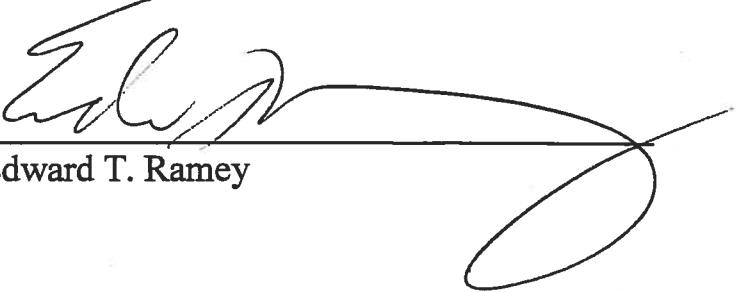


<p>SUPREME COURT OF COLORADO  101 West Colfax Avenue, Suite 800  Denver, Colorado 80203</p>	<p style="text-align: center;">FILED IN THE  SUPREME COURT</p> <p style="text-align: center;">AUG 17 2011</p> <p style="text-align: center;">OF THE STATE OF COLORADO  Christopher T. Ryan, Clerk</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding  Pursuant to §1-40-107(2), C.R.S. (2010)  Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission  Clause for Proposed Initiatives 2011-2012, #29, #30, #31,  #32, #33, #34, #35, and #36,</p> <p><b>Petitioner:</b></p> <p>Douglas Bruce, Objector,</p> <p>v.</p> <p><b>Respondents:</b></p> <p>Mason Tvert and Brian Vicente, Proponents,</p> <p>and</p> <p><b>Title Board:</b></p> <p>William Hobbs, Dan Domenico, and Jason Gelender</p>	
<p>Attorneys for Respondents Mason Tvert and Brian Vicente  (Proponents)</p> <p>Edward T. Ramey, #6748  Heizer Paul Grueskin LLP  2401 15<sup>th</sup> Street, Suite 300  Denver, CO 80202  Telephone: 303-376-3712  Facsimile: 303-595-4750  Email: <a href="mailto:eramey@hpgfirm.com">eramey@hpgfirm.com</a></p>	<p>Supreme Court Case No.  2011SA194</p>
<p><b>OPENING BRIEF OF RESPONDENTS/PROponents</b></p>	

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all applicable requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in those rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). The brief contains 3,667 words.



Edward T. Ramey

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Respondents Mason Tvert and Brian Vicente, Proponents, respectfully submit the following Opening Brief pursuant to Order of Court dated July 29, 2011:

**I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. May a petitioner obtain review in this Court under §1-40-107(2), C.R.S. (2010), of the final action of the Ballot Title Board setting titles, ballot titles, and submission clauses for proposed initiatives regarding which he is neither (a) a proponent, (b) a registered elector who timely filed a motion for rehearing before the Ballot Title Board under §1-40-107(1), C.R.S. (2010), nor (c) a registered elector who appeared before the Ballot Title Board in support of or opposition to a motion for rehearing?

2. May a person obtain review by this Court or the Ballot Title Board of an issue that could have been – but was not – raised within the seven day time period provided for submission of motions for rehearing under §1-40-107(1), C.R.S. (2010), and does not concern an issue that was affected in any manner by revisions made by the Ballot Title Board at a subsequent rehearing?

3. Does the scope of this Court's review provided by §1-40-107(2), C.R.S. (2010), incorporate arguments that a ballot title and submission clause set

by the Ballot Title Board are not in compliance with Colo. Const. art. X, §20(3)(c)?

4. Do the proposed initiatives at issue in this case contain a tax increase that would require a ballot title and submission clause in conformity with the language and typeface mandated by Colo. Const. art. X, §20(3)(c)?

## **II. STATEMENT OF THE CASE**

### **A. Nature of the Case, Course of Proceedings, and Disposition Below.**

The eight ballot initiatives at issue were filed by the Proponents with the Secretary of State pursuant to §1-40-105(4), C.R.S. (2010), on June 3, 2011. The texts of the initiatives – a proposed constitutional amendment dealing with the use and regulation of marijuana – are identical except for alternative groupings of three variables concerning the inclusion or exclusion of industrial hemp, a direction or authorization to the General Assembly to enact an excise tax on wholesale sales by marijuana cultivation facilities, and dedication of revenue from that tax.

Pursuant to §1-40-106, C.R.S. (2010), the Title Board conducted a public meeting and set titles, ballot titles, and submission clauses for each initiative on June 15, 2011. A Motion for Rehearing regarding all of the initiatives was timely filed pursuant to §1-40-107(1), C.R.S. (2010), on June 22, 2011, by a Mr. Corey Donahue (not a party to this proceeding). The rehearing was conducted at the next

regularly scheduled meeting of the Title Board on July 6, 2011. At the rehearing, Mr. Donahue's motion was granted in part and denied in part, and the titles, ballot titles, and submission clauses for each initiative were amended in an identical manner. Mr. Donahue subsequently filed a Petition for Review with this Court on July 12, 2011, which is pending as Case No. 2011SA198.

On July 11, 2011, Petitioner herein – Mr. Bruce – filed a Petition for Review of Title Setting and for an Order to Desist with this Court. On July 12, 2011, Mr. Bruce filed a Petition for Rehearing regarding the same initiatives with the Ballot Title Board. The Ballot Title Board convened a rehearing regarding Mr. Bruce's Petition on July 20, 2011, at which it dismissed the Petition for Rehearing for lack of jurisdiction.

Respondent-Proponents filed a Motion to Dismiss Mr. Bruce's Petition in this case on August 4, 2011. Mr. Bruce filed his Opening Brief and Answer to Motion to Dismiss on August 8, 2011.

**B. Statement of the Facts.**

Each of the eight alternative initiatives presented by the Proponents would seek to add a new section to Colo. Const. art. XVIII establishing a regulatory structure for the legal use, cultivation, and sale of marijuana within the state. Each version would generally permit persons twenty-one years of age or older to

consume or possess limited amounts of marijuana and would provide for the licensing of marijuana cultivation facilities, product manufacturing facilities, testing facilities, and retail stores subject to specified general procedures and criteria. Each version would also permit local governments within the state to regulate or prohibit such facilities within their localities, again subject to specified procedures and criteria. As a part of the regulatory structure, four of the alternative versions would require – and four simply permit – the General Assembly to enact an excise tax on wholesale sales by marijuana cultivation facilities, and four of the versions would dedicate a portion of the revenue from that tax to the Public School Capital Construction Assistance Fund. Four of the versions would further require the General Assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp.<sup>1</sup>

Using Proposed Initiative 2011-2012 #30<sup>2</sup> as an exemplar (as it incorporates each positive variance), the title set by the Ballot Title Board at the initial public meeting on June 15, 2011, read as follows:

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<sup>1</sup> As the Proponents stated in response to inquiries by the Title Board at both the hearing and initial rehearing, it is their intention to seek to place only one of the eight versions of this initiative on the ballot for the November 2012 general election.

<sup>2</sup> The text of Proposed Initiative 2011-2012 #30 is appended as Exhibit 1.



An amendment to the Colorado constitution concerning marijuana, and, in connection therewith, providing for the regulation of marijuana in a manner similar to alcohol; permitting a person twenty-one years of age or older to consume or possess limited amounts of marijuana; providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; requiring the general assembly to enact an excise tax to be levied upon wholesale sales of marijuana; requiring that the first \$40 million in revenue raised annually by such tax be credited to the public school capital construction assistance fund; and requiring the general assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp.

On June 22, 2011, a timely Motion for Rehearing was filed pursuant to §1-40-107(1) by a Mr. Corey Donahue. Mr. Donahue's Motion raised two arguments – (1) the title was misleading by virtue of its inclusion of the phrase “in a manner similar to alcohol,” and (2) that phrase constituted an impermissible catch phrase. At the rehearing conducted on July 6, 2011,<sup>3</sup> discussion ranged from the topics noted in Mr. Donahue's Motion, to the possible impact of inconsistent federal law, to the unnecessary use of legalistic verbiage in the title. The Proponents did not contest removing the phrase “in a manner similar to alcohol.” In the end, the Ballot Title Board amended all eight titles to delete the phrase “in a manner similar to alcohol.” The title to #30, for example, thus now reads:

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<sup>3</sup> A copy of Mr. Donahue's Motion for Rehearing is appended as Exhibit 2. A transcript of the rehearing is appended as Exhibit 3.

An amendment to the Colorado constitution concerning marijuana, and, in connection therewith, providing for the regulation of marijuana; permitting a person twenty-one years of age or older to consume or possess limited amounts of marijuana; providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; requiring the general assembly to enact an excise tax to be levied upon wholesale sales of marijuana; requiring that the first \$40 million in revenue raised annually by such tax be credited to the public school capital construction assistance fund; and requiring the general assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp.

