorized for limited gaming** pursuant to this constitution." (Emphasis added.)

Initiative #415 exempts localities from having "been granted constitutional authority for limited gaming" because there is no statewide vote that "first adds (a locality) to those authorized for gaming." Colo. Const., art. XVIII, sec. 9(6). This aspect of #415 was not a matter about which the proponents advised the Title Board, and it was not a matter that was evident to Title Board members until the issue was raised by the undersigned at the April 15 title setting hearing. It would likewise be a matter that is not apparent to voters and is thus the surreptitious change that the single subject requirement was intended to protect against.

It is similar to the attempted evisceration of the single subject requirement that was shoehorned into an omnibus change to petition requirements. "A voter of average intelligence would be quite surprised to find out that an initiative purporting to deal with procedural aspects of the right to petition drastically altered the substance of measures on the ballot." *In re Title, Ballot Title and Submission Clause for Proposed Initiatives #43 and #45*, 46 P.3d 438, 446 (Colo. 2002). As to #415, most voters would be surprised that the double-barreled protection they adopted to ensure buy-in by both the state as a whole and by the affected locality was no longer in effect because the statewide vote requirement will have been eliminated. *Id.* (second subject would commit a fraud on voters by "reversing a constitutional safeguard the voters felt was necessary" through their prior adoption of such protection).

In the same way, voters approved subsection (6) of Article XVII, section 9, in 1992. Voters understood that there would be two votes on any locality's gambling proposal, as the Blue Book clearly stated. "Adoption of this amendment would require local approval of gambling **in addition to statewide approval**." *An Analysis of 1992 Ballot Proposals*, Res. Pub. No. 369 at 9 (https://hermes.cde.state.co.us/islandora/object/co:2548/datastream/OBJ/view) (emphasis added). The very first argument in favor of this two-vote process stated: "The impact of gambling in a community is of such importance, with far-reaching implications, that the question of expansion into a new area should be determined by local vote, **which would follow an affirmative statewide vote**." *Id.* (emphasis added).

A vote in favor of #415 is not the "affirmative statewide vote" that the 1992 ballot measure required. Had that been the case, subsection (6) would not be specific about "the amendment that first adds" a given locality to the list of jurisdictions "authorized for limited gaming pursuant to this constitution." But that is exactly what the Constitution says, and #415 removes that requirement for all voters in the state to decide, as a preliminary matter, that more gaming in the state is good for Colorado and, specifically, that the local voters of a given jurisdiction should have the final say on whether gambling expands to their city, town or county.

D. *The fourth subject*: unlike the use of existing gaming taxes, Initiative #415 attempts to bait voters into "yes" votes with the promise of funding for K-12 education.

Currently, funding recipients of gaming taxes are primarily historic preservation and community colleges. Colo. Const., art. XVIII, sec. 9(5)(b), (7)(c)(III)(A). Sports betting proceeds are used to fund water projects throughout the state. C.R.S. § 44-30-1509(2)(e).

In contrast, Initiative #415 provides 12% of gaming tax revenues to schools in the localities that approve gambling within their boundaries. In an era of budget cuts that include reductions to Colorado's public schools, #415's redirection of gaming tax revenue to schools is a sweetener for voters who would be forced into a trade-off between the social costs of gaming and the possible benefits to K-12 education. Putting gaming tax revenues into schools in a certain local jurisdiction has nothing to do with authorizing gaming per se. As a result, voters would be wooed to vote "yes" either because they endorse expanded gaming or because, even though they oppose gaming, they favor more money for public schools. One aspect of the measure has nothing to do with the other, but it is an attempt to lure voters to support a measure they might otherwise oppose. This is precisely what the single subject requirement sought to avoid and should not be sanctioned by the Title Board in its single subject decision.

E. *The fifth subject*: revoking local electors' authority to decide the TABOR implications of new gaming revenue.

Initiative #415 imposes a state tax on gaming authorized under its terms, but a substantial portion of that tax revenue is ***not*** state revenue but local revenue. Ten percent "of the remaining gaming tax revenues" flow "to the governing bodies of the authorizing jurisdictions to address local gaming impacts," with "the school districts located within authorizing jurisdictions" receiving 12 percent of remaining revenue. As a TABOR matter, this revenue counts for the local jurisdictions that receive it, not the State as the collections administrator. *See* Colo. Const. art. X, sec. 20(2)(e) (excepting "collections for another government" from fiscal year spending). The measure then de-Bruces all revenue for TABOR purposes. *See* Proposed Subsection (8)(c)(X) ("Gaming tax revenues attributable to the operation of this subsection (8) shall be collected and spent as a voter-approved revenue change ***without regard to any limitation*** contained in section 20 of article x of this constitution or any other law." (emphasis added)).

