IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2025 -2026 #418 ("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 #418, 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 #418:

> *Shall there be an amendment to the Colorado Constitution allowing voters in any city, town, city and county, or county to approve limited gaming within its boundaries, and, in connection therewith, 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 and to local jurisdictions to address limited gaming impacts; and allowing the tax revenues to be kept and spent as a voter-approved revenue change?*

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #418 because it comprises multiple subjects.

A. *The first subject*: Initiative #418 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 it isn't even clear that localities would have the authority to limit gaming. Thus, the default under this provision 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 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 #418 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 #418 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 #418 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 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 #418, 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) 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 #418 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 #418 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.

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

Initiative #418 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. Twenty-two percent flows "to the governing bodies of the authorizing jurisdictions to address local gaming impacts." 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)(d)(III) ("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 #418, 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 #418'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. The ballot title fails to inform voters that Initiative #418 allows local votes on gaming without first requiring statewide approval of gaming in a specific local jurisdiction.

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.

C. The ballot title fails to inform voters that Initiative #418 requires local approval by "the voters" – not just a majority of voters participating.

This version of Proponents' measure requires local approval "by the voters of the town, city, county, or city and county" of the affected jurisdiction. In contrast, their other versions require either approval by "a majority of the electors" of the locality, Initiative #415, proposed Art. XVIII, sec. 9(8)(c)(I), or "a simple majority of their voters." Initiative #417, proposed Art. XVIII, sec. 9(8). Clearly, the use of different phraseology carries with it different legal consequences.

At the initial hearing before the Title Board on a companion measure (#416), proponents maintained that this analysis only applies to interpretation of a body of law where the two different phrases have been used, not proposed changes to such law. For the sake of argument, Objector accepts their point. But in so doing, this Board must take notice of the existing body of law granting localities the right to approve local gaming that has been authorized by a state vote.

In the current subsection (6) of Article XVIII, section 9, the law is clear about what constitutes an acceptable vote at the local level. "Except as provided in paragraph (e) of this subsection (6), limited gaming shall not be lawful within any city, town, or unincorporated portion of a county which has been granted constitutional authority for limited gaming within its boundaries unless first approved **by an affirmative vote of a majority of the electors of such city, town, or county voting thereon**." (Emphasis added.) In other words, the existing local approval is determined by "yes" votes of a majority at of voters participating in that election ("electors… voting thereon"). Thus, using Proponents' own legal theory, the language they chose to use in Initiative #418 requires "the voters" – not just a majority of those voting – to approve gaming in order for it to become legalized in their town, city, or county.

Because Proponents concede that they used language that deviates from the existing, constitutional standard and that such difference carries legal weight, they cannot now disavow that clear reading of their measure. And the title set for #418 should reflect that unanimity requirement of local voters that Proponents incorporated into their measure.

D. <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.

E. <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 #418 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 #418** was sent this day, April 22, 2026, via email to:

Suzanne Taheri
Counsel for proponents

Kyle Holter
Assistant Attorney General

s/ Erin Mohr