The Petitioner in the present case, Mr. Bruce, did not appear at or participate in any manner in the July 6 rehearing. Nevertheless, on July 11, 2011, Mr. Bruce filed his Petition for Review of Title Setting and for an Order to Desist with this Court. Mr. Bruce's Petition asserts that the ballot titles and submission clauses set by the Ballot Title Board should have "alert[ed] voters in the required manner that all eight measures are tax increases" by use of the language prescribed by Colo. Const. art. X, §20(3)(c), *i.e.*, "SHALL STATE TAXES BE INCREASED BY (\$X) ANNUALLY...? While this issue was briefly discussed at the initial Ballot Title Board meeting on June 15, 2011, it was not raised or discussed at the July 6 rehearing, nor was it in any manner affected by the title revisions made at the July 6 rehearing.<sup>4</sup>

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<sup>4</sup> In the wake of Mr. Bruce's filing, Mr. Donahue has incorporated a similar argument into his own Petition for Review (Case No. 2011SA198) filed with the

Mr. Bruce acknowledges in his Petition for Review that he first read of the July 6, 2011, rehearing the following day, upon which he communicated his concerns directly to the Ballot Title Board by email. *See* Exhibit 2 to his Petition for Review. He also acknowledges in his Petition that, at the July 6 rehearing, the titles for these measures “were adjusted in areas not related to this petition for review.” Nevertheless, Mr. Bruce claims not to be bound by the seven day statutory deadline for filing motions for rehearing (at least on this topic) with the Ballot Title Board under §1-40-107(1) – nor, apparently, by the limitations in §1-40-107(2) regarding who may file a petition for review (at least on this topic) with this Court.

### III. SUMMARY OF THE ARGUMENT

1. Petitioner Bruce may not obtain review in this Court under §1-40-107(2), C.R.S. (2010), of the final action of the Ballot Title Board setting titles, ballot titles, and submission clauses on these proposed initiatives as he is neither (a) a proponent of any of the initiatives, (b) a registered elector who timely filed a motion for rehearing before the Ballot Title Board regarding any of the initiatives under §1-40-107(1), C.R.S. (2010), nor (c) a registered elector who appeared before the Ballot Title Board in support of or opposition to a motion for rehearing.

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Court on July 12, 2011, though neither he nor anyone else had raised the issue in the context of rehearing proceedings before the Ballot Title Board.

2. Petitioner Bruce may not obtain review by this Court or the Ballot Title Board of an issue that could have been raised within the seven day time period provided for submission of motions for rehearing under §1-40-107(1), C.R.S. (2010), was not raised until over two weeks after the end of that time period, and does not concern an issue that was affected in any manner by revisions made by the Ballot Title Board at a rehearing.

3. The scope of this Court's review provided by §1-40-107(2), C.R.S. (2010), does not incorporate arguments that a ballot title and submission clause set by the Ballot Title Board are not in compliance with Colo. Const. art. X, §20(3)(c).

4. The proposed initiatives at issue in this case do not contain a tax increase that would require a ballot title and submission clause in conformity with the language and typeface mandated by Colo. Const. art. X, §20(3)(c).

#### IV. ARGUMENT

##### A. Standard of Review.

“When reviewing a challenge to the Title Board's setting of an initiative's title and ballot title and submission clause, we employ all legitimate presumptions in favor of the propriety of the Board's actions.” In re Title, Ballot Title and Submission Clause for 2009-2010 #91, 235 P.3d 1071, 1076 (Colo. 2010). “We do

not determine the initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal.” Id.

This case also involves an issue of statutory construction pertaining to the standing and time requirements of §1-40-107 (1) and (2), C.R.S. (2010). On review, issues of statutory construction are reviewed *de novo*. Build It and They Will Drink, Inc. v. Strauch, 253 P.3d 302, 304 (Colo. 2011). In this Original Proceeding, this Court’s review, particularly of subsection 107(2), is exclusive.

**B. Petitioner Bruce does not have standing to bring this petition under §1-40-107(2), C.R.S. (2010).**

Pursuant to §1-40-107(2), C.R.S. (2010), the following persons may seek review by this Court of actions of the Ballot Title Board: “any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing . . . .” As accurately stated in Mr. Bruce’s Petition, he falls into none of these categories.

Mr. Bruce’s only contact with the Ballot Title Board regarding these proposed initiatives prior to filing his Petition with this Court was the email to Chairman Hobbs, the Secretary of State, and various members of the press attached as Exhibit 2 to his Petition herein – over two weeks after the statutory deadline to

request a rehearing per §1-40-107(1), C.R.S. (2010), and two days after the conduct of a rehearing timely requested by another objector on other issues. A formal request for a rehearing before the Ballot Title Board did not follow for another five days, a day after the filing by Mr. Bruce of his Petition for Review with this Court.<sup>5</sup> Mr. Bruce did not participate in any way in the Ballot Title Board rehearing that did occur – by his account he did not learn about the pendency of these proposed initiatives until after that rehearing. And Mr. Bruce is assuredly not one of the proponents of these measures.

Mr. Bruce excuses his belated arrival by stating in his Petition that “constitutional violations” of the nature he alleges here “cannot be shielded by adopting a statutory one-week time limit to request title rehearings” – noting that “TABOR (1) allows enforcement suits for multiple years after violations.” This, however, is not such an “enforcement suit” (as discussed in section D, below). This is a statutorily circumscribed and expedited administrative process, incorporating direct appellate review by this Court, for the limited purposes of reviewing initial decisions by the Ballot Title Board “with regard to whether a petition contains more than a single subject” and whether “the titles and

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<sup>5</sup> As noted above, this petition for rehearing was dismissed by the Ballot Title Board, during the pendency of the proceeding before this Court, for lack of jurisdiction.

submission clause provided by the title board . . . are unfair or that they do not fairly express the true meaning and intent” of the measure. Section 1-40-107(1), C.R.S. (2010). In providing this process, the General Assembly has also specifically restricted the timing and availability of its use at both the administrative review and judicial review stages.

Referring to the five day time period within which petitions for review may be filed with this Court under §1-40-107(2), C.R.S. (2010), in the wake of a rehearing before the Ballot Title Board, the Court has noted two legislative objectives – “finality of agency action” and “an expedited appeal process.” In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1080 (Colo. 1998). These legislative objectives are no less pertinent to the seven day deadline for requesting a rehearing before the Ballot Title Board itself under §1-40-107(1), C.R.S. (2010). Nor are they less pertinent to the administrative exhaustion requirement that limits appellate recourse to this Court to those persons who have timely participated in the administrative rehearing process before the Ballot Title Board.

Even were Mr. Bruce correct on the substance of his objection (which he is not, as discussed below), he may not avail himself of this process to address that objection without complying with the statutory prerequisites for participating in

this process. In this case he has not done so. He is not a member of the specifically defined group of persons upon whom the General Assembly has conferred standing to pursue a petition for review by this Court under §1-40-107(2), C.R.S. (2010).

**C. The issue raised by Petitioner is time-barred under §1-40-107(1) and (2), C.R.S. (2010)**

Had Mr. Bruce participated in the rehearing process before the Ballot Title Board below, he would nevertheless not be permitted to raise the issue addressed in his Petition at this stage of these proceedings – either before the Ballot Title Board or this Court.

The issue addressed by Mr. Bruce was not raised at the rehearing that did take place before the Ballot Title Board regarding these initiatives, nor, as Mr. Bruce acknowledges, does the issue relate to changes to the ballot title and submission clause made at the rehearing. Section 1-40-107(1), C.R.S. (2010), generally “permit[s] an objector to bring only one motion for rehearing to challenge titles set by the Board.” In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #219, 999 P.2d 819, 821 (Colo. 2000). “[A]n objector may not raise in a second motion for rehearing a challenge that the objector could have raised in his first motion for rehearing.” In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #215, 3 P.3d 447, 449



(Colo. 2000). Nor, logically, may a person who did not participate at all in an initial rehearing appear outside of the statutorily mandated time frame to raise an issue that could have been raised in a timely rehearing motion and is unrelated to changes made by the Title Board at another party's rehearing.

Finally, not having raised the issue addressed in his Petition in a timely motion for rehearing before the Ballot Title Board, Mr. Bruce may not seek review of that issue by this Court under §1-40-107(2), C.R.S. (2010). In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #265, 3 P.3d 1210, 1215 (Colo. 2000).