Under TABOR, tax decisions are committed to the electors of the jurisdiction affected by the taxing and revenue/spending decisions. With respect to the local jurisdictions that receive tax revenue under Initiative #415, the measure strips the electors of those local jurisdictions of the authority to decide for themselves under TABOR whether this new revenue counts against their district's revenue and spending limit. Indeed, voters in jurisdictions that do not even authorize gaming are making the decision for jurisdictions that do authorize it. This is a significant alteration of the process and structure of approving deviations from a jurisdiction's revenue and spending limits under TABOR, and it is a change coiled within the folds of the measure.

II. The ballot title is misleading, unfair, and inaccurate.

A. The ballot title incorrectly refers to this measure as authorizing "limited gaming," but Initiative #415's provisions expressly preclude using the definition of "limited gaming" in applying this amendment.

As noted above, this measure does not incorporate the definition of "limited gaming" and, in fact, expressly carves out the subsection that defines "limited gaming" from applying to the new subsection (8). Given the more than 35 years in which limited gaming has been legal in

Black Hawk, Central City, and Cripple Creek, it is misleading to say that this measure incorporates the concept of "limited" gaming.

In fact, the text of the measure provides otherwise. Local voters "may, but are not required to limit" games, hours of operation, and bet limits. *See* proposed subsection (8)(c)(II). Thus, any limits exist only if imposed by local voters. Barring any such local vote, there are no limits on gaming in the new jurisdictions. None. Thus, it is misleading to voters to suggest that there are any presumptive limits, and it is further misleading to state (as the title set for this measure does) that the measure "allows local control" when it allows for only those limits that are voters impose. *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d 963, 969 (Colo. 1992) (title misstated applicability of amendment to new gaming provisions in constitution and was thus misleading).

B. <u>The ballot title fails to inform voters that it changes the rules for existing gaming jurisdictions.</u>

As noted above, the measure does not limit its applicability to only new jurisdictions. Thus, voters should know that these changes are both prospective as to new localities that do not now have gaming and all three towns that do. The title incorrectly omits any such reference. *Id.*

C. <u>The ballot title fails to inform voters that Initiative #415 allows local votes on gaming without first requiring statewide approval of gaming in a specific local jurisdiction.</u>

Again, as noted above, the measure exempts localities from having to be approved at a statewide vote. Of all the changes to the Constitution proposed by this initiative, this repeal is the most significant alteration to be made. The title is legally deficient by its silence on this dramatic change, and the title's introductory clause must state that this requirement would be repealed by this initiative.

D. <u>The ballot title misdescribes which local entities receive gaming tax revenue</u>.

The ballot title currently states that, with respect to local jurisdictions, gaming revenue flows to "to address limited gaming impacts within the local government, and to school districts within the local governments." Here, the use of "local government" is ambiguous and can be read to mean any local government (a county, a city or town, a special district, etc.). Instead, the only local governments that receive tax revenue are those where gaming has been approved. It is important that voters understand which local governments receive tax revenue, as voters could be misled into believing their district could receive revenue even if gaming is not approved.

Additionally, as worded, the title states that revenue is used to address gaming impacts "within the local government" (i.e., impacts in the governmental entity itself such as improper gaming by local government officials) and not gaming impacts in the jurisdiction where gaming has been authorized (e.g., needing additional police).

E. <u>The title should be clear on the allocation of tax revenue</u>.

Although explaining the recipients of tax revenue, the title does not explain how much tax revenue the respective recipients receive. The measure includes a specific formula for allocating tax revenue among the three recipients, and that allocation should be explained to voters. Voters who favor more education spending may be misled into believe local school districts will receive an equal or greater share of revenue than other recipients. Voters in cities with budgetary problems may believe more revenue is coming to their city than would be the case. The dolling out of tax dollars is a significant sweetener in the measure, and the title should be clear as to how the funding distribution works, especially around a politically sensitive subject such as school financing.

F. <u>The ballot title does not inform voters that local jurisdictions are losing the authority to decide whether to exempt this new revenue from their revenue/spending limit</u>.

As noted above, the measure strips voters in local jurisdictions of the authority to decide the TABOR impacts of new tax revenue. The title's description of the TABOR provision of the measure does not inform voters of this change.

G. <u>The title requires the "shall taxes be raised" introductory clause</u>.

The title set by the board is constitutionally deficient, as it does not include the mandatory language from TABOR for ballot issues that propose a new tax. *See* Colo. Const., art. X, sec. 20(3)(c)). The measure here not only permits gaming in new jurisdictions, but it also makes that activity subject to a new tax. TABOR requires that the ballot title begin with the phrase, ""SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY ...?" Accordingly, the Board must correct the title.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #415 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

RECHT KORNFELD, P.C.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025 -2026 #415** was sent this day, April 22, 2026, via email to:

Suzanne Taheri
Counsel for proponents

Kyle Holter
Assistant Attorney General

s/ Erin Mohr