**D. Petitioner's arguments are not within the scope of review provided by §1-40-107(2), C.R.S. (2010).**

Petitioner's argument is that the ballot titles and submission clauses set for these proposed initiatives violate the strictures of Colo. Const. art. X, §20(3)(c) for "tax or bonded debt increases." Were this correct, the subject "tax increase" would be subject to a post-adoption enforcement suit, and presumably invalidation and a refund mandate, under Colo. Const. art. X, §20(1). At this juncture, however, the scope of such action, let alone the amount of any such refund, would be pure speculation, requiring this Court to interpret the language of each initiative, predict its application, and predict at least the response of the General Assembly to the non-specific authorizations or directives in paragraph 5(d) of each proposed

measure to enact an excise tax at a presently indeterminate rate and at a presently indeterminate date in the future. Such an exercise would be both premature and beyond the scope of a §1-40-107(2), C.R.S. (2010) review. In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #10, 943 P.2d 897, 899-900 (Colo. 1997). And such an exercise would be beyond the statutory scope of an administrative rehearing – and thus review by this Court – as to “whether a petition contains more than a single subject” and whether the titles are “unfair” or “do not fairly express the true meaning and intent of” the proposed measure. Section 1-40-107(1).

**E. These proposed initiatives do not contain a tax increase that would require a ballot title and submission clause in conformity with the language and typeface mandated by Colo. Const. art. X, §20(3)(c).**

Colo. Const. art. X, §20(3)(c) provides that ballot titles “for tax or bonded debt increases” shall begin with the capitalized language “SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...? or SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?” Petitioner argues that each of these proposed initiatives is a “tax increase” requiring submission to the voters with such a ballot title.

In fact, none of the measures constitute or include a tax increase. Each measure, in paragraph 5(d), states that the General Assembly “may” or “shall” enact an excise tax “at a rate not to exceed fifteen percent prior to January 1, 2017 and at a rate to be determined by the general assembly thereafter.” Except for the pre-2017 cap, the rate of such tax is deferred completely to future determination by the General Assembly. The date of enactment is deferred to the General Assembly. The effective date of any such tax is deferred to the General Assembly. Whether the General Assembly will enact any tax at all is expressly optional in four of the measures and indeterminate in the other four. There is no way at this point to predict or estimate the annual or first year amount of any increase. All of this is largely left to the discretion of the General Assembly. If and when a “tax increase” is to be enacted, it is the General Assembly that will do it. And it may be presumed that the General Assembly will comply at that time with any applicable requirements of Colo. Const. art. X, §20.

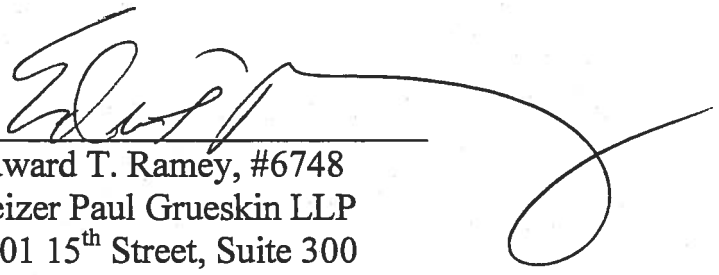
Were the ballot titles and submission clauses for the proposed measures at issue here to be saddled with “TABOR-compliant” language, the resulting voter confusion would be manifest in at least two respects. On the one hand, the primary legalization and regulatory components of these measures would be masked behind a title that would suggest the measures were all about a “tax increase.” On the

other hand, the voters would be led to believe they were currently voting for or against a “tax increase” that in fact could not, would not, and may never occur unless and until enacted by the General Assembly, at which point they would be asked to vote again for or against the same “tax increase” they had in effect already voted for or against. This cannot be the intent of either Colo. Const. art. X, §20, nor the ballot title process.

## V. CONCLUSION

For the reasons set forth above, the Respondent Proponents respectfully request the Court to dismiss the Petition for Review or, alternatively, to affirm the actions of the Title Board.

Respectfully submitted this 17th day of August, 2011.



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Edward T. Ramey, #6748  
Heizer Paul Grueskin LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
Telephone: 303-376-3712  
Facsimile: 303-595-4750  
Email: [eramey@hpgfirm.com](mailto:eramey@hpgfirm.com)

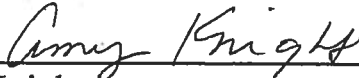
Attorneys for Respondent Proponents

## CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2011, a true and correct copy of the foregoing **OPENING BRIEF OF RESPONDENTS/PROPOSERS** was served via overnight mail on the following:

Douglas Bruce  
Post Office Box 26018  
Colorado Springs, CO 80936

John W. Suthers  
Maurice G. Knaizer  
Office of the Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Amy Knight

## **ADDENDUM**

RECEIVED

#30-Final

JUN 03 2011 1:20 pm  
CB

Be it Enacted by the People of the State of Colorado

Colorado Secretary of State

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

**Section 16. Personal use and regulation of marijuana**

**(1) Purpose and findings.**

(a) IN THE INTEREST OF THE EFFICIENT USE OF LAW ENFORCEMENT RESOURCES, ENHANCING REVENUE FOR PUBLIC PURPOSES, AND INDIVIDUAL FREEDOM, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE USE OF MARIJUANA SHOULD BE LEGAL FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER AND TAXED IN A MANNER SIMILAR TO ALCOHOL.

(b) IN THE INTEREST OF THE HEALTH AND PUBLIC SAFETY OF OUR CITIZENRY, THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT MARIJUANA SHOULD BE REGULATED IN A MANNER SIMILAR TO ALCOHOL SO THAT:

(I) INDIVIDUALS WILL HAVE TO SHOW PROOF OF AGE BEFORE PURCHASING MARIJUANA;

(II) SELLING, DISTRIBUTING, OR TRANSFERRING MARIJUANA TO MINORS AND OTHER INDIVIDUALS UNDER THE AGE OF TWENTY-ONE SHALL REMAIN ILLEGAL;

(III) DRIVING UNDER THE INFLUENCE OF MARIJUANA SHALL REMAIN ILLEGAL;

(IV) LEGITIMATE, TAXPAYING BUSINESS PEOPLE, AND NOT CRIMINAL ACTORS, WILL CONDUCT SALES OF MARIJUANA; AND

(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

(c) IN THE INTEREST OF ENACTING RATIONAL POLICIES FOR THE TREATMENT OF ALL VARIATIONS OF THE CANNABIS PLANT, THE PEOPLE OF COLORADO FURTHER FIND AND DECLARE THAT INDUSTRIAL HEMP SHOULD BE REGULATED SEPARATELY FROM STRAINS OF CANNABIS WITH HIGHER DELTA-9 TETRAHYDROCANNABINOL (THC) CONCENTRATIONS.

(d) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS SECTION THROUGHOUT THE STATE AND THAT, THEREFORE, THE MATTERS ADDRESSED BY THIS SECTION ARE, EXCEPT AS SPECIFIED HEREIN, MATTERS OF STATEWIDE CONCERN.

**(2) Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES,

(a) "COLORADO MEDICAL MARIJUANA CODE" MEANS ARTICLE 43.3 OF TITLE 12, COLORADO REVISED STATUTES.

(b) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY.

(d) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES NOT EXCEED THREE-TENTHS PERCENT ON A DRY WEIGHT BASIS.

(e) "LOCALITY" MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(f) "MARIJUANA" OR "MARIHUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIHUANA CONCENTRATE. "MARIJUANA" OR "MARIHUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

(g) "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

(h) "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(i) "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

(j) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

(k) "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

(l) "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.

(m) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(n) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

(o) "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION OF A MARIJUANA



ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

**(3) Personal use of marijuana.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

(b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY, AND IS NOT MADE AVAILABLE FOR SALE.

(c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED OPENLY AND PUBLICLY OR IN A MANNER THAT ENDANGERS OTHERS.

(e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS SUBSECTION.

**(4) Lawful operation of marijuana-related facilities.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) MANUFACTURE, POSSESSION, OR PURCHASE OF MARIJUANA ACCESSORIES OR THE SALE OF MARIJUANA ACCESSORIES TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(b) POSSESSING, DISPLAYING, OR TRANSPORTING MARIJUANA OR MARIJUANA PRODUCTS; PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY; OR SALE OF MARIJUANA OR MARIJUANA PRODUCTS TO CONSUMERS, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A RETAIL MARIJUANA STORE OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED RETAIL MARIJUANA STORE.

(c) CULTIVATING, HARVESTING, PROCESSING, PACKAGING, TRANSPORTING, DISPLAYING, OR POSSESSING MARIJUANA; DELIVERY OR TRANSFER OF MARIJUANA TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA TO A MARIJUANA CULTIVATION FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE; OR THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA CULTIVATION FACILITY OR IS ACTING

IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA CULTIVATION FACILITY.

(d) PACKAGING, PROCESSING, TRANSPORTING, MANUFACTURING, DISPLAYING, OR POSSESSING MARIJUANA OR MARIJUANA PRODUCTS; DELIVERY OR TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA OR MARIJUANA PRODUCTS TO A RETAIL MARIJUANA STORE OR A MARIJUANA PRODUCT MANUFACTURING FACILITY; THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; OR THE PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA PRODUCT MANUFACTURING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA PRODUCT MANUFACTURING FACILITY.

(e) POSSESSING, CULTIVATING, PROCESSING, REPACKAGING, STORING, TRANSPORTING, DISPLAYING, TRANSFERRING OR DELIVERING MARIJUANA OR MARIJUANA PRODUCTS IF THE PERSON HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA TESTING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA TESTING FACILITY.

(f) LEASING OR OTHERWISE ALLOWING THE USE OF PROPERTY OWNED, OCCUPIED OR CONTROLLED BY ANY PERSON, CORPORATION OR OTHER ENTITY FOR ANY OF THE ACTIVITIES CONDUCTED LAWFULLY IN ACCORDANCE WITH PARAGRAPHS (a) THROUGH (e) OF THIS SUBSECTION.

##### **(5) Regulation of marijuana.**

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

- (IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;
- (V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE;
- (VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;
- (VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;
- (VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND
- (IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

(b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF MARIJUANA AND MARIJUANA PRODUCTS IN ACCORDANCE WITH THIS SUBSECTION, IN ANY COMPETITIVE APPLICATION PROCESS THE DEPARTMENT SHALL HAVE AS A PRIMARY CONSIDERATION WHETHER AN APPLICANT:

(I) HAS PRIOR EXPERIENCE PRODUCING OR DISTRIBUTING MARIJUANA OR MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE IN THE LOCALITY IN WHICH THE APPLICANT SEEKS TO OPERATE A MARIJUANA ESTABLISHMENT; AND

(II) HAS, DURING THE EXPERIENCE DESCRIBED IN SUBPARAGRAPH (I), COMPLIED CONSISTANTLY WITH SECTION 14 OF THIS ARTICLE, THE PROVISIONS OF THE COLORADO MEDICAL MARIJUANA CODE AND CONFORMING REGULATIONS.

(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER'S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

(d) THE GENERAL ASSEMBLY SHALL ENACT AN EXCISE TAX TO BE LEVIED UPON MARIJUANA SOLD OR OTHERWISE TRANSFERRED BY A MARIJUANA CULTIVATION FACILITY TO A MARIJUANA PRODUCT MANUFACTURING FACILITY OR TO A RETAIL MARIJUANA STORE AT A RATE NOT TO EXCEED FIFTEEN PERCENT PRIOR TO JANUARY 1, 2017 AND AT A RATE TO BE DETERMINED BY THE GENERAL ASSEMBLY THEREAFTER, AND SHALL DIRECT THE DEPARTMENT TO ESTABLISH PROCEDURES FOR THE COLLECTION OF ALL TAXES LEVIED. PROVIDED, THE FIRST FORTY MILLION DOLLARS IN REVENUE RAISED ANNUALLY FROM ANY SUCH EXCISE TAX SHALL BE CREDITED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR ANY SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE. PROVIDED FURTHER, NO SUCH EXCISE TAX SHALL BE LEVIED UPON MARIJUANA INTENDED FOR SALE AT MEDICAL MARIJUANA CENTERS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(e) NOT LATER THAN OCTOBER 1, 2013, EACH LOCALITY SHALL ENACT AN ORDINANCE OR REGULATION SPECIFYING THE ENTITY WITHIN THE LOCALITY THAT IS RESPONSIBLE FOR PROCESSING APPLICATIONS SUBMITTED FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE BOUNDARIES OF THE LOCALITY AND FOR THE ISSUANCE OF SUCH LICENSES SHOULD THE ISSUANCE BY THE LOCALITY BECOME NECESSARY BECAUSE OF A FAILURE BY THE DEPARTMENT TO ADOPT REGULATIONS PURSUANT TO PARAGRAPH (a) OR BECAUSE OF A FAILURE BY THE DEPARTMENT TO PROCESS AND ISSUE LICENSES AS REQUIRED BY PARAGRAPH (g).

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR.

(g) EACH APPLICATION FOR AN ANNUAL LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT SHALL BE SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL:

- (I) BEGIN ACCEPTING AND PROCESSING APPLICATIONS ON OCTOBER 1, 2013;
- (II) IMMEDIATELY FORWARD A COPY OF EACH APPLICATION AND HALF OF THE LICENSE APPLICATION FEE TO THE LOCALITY IN WHICH THE APPLICANT DESIRES TO OPERATE THE MARIJUANA ESTABLISHMENT;
- (III) ISSUE AN ANNUAL LICENSE TO THE APPLICANT BETWEEN FORTY-FIVE AND NINETY DAYS AFTER RECEIPT OF AN APPLICATION UNLESS THE DEPARTMENT FINDS THE APPLICANT IS NOT IN COMPLIANCE WITH REGULATIONS ENACTED PURSUANT TO PARAGRAPH (a) OR THE DEPARTMENT IS NOTIFIED BY THE RELEVANT LOCALITY THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) AND IN EFFECT AT THE TIME OF APPLICATION, PROVIDED, WHERE A LOCALITY HAS ENACTED A NUMERICAL LIMIT ON THE NUMBER OF MARIJUANA ESTABLISHMENTS AND A GREATER NUMBER OF APPLICANTS SEEK LICENSES, THE

DEPARTMENT SHALL SOLICIT AND CONSIDER INPUT FROM THE LOCALITY AS TO THE LOCALITY'S PREFERENCE OR PREFERENCES FOR LICENSURE; AND

(IV) UPON DENIAL OF AN APPLICATION, NOTIFY THE APPLICANT IN WRITING OF THE SPECIFIC REASON FOR ITS DENIAL.

(h) IF THE DEPARTMENT DOES NOT ISSUE A LICENSE TO AN APPLICANT WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION FILED IN ACCORDANCE WITH PARAGRAPH (g) AND DOES NOT NOTIFY THE APPLICANT OF THE SPECIFIC REASON FOR ITS DENIAL, IN WRITING AND WITHIN SUCH TIME PERIOD, OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) AND HAS ACCEPTED APPLICATIONS PURSUANT TO PARAGRAPH (g) BUT HAS NOT ISSUED ANY LICENSES BY JANUARY 1, 2014, THE APPLICANT MAY RESUBMIT ITS APPLICATION DIRECTLY TO THE LOCALITY, PURSUANT TO PARAGRAPH (e), AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE RESUBMITTED APPLICATION UNLESS THE LOCALITY FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME THE APPLICATION IS RESUBMITTED AND THE LOCALITY SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. IF AN APPLICATION IS SUBMITTED TO A LOCALITY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL FORWARD TO THE LOCALITY THE APPLICATION FEE PAID BY THE APPLICANT TO THE DEPARTMENT UPON REQUEST BY THE LOCALITY. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS ONLY UPON RESUBMISSION TO THE LOCALITY OF A NEW APPLICATION SUBMITTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (g). NOTHING IN THIS PARAGRAPH SHALL LIMIT SUCH RELIEF AS MAY BE AVAILABLE TO AN AGGRIEVED PARTY UNDER SECTION 24-4-104, C.R.S., OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION.

(i) IF THE DEPARTMENT DOES NOT ADOPT REGULATIONS REQUIRED BY PARAGRAPH (a), AN APPLICANT MAY SUBMIT AN APPLICATION DIRECTLY TO A LOCALITY AFTER OCTOBER 1, 2013 AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION UNLESS IT FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME OF APPLICATION AND SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS IF THE DEPARTMENT HAS NOT ADOPTED REGULATIONS REQUIRED BY

PARAGRAPH (a) AT LEAST NINETY DAYS PRIOR TO THE DATE UPON WHICH SUCH SUBSEQUENT OR RENEWED LICENSE WOULD BE EFFECTIVE OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) BUT HAS NOT, AT LEAST NINETY DAYS AFTER THE ADOPTION OF SUCH REGULATIONS, ISSUED LICENSES PURSUANT TO PARAGRAPH (g).

(j) NOT LATER THAN JULY 1, 2014, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION GOVERNING THE CULTIVATION, PROCESSING AND SALE OF INDUSTRIAL HEMP.

**(6) Employers, driving, minors and control of property.**

(a) NOTHING IN THIS SECTION IS INTENDED TO REQUIRE AN EMPLOYER TO PERMIT OR ACCOMMODATE THE USE, CONSUMPTION, POSSESSION, TRANSFER, DISPLAY, TRANSPORTATION, SALE OR GROWING OF MARIJUANA IN THE WORKPLACE OR TO AFFECT THE ABILITY OF EMPLOYERS TO HAVE POLICIES RESTRICTING THE USE OF MARIJUANA BY EMPLOYEES.

(b) NOTHING IN THIS SECTION IS INTENDED TO ALLOW DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA OR TO SUPERSEDE STATUTORY LAWS RELATED TO DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA, NOR SHALL THIS SECTION PREVENT THE STATE FROM ENACTING AND IMPOSING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF OR WHILE IMPAIRED BY MARIJUANA.

(c) NOTHING IN THIS SECTION IS INTENDED TO PERMIT THE TRANSFER OF MARIJUANA, WITH OR WITHOUT REMUNERATION, TO A PERSON UNDER THE AGE OF TWENTY-ONE OR TO ALLOW A PERSON UNDER THE AGE OF TWENTY-ONE TO PURCHASE, POSSESS, USE, TRANSPORT, GROW, OR CONSUME MARIJUANA.

(d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER, SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY, TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA ON OR IN THAT PROPERTY.

**(7) Medical marijuana provisions unaffected.** NOTHING IN THIS SECTION SHALL BE CONSTRUED:

(a) TO LIMIT ANY PRIVILEGES OR RIGHTS OF A MEDICAL MARIJUANA PATIENT, PRIMARY CAREGIVER, OR LICENSED ENTITY AS PROVIDED IN SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE;

(b) TO PERMIT A MEDICAL MARIJUANA CENTER TO DISTRIBUTE MARIJUANA TO A PERSON WHO IS NOT A MEDICAL MARIJUANA PATIENT;

(c) TO PERMIT A MEDICAL MARIJUANA CENTER TO PURCHASE MARIJUANA OR MARIJUANA PRODUCTS IN A MANNER OR FROM A SOURCE NOT AUTHORIZED UNDER THE COLORADO MEDICAL MARIJUANA CODE;

(d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE.; OR

(e) TO DISCHARGE THE DEPARTMENT, THE COLORADO BOARD OF HEALTH, OR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FROM THEIR STATUTORY AND CONSTITUTIONAL DUTIES TO REGULATE MEDICAL MARIJUANA PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

**(8) Self-executing, severability, conflicting provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

**(9) Effective date.** UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

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**Proponent Representative 1**

**Name:** Mason Tvert  
**Physical Address:** 1441 Humboldt Street #101, Denver, Colorado 80218  
**Mailing Address:** P.O. Box 40332, Denver, Colorado 80204  
**Phone:** 303-861-0033  
**Fax:** 303-861-0915  
**E-mail:** mason@saferchoice.org

**Proponent Representative 2**

**Name:** Brian Vicente  
**Physical Address:** 949 B Pennsylvania St., Denver, Colorado 80203  
**Mailing Address:** P.O. Box 18768, Denver, Colorado 80218  
**Phone:** 303-860-4501  
**Fax:** 303-860-4505  
**E-mail:** brian@sensiblecolorado.org



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MOTION FOR REHEARING

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June 22, 2011

Colorado Secretary of State  
Attn: Title Board  
1700 Broadway, Suite 200  
Denver, CO 80290  
Phone: (303) 894-2200, press "3"  
Fax: (303) 869-4861  
Web: [www.sos.state.co.us](http://www.sos.state.co.us)  
Email: [initiatives@sos.state.co.us](mailto:initiatives@sos.state.co.us)

RECEIVED  
JUN 22 2011 3:57 PM  
Colorado Secretary of State

Dear Sirs:

Pursuant to CRS 1-40-107 (1), this is a motion for rehearing on the ballot title and submission clauses for proposed initiatives 2011-2012 #29 through 2011-2012 #36 – "Use and Regulation of Marijuana". I am a registered elector in the state of Colorado. I believe the titles and submission clauses set by the Title Board at their hearing on June 15, 2011 do not fairly express the true meaning and intent of the proposed initiatives.

I. The title is misleading.

The title contains the phrase "providing for the regulation of marijuana in a manner similar to the use of alcohol." This is misleading to voters, as the proposed initiatives more closely model the Medical Marijuana Code than the Alcohol Code. I propose changing that language to "providing for the regulation of marijuana in a manner similar to medical marijuana with enforcement through the Department of Revenue."

- 1) The word "alcohol" is only mentioned twice in the proposed ballot initiatives. In 1 (a), it says it shall be "taxed in a manner similar to alcohol". In 1 (b), it says marijuana shall be "regulated in a manner similar to alcohol", but in only 5 different areas: a person will need to show proof of age to purchase marijuana; sales to minors shall be illegal; driving under the influence of marijuana shall be illegal; "criminal actors" will not be allowed to sell marijuana; and marijuana will be subject to additional regulations "to ensure that consumers are informed and protected."
- 2) The Medical Marijuana Code is mentioned repeatedly in the proposed initiatives. Section 5 (a) (II) states that a person "licensed under the Colorado Medical Marijuana Code" shall have a discounted licensing fee for a retail marijuana store. Section 5 (b) states that the Department of Revenue shall have as a "primary consideration" whether or not the applicant for a marijuana retail store is licensed under the "Colorado Medical Marijuana Code" and has "complied consistently" with the "Colorado Medical Marijuana Code." This means if you have a license for a medical marijuana retail store, you are almost automatically guaranteed a license for a retail marijuana store. This indicates the clear intent of the proponents to model their initiatives after the Medical Marijuana Code, not the Liquor Code. Licensed retail medical marijuana stores are given preferential treatment because they are already assumed to be in compliance with the bulk of regulations that will be promulgated for retail marijuana stores. There are no similar provisions for preferential treatment or discounted licensing fees for retail liquor stores, as there would be if these initiatives intended to regulate marijuana in a manner "similar to alcohol."
- 3) The proposed initiatives give broad power to regulate retail marijuana stores to the Department of Revenue, which also controls medical marijuana licensing in the state. Even though the DOR does oversee alcohol as well, marijuana is much more similar to medical marijuana than it is alcohol, so it is logical to assume the DOR will use its broad powers to create rules which model its medical marijuana rules, not its alcohol rules.



- 4) The proposed initiatives set a limit on possession of marijuana by consumers of 1 ounce and 6 plants. However, there is no limit on the amount of alcohol that can be purchased in a retail alcohol store. This is a fundamental difference in the regulation of the two products. If alcohol consumers were only allowed to purchase one ounce of vodka at a time, it would require an entirely different set of regulations. The Liquor Code would be far different from the one we have today. This fundamental difference in quantity limits means it would be misleading to voters to say marijuana was regulated in a manner "similar to alcohol" under the proposed initiatives. This misleads the public into thinking that there are no limits on marijuana possession, just as there are none on alcohol
- 5) The proposed initiatives will likely result in the need for the Department of Revenue to create a database of marijuana consumers, so that they can track their purchases to make sure that consumers are not exceeding the limits. There is no such database required for liquor store sales.
- 6) Marijuana is illegal under Federal Law, and thus cannot be regulated like alcohol, a legal substance. To say it is "similar to alcohol" misleads voters into thinking that marijuana is legal under federal law.
- 7) Marijuana consumers risk federal arrest and therefore will have need for more privacy rules than alcohol consumers.

II. The titles include an impermissible catch phrase

The phrase "similar to alcohol" is a catch phrase used to appeal to the emotions of people who want marijuana to be treated with leniency. The use of this catch phrase will mislead voters into thinking that the regulation will be similar to alcohol. However, because of the substantial differences between marijuana and alcohol regulation outlined above, it is clear that marijuana will be treated much stricter than alcohol and much more similarly to medical marijuana by the Department of Revenue. The use of a catch phrase is forbidden in titles. It will mislead voters into voting in favor of a leniency in laws similar to alcohol, when in reality they will be voting for much greater scrutiny and stricter regulations than retail liquor stores. Medical marijuana is now regulated stricter than plutonium in Colorado.

In conclusion, the titles as set are misleading and contain an impermissible catch phrase. I request that my Motion for Rehearing be granted, or, alternatively, for the Title Board to amend the titles of the proposed initiatives to state "providing for the regulation of marijuana in a manner similar to medical marijuana with enforcement through the Department of Revenue."

Sincerely,

Corey Donahue  
1536 MacArthur Drive, Boulder, CO 80303  
Phone: 720-340-9730  
Email: minatour48@hotmail.com

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Certificate of Service

The above Motion for Rehearing was emailed to the proponents of the initiatives  
Mason Tvert, SAFER <mason@saferchoice.org>  
Brian Vicente, Sensible <brian@sensiblecolorado.org>

**Cesiah Gomez**

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**From:** COREY DONAHUE <minatour48@hotmail.com>  
**Sent:** Wednesday, June 22, 2011 3:37 PM  
**To:** Statewide Initiatives  
**Subject:** Motion for rehearing on the ballot title and submission  
**Attachments:** title.board.rehearing.petition.pdf

To whom it may concern,

Attached is my motion for a rehearing on recently submitted marijuana ballot titles. The attachment lays out the reasons why this rehearing is important to the people of Colorado. I thank you for your time.

Sincerely,

Corey Donahue  
1536 MacArthur Drive, Boulder, CO 80303  
Phone: 720-340-9730  
Email: [minatour48@hotmail.com](mailto:minatour48@hotmail.com)

**ORIGINAL**

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INITIATIVE TITLE SETTING REVIEW BOARD  
Secretary of State's Blue Spruce Conference Room  
1700 Broadway, Suite 270  
Denver, Colorado  
Wednesday, July 6, 2011

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Motion for Rehearing  
2011-2012 #29 through #36 Use and Regulation of  
Marijuana

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**APPEARANCES:**

William A. Hobbs  
Deputy Secretary of State  
1700 Broadway, Suite 270  
Denver, Colorado 80290

Jason Gelender  
Senior Attorney  
Office of Legislative Legal Services  
091 State Capital Building  
Denver, Colorado 80203

**EXHIBIT 3**

ORIGINAL

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1

2

P R O C E E D I N G S

3

MR. HOBBS: Good afternoon. Let's go ahead and

4

begin.

5

This is a meeting of the Title Setting Board

6

pursuant to Article 40 of Title I, Colorado Revised

7

Statute. The date is July 6, 2011. The time is

8

2:01 p.m. We're meeting in the Secretary of State's

9

Blue Spruce Conference Room, 1700 Broadway, Denver,

10

Colorado.

11

The Title Setting Board today consists of the

12

following: My name is Bill Hobbs. I'm deputy secretary

13

of state, and I'll conduct the meeting on behalf of

14

Secretary of State Scott Gessler. To my immediate left

15

is Jason Gelender senior attorney with the Office of

16

Legislative Legal Services, who is the designee of the

17

Director of the Office of Legislative Legal Services,

18

Dan Cartin. We do not have the third member of the

19

title board today, Dan Domenico, was the attorney who

20

oversees -- the representative of the attorney general's

21

office who served on the board when these measures were

22

considered last time, but he is unavailable. He is out

23

of town. So it will just be the two of us.

24

Our agenda today is a single motion for rehearing

25

for the eight different versions, numbers 29 through 36.

1 Because this is a motion for rehearing that we're  
2 considering today, we have a quorum because we have two  
3 out of the three board members here but any change to  
4 the status quo would require a majority vote of the  
5 quorum, which means a two/o vote. So just to be clear  
6 on the procedures. I regret that we don't have all  
7 three members of the board, but it does sometimes  
8 happen.

9 We do have a -- we have sign-up sheets on the  
10 table by the door. If anybody to wishes to testify,  
11 please do sign up on the sign-up sheet. When you  
12 testify, come to the podium, state your name and who you  
13 represent, if anyone.

14 This is a recorded meeting. It's also broadcast  
15 over the Internet and copies of the recording will be  
16 available on the Secretary of State's web site I think  
17 probably later today.

18 I think that covers the preliminaries. We'll  
19 start with then the -- to hear from the proponent of the  
20 motion for rehearing, and I believe -- I check my  
21 sign-up sheet -- this was submitted by Corey Donahue.  
22 And are you present, sir? If you'll come forward and  
23 identify yourself and if you like -- we have the benefit  
24 of your written argument but if you would like to  
25 summarize or elaborate or emphasize anything, please go

1 ahead and give us your testimony.

2 MR. DONOHUE: Okay. Thank you very much, Deputy  
3 Secretary Hobbs and Mr. Gelender.

4 Lately, as you said, you have the written  
5 testimony, and I am very familiar with the law, the  
6 medical marijuana code and the proposal, and even if  
7 someone as familiar as myself, I am still extremely  
8 confused.

9 The first point, as it says, they say they'd like  
10 to -- they'd like to be made -- regulated in a manner  
11 similar to the use of alcohol, yet alcohol is only  
12 mentioned twice in all of their initiative language, and  
13 the medical marijuana code is mentioned nine times in  
14 total. So I think that the true intent of this is to  
15 regulate it like medical marijuana, and I think that it  
16 behooves the people of Colorado to have a title that  
17 informs them of such because creating the -- creating  
18 the title and trying to regulate it similar to alcohol  
19 is, as it says, impermissible catch phrase, and one of  
20 the proponents of this initiative wrote a book to the --  
21 to the -- speaking to it's safer than alcohol, so you  
22 treat it like alcohol.

23 And I think that's the catch phrase that plays on  
24 people's emotions that think, oh, it will be regulated  
25 similar to alcohol when, in fact, it will not be because

1 you cannot -- it does not matter how much liquor you buy  
2 in the stores. There's no limit. I could buy for all  
3 of us the entire liquor store, and we could have it. I  
4 could give it to you. There's no tracking of my one  
5 ounce. I can buy way more than one little shooter of  
6 vodka or gin or I can buy a seven-pack or a 12-pack or a  
7 case or a keg, not one ounce. There's no specific limit  
8 on that. So to say it's regulated in a manner similar  
9 to alcohol, I believe is an injustice, and I believe  
10 it's misleading the people and the voters of Colorado as  
11 to the true intent of this.

12 Also, it is regulated by the Department of  
13 Revenue which regulates liquor but the Department of  
14 Revenue does not have the liquor criminal enforcement  
15 division. The criminal enforcement for the violation of  
16 the liquor code is taken up by the police as you see  
17 with their -- when they send underaged kids into liquor  
18 stores to try to purchase alcohol to make sure they're  
19 compliant. It's not done by criminal enforcement in the  
20 Department of Revenue. It's done by the police and the  
21 sheriff of Colorado.

22 So I think that it's very confusing and being a  
23 person who is extremely familiar with medical marijuana  
24 laws and the laws in Colorado, I think the average voter  
25 would be ballyhooed and confused into believing that

1 this would be regulated anywhere close to that, given  
2 that they're putting limits on it and that they're  
3 not -- they're creating an entire separate division of  
4 enforcement separate from dealer enforcement provision.  
5 That's my (inaudible).

6 MR. HOBBS: Any questions for Mr. Donahue?

7 MR. GELENDER: Let me push back just a little bit  
8 for the sake of drawing out the discussion a little bit.

9 The legislative declaration, I think, for each of  
10 these under the purpose and (inaudible) says that  
11 it's -- there's marijuana should be regulated in a  
12 manner similar to alcohol and if -- it seemed to the  
13 Board that in a rough sense there's a lot of parallels  
14 between the proposed regulation of marijuana and the  
15 existing regulation of alcohol.

16 You know, you -- you conceded in the motion for  
17 rehearing that there's five -- five areas of similarity.  
18 The one major area that's the most significant  
19 difference, I think, as you pointed out, is the limited  
20 quantity. That is a really big difference. But the  
21 Board dealt with that by pointing that out in the title  
22 after first saying that it's in a manner similar to  
23 alcohol it does go on to say "permitting someone 21  
24 years of age or older to consume or possess limited  
25 amounts of marijuana."



1           So I think it was important to us to recognize  
2 that as a difference between the existing regulation of  
3 alcohol and the proposed regulation of marijuana.

4           So I still like to say it's hard for me to see  
5 that this is so substantially different from alcohol  
6 that the title is misleading or suggestive.

7           MR. DONAHUE: I would also believe it would be  
8 essentially different. If it wasn't, why would they  
9 then give preferential treatment to medical marijuana  
10 facilities who are seeming to comply with the previously  
11 controlled -- you know, why weren't they given to  
12 alcohol -- liquor stores. Why can't a liquor store go  
13 in and say, hey, I've complied with all the liquor  
14 codes, and if we're going to -- if we're going to treat  
15 this the same as my liquor business, which, you know,  
16 Applejack and the numerous ones we have around the state  
17 that have been here for a long time, why wouldn't they  
18 have the privilege of being able to have a medical  
19 marijuana license first in order because they -- it's  
20 being -- it would still be regulated similar to alcohol.  
21 Why is it the medical marijuana centers rather than the  
22 liquor stores that get the preferential treatment for  
23 this for the license or whatever the Department of  
24 Revenue decides to deem necessary?

25           So that's another area I think that it's

1 completely different to alcohol because they would -- if  
2 it was similar to alcohol, why would you go and create  
3 another division and say the people that complied with  
4 the rules from this division in the Department of  
5 Revenue, not from the alcohol division or the gambling  
6 division but from the medical marijuana division? Why  
7 would they be given preferential treatment rather than  
8 alcohol or gambling or, you know, ones that have already  
9 complied with -- why aren't we having liquor stores that  
10 have been in compliance for 20 years with the alcohol  
11 codes, why don't they get preferential treatment because  
12 it seems to me the state would prefer that because we  
13 could see they're honest, they're trustworthy businesses  
14 that comply with the rules and regulations of the State  
15 of Colorado.

16 And that's why it seems there's a fundamental  
17 difference. That's why I have a disagreement with the  
18 Board and that's the reason for the rehearing.

19 MR. HOBBS: Okay. Thank you.

20 MR. DONAHUE: Anything else?

21 MR. GELENDER: I just --

22 MR. HOBBS: Mr. Gelender.

23 MR. DONAHUE: Mr. Gelender.

24 MR. GELENDER: I would just point out,

25 Mr. Donahue, there are, however -- I mean, we did talk

1 about there seems to be a function of a similarity of  
2 the product. I think there's no doubt that marijuana,  
3 whether for recreation -- marijuana for recreational  
4 uses as a product is probably more similar to medical  
5 marijuana than to alcohol. But we're talking about sort  
6 of how it's regulated and what -- I see a lot of  
7 similarity: Similar population, you're selling to  
8 anyone 21 or over as opposed to just people with a  
9 certain maintenance medical criteria, similar type of or  
10 somewhat similar DUI type enforcement, legal sale by  
11 licensees, taxation, limits on either open or public  
12 dangerous consumption. Those are a big difference.  
13 But, I mean, liquor, there are actually laws, whether  
14 enforced or not, you know, about sort of open  
15 consumption just on the street.

16 Also, the provision provides for a local option  
17 to prohibit or limit the marijuana sales which is also  
18 on the books for liquor and alcohol.

19 So lastly different kinds of licenses, for  
20 example, for manufacture versus retail versus being a  
21 wine shop or something, having a tasting room.

22 So there seem to be a lot more similarities than  
23 differences to me.

24 MR. DONAHUE: I think there are some  
25 similarities. I mean, you could say that preapproved

1 question, you thought similarities, who can buy it, who  
2 can sell it? You could do that for alcohol. You could  
3 say, you know -- I mean for tobacco. Why is it alcohol?  
4 Why are they saying it's similar to alcohol when it's,  
5 you know, obviously there are some differences? And so  
6 you say that for -- why can't we say marijuana is  
7 similar to tobacco with the age limit of 21? Why are  
8 these specific ones with the very specific, as he  
9 says -- as it says in the first one, there's five very  
10 specific areas. It mentions the alcohol code. You  
11 know, it says -- it says to be taxed in a manner similar  
12 to alcohol.

13 Marijuana should be regulated in a manner similar  
14 to alcohol but in only five different areas. A person  
15 who shows proof of age, similar. Similar for tobacco.  
16 You have to show you're 18 to buy tobacco and not -- you  
17 know, 18 for tobacco. 21. 18 to buy a gun. 18 to, you  
18 know -- so that proof of age is for guns, for gambling,  
19 for tobacco, for alcohol, for marijuana. Why isn't it  
20 marijuana and alcohol? Proof of age.

21 It says minor shall be illegal. You can't gamble  
22 under 18. You can't drink under 21. You can't buy a  
23 gun under 18. You can't -- you know, you can't buy  
24 tobacco under 18. So why not tobacco and -- have it  
25 tobacco and marijuana or gambling and marijuana with an

1 age limit of 21 instead of 18.

2 And then driving under the influence of marijuana  
3 shall be illegal. That's the only one that's similar  
4 between alcohol -- just alcohol and just cannabis  
5 because, you know, you can smoke a cigarette in your  
6 car. You can scratch your scratch-offs in your car.  
7 You can bring your gun in your car.

8 And then criminal acting shall not sell  
9 marijuana. That saying you can't buy a gun from someone  
10 off the street. You have to have your tax license for  
11 tobacco. You have to have your -- you have to follow  
12 the code to satisfy the Department of Revenue for  
13 gambling.

14 And then -- and will be subject to additional  
15 regulations and be sure the consumers are informed and  
16 protected. So informing on that it's similar to alcohol  
17 when there are some similarities yet a vast array of  
18 differences is misleading to the public.

19 And as I said, I know this and I'm still  
20 confused. The average voter, I don't believe would know  
21 all this, would actually spend time looking at the  
22 alcohol code versus marijuana, medical marijuana code or  
23 the gambling code versus the medical marijuana code.

24 So I think it's disingenuous to say that it's  
25 going to be regulated in a manner similar to alcohol.

1 MR. HOBBS: Thank you very much.

2 MR. DONAHUE: Thank you very much.

3 MR. HOBBS: I want to hear from the proponents of  
4 the measure, but first let me find out if there's anyone  
5 else who wishes to testify in support of the motion for  
6 rehearing.

7 If you'll come forward. I do have a Kathleen  
8 Chippi signed up. Okay. Thank you.

9 If you'll identify yourself for the tape and give  
10 us your testimony.

11 MS. CHIPPI: Kathleen Chippi representing the  
12 Patient and Caregiver Rights Litigation Project.

13 And I see a big difference between alcohol and  
14 marijuana and that big difference would be if we're  
15 going to regulate it like alcohol, the consumer and the  
16 voter are all going to think that it's federally legal  
17 and acceptable, and it is not. So the fact of the  
18 matter is medical marijuana in the State of Colorado is  
19 still federally illegal, but it is constitutional in the  
20 State of Colorado. And I would say that we would  
21 definitely be misleading the voter to say it will be  
22 regulated like alcohol because -- and like Mr. Donahue  
23 just said, the medical marijuana enforcement division  
24 and the code is referenced seven or nine times and part  
25 of that -- part of that code allows for the video

1 surveillance via live Internet feed to the Department of  
2 Revenue and the medical marijuana center, which as a  
3 founding member of the Patient Caregiver Rights  
4 Litigation Project is stomping all over patients'  
5 privacy rights and that's also incriminating them  
6 because it's all accessible to all law enforcement and  
7 the DEA.

8           So since federal law is okay with alcohol and  
9 federal law is not okay with marijuana, I think we're  
10 going to confuse everyone in the State of Colorado who  
11 is not as informed on what is going on, and if it's  
12 going to be regulated right, medical marijuana, which is  
13 referenced numerous times, I think it's a better matchup  
14 to -- to correct the title because -- and it's only  
15 (inaudible) as the main concern and on a federal level  
16 it's completely different than alcohol.

17           And I think that the voters are going to be  
18 confused. They're going to think they're legalizing --  
19 I mean, they're legalizing cannabis for recreation.  
20 Just like I go into a liquor store and I can buy the  
21 whole store. I can go back to my house and have a  
22 party, and I can pass it out to anybody I want as much  
23 as I want. And I think it would be misleading to the  
24 general public that it is limitless, by the way.

25           That's another thing I found confusing on what

1 can you have at your house; that you can only transport  
2 one ounce, and I think that's another problem for  
3 enforcement because in the medical marijuana program two  
4 ounces is what patients are allowed to purchase from a  
5 medical marijuana center.

6 The medical marijuana center is being granted the  
7 privilege, which I'll -- I'll say it quite honestly, I  
8 don't think anybody should have a leg up if this goes  
9 legal, let alone a medical marijuana center. I think  
10 all other business owners that aren't (inaudible) should  
11 be offended. \$500 for a -- if you're a medical  
12 marijuana license -- state licensed facility versus a  
13 liquor store if it really is liquor. Why would I pay  
14 with the discount instead of the \$5,000 license, they  
15 get a \$500 license.

16 But I'll tell you I can't get past the federal  
17 thing, and I think we're going to confuse people very  
18 much so.

19 And the other thing is the Department of Revenue  
20 is going to be in charge of enforcing similar to the  
21 patients in the medical marijuana program and this video  
22 surveillance is unacceptable and it's  
23 self-incrimination, and there's no guarantee that that  
24 is not going to happen here. And people are going to be  
25 breaking federal law if this passes. And I'm not saying



1 I'm against that. I believe in states rights. However,  
2 the DEA has been knocking on our door, you know, when  
3 you're getting regular letters from the -- from the  
4 federal government saying that they're going to come and  
5 arrest everybody, well, we clearly are not treating it  
6 like alcohol. That's all I have to say.

7 MR. HOBBS: Let me -- let me comment a little bit  
8 about that because I think you raise an important  
9 concern for the Title Board, and I'll comment on it, and  
10 if you want to comment further, then you're welcome to  
11 do so.

12 You know, your point is well taken. A big  
13 difference here between alcohol regulation and this  
14 proposal is -- is federal regulation, federal  
15 prohibition. And this is something that the Title Board  
16 I think talked about last time. I think we talked about  
17 it a year or so ago when we set a title for number 47  
18 which was somewhat similar.

19 From -- I think from our perspective the way that  
20 resolved that dilemma in not addressing that in the  
21 title is that it's not a feature of the measure itself.  
22 We don't -- by practice we try to draw a line where we  
23 don't speculate about how a measure -- what effects it  
24 may have, how it might be administered, what legal -- if  
25 there's legal questions about it, we don't speculate in

1 the title about those legal questions. If something may  
2 be unconstitutional for various reasons. Those -- in  
3 many cases of measures come before the Title Board,  
4 those are legitimate concerns, but they are more  
5 questions of legal interpretation or how a measure might  
6 operate.

7 And I think at least in this case and then in the  
8 case of number 47, we felt that the -- you know, the  
9 effective federal prohibition is something that's  
10 probably better discussed in the argument for and  
11 against the measure. That is they are very relevant, as  
12 you pointed out, but when we're charged with summarizing  
13 the key features of the measure itself, I don't think  
14 there's anything in the measure itself about it. So I  
15 think that's why we sort of erred on a little bit more  
16 conservative side and not talk about it in the title.

17 So -- but I do agree it's a legitimate concern,  
18 but it is just probably not something that I think the  
19 Title Board should comment about in the title.

20 But, again, you're welcome to comment further if,  
21 you know, if you'd like to try to persuade me otherwise.

22 MS. CHIPPI: Do you have something you want to  
23 say? Are you fine with it or no?

24 MR. DONAHUE: No.

25 MS. CHIPPI: Okay. Well, I would, I guess,

1 then -- I think that saying to the average voter,  
2 average citizen in the State of Colorado that we're  
3 regulating it like alcohol is deceitful and on November  
4 6, 2010, which was last November, I attended the  
5 (inaudible) for Sensible for Drug Policy Reform. It was  
6 a daylong event at CU Boulder campus, and Proponent  
7 Mason Tvert spoke and discussed this language that he  
8 was preparing and probably announced that his -- since  
9 we already had a medical marijuana program set up by the  
10 state and enforced in the division by the state -- that  
11 we would just use that as the model and -- and go ahead  
12 and legalize that. Now, I have that on audio and  
13 videotape.

14 And then just last week, more recently, Proponent  
15 Mason Tvert was on marijuana radio discussing his  
16 language where in that -- that is also a pod cast  
17 available for everyone to hear, where Mr. Tvert admits  
18 that (inaudible) of alcohol is a catch phrase in the  
19 title and that concerns me. Concerned me enough that I  
20 called in to the radio show and voiced my concern  
21 because it is illegal to have a catch phrase and -- and  
22 I guess I will end it with that.

23 MR. HOBBS: Any questions?

24 Thank you very much.

25 MS. CHIPPI: Uh-huh.

1 MR. HOBBS: Okay. Thank you.

2 MS. KRIHO: Laura Kriho. I was here last time  
3 speaking on behalf of the another initiative campaign  
4 that we're working on called Legalize 2012. And as you  
5 guys remember when I was here last time, I grabbed the  
6 word legalization out of the title and reserved it for  
7 the title of our ballot initiative when it should come  
8 before the Court. And I think it's -- the proponents  
9 all argued to get the word legalization out of the  
10 ballot title clearly shows there to regulate as  
11 something other than alcohol because otherwise if they  
12 really wanted to regulate it like alcohol, they wouldn't  
13 have argued against having the word legalized there.  
14 And I guess that's my main concern.

15 As far as it being misleading to voters is that  
16 if you say "in a manner similar to alcohol," alcohol is  
17 legal under both state and federal law, and people are  
18 going to get that idea in their heads. We think that is  
19 deceptive of the proponents to do this because I also  
20 have had personal conversations with them where they had  
21 declared their intent to regulate it like medical  
22 marijuana. To paraphrase what they had told me, we  
23 already have a regulated system for medical marijuana in  
24 Colorado, why wouldn't we just plug in and use that.  
25 They never said that to me about alcohol. They never

1 said, oh, we already have retail liquor stores, why  
2 wouldn't we just plug in and sell it through liquor  
3 stores. I mean, honestly if that were really the model  
4 of alcohol, it would be sold through retail liquor  
5 stores, and they wouldn't have to create an entity  
6 called the retail marijuana store where this would be  
7 sold.

8 Well, once again, I mean, to me that proves the  
9 disingenuousness of their -- not only their proposal but  
10 also of the misleading -- the misleading aspects of the  
11 title.

12 And I would like to also argue the fact that it  
13 is a catch phrase similar to alcohol as Kathleen  
14 testified. She has heard the proponents use this as a  
15 catch phrase and we even admit that it is a catch  
16 phrase.

17 The proponents have written books upon which this  
18 is the main basis that marijuana is similar (inaudible)  
19 to alcohol. So this is a catch phrase designed to  
20 confuse voters. Where the confusion of the voters would  
21 come -- and it's really hard to understand unless you've  
22 gone through the whole medical marijuana thing.

23 You know, medical marijuana was sold to the State  
24 of Colorado as being legalize medical marijuana, and  
25 it's going to help patients and over the past -- since

1 the general assembly has gotten ahold of it over the  
2 past two years we've seen these incredible restrictions  
3 and incredible laws that are being forced down on  
4 patients and their providers that were never foreseen  
5 before the original initiatives because everybody  
6 thought, oh, this is legalizing it; this is legalizing  
7 it.

8 Well, you have the proponents here on 10/15 to  
9 argue themselves that this is not legalizing it. This  
10 is not legalizing it. This is restricting it and  
11 controlling it. And anything other than that in the  
12 title will be misleading to voters. And I would argue  
13 again there is a catch phrase that should not be allowed  
14 in the title ever on anybody's initiative.

15 That's my testimony.

16 MR. HOBBS: Thank you very much.

17 MR. GELENDER: Thank you.

18 MR. HOBBS: Anyone else wish to testify in favor  
19 of the motion for rehearing? And I will give  
20 Mr. Donahue another chance after we hear from the  
21 proponents of the measure.

22 Then I'll turn to the proponents of the measure  
23 and several people signed up.

24 Mr. Ramey, do you want to begin?

25 MR. RAMEY: Mr. Chairman, yes, thank you. With

1 me today are the two proponents, Mr. Vicente and  
2 Mr. Tvert.

3 I think -- I guess I -- two points I'd like to --  
4 to raise very briefly. Number one, I think the Board  
5 had accurately caught our purpose as stated in the  
6 measure to attempt to regulate marijuana in a manner  
7 similar to alcohol. I think that does accurately  
8 reflect the proponents' purpose. However, we've  
9 listened to several minutes of arguments as to why the  
10 use of that phrase in the title might be misleading, and  
11 three people have come up and not only indicated they  
12 have been misled, despite having substantial familiarity  
13 with the measures, but also have accused us, the  
14 proponents, of being -- trying to remember all the  
15 words -- deceitful, deceptive, disingenuous, misleading,  
16 et cetera -- which is not our intent.

17 I would particularly point that out, and I don't  
18 think we -- I think that phrase was in the staff draft  
19 and it was fine with us. I think we found it to be an  
20 accurate reflection. It wasn't something that we were  
21 fighting tooth and nail for last time.

22 But the last thing that the proponents want to  
23 do -- and I will invite Mr. Tvert and Mr. Vicente to  
24 comment if they wish -- is to do anything that would  
25 mislead anybody or have anything in the title that might

1 arguably be misleading to any of the voters, whether we  
2 think the phrase is misleading or not.

3           And similarly the last thing we want to do, for a  
4 whole lot of obvious reasons, is to have a catch phrase  
5 in the title, and I'll be candid with the Board, the  
6 (inaudible) on catch phrases still needs to be  
7 (inaudible) -- the last pronouncement from the Supreme  
8 Court on that issue came down last year with the health  
9 care initiative, and there was the majority opinion and  
10 a dissent dealing with the catch phrase issue. And some  
11 of it is running back to an old case of mine of a bunch  
12 of years ago where I probably created more trouble than  
13 I should have.

14           So, I mean, I don't want a catch phrase to stay,  
15 and it seems to me to be a little -- the term seems to  
16 be a little flexible, but we don't want one of those in  
17 there. And we certainly do not want to mislead any of  
18 the voters, majority or minority.

19           So from the proponents' perspective  
20 grudgingly -- and I say this grudgingly but it would be  
21 acceptable to us to drop the phrase "in a manner similar  
22 to alcohol" in all eight of the titles. And the way  
23 then it would read -- and it sort of pains me to say  
24 this because, you know, I think the phrase has -- has  
25 some -- some important -- interpretive import to it, but



1    apparently it is of concern and misleading to at least  
2    three people, and I'm going to assume more people as  
3    well as those three that are here.

4            So it would be simple enough to simply drop the  
5    words "in a manner similar to alcohol." We don't want  
6    to put in a substitute "in a manner similar to medical  
7    marijuana" because we get back into the same quagmire  
8    we're in with a manner similar to alcohol. I could  
9    stand here and recite a bunch of different ways as to  
10   why it's different and the references to medical  
11   marijuana are often by ways of distinction or exclusion  
12   or granting a preference to medical marijuana licensees  
13   and the licensing process and so forth. But it's --  
14   it's not an attempt in the language of the initiative to  
15   be similar to medical marijuana. So I wouldn't want to  
16   substitute that phrase, but we could drop the one that  
17   we have.

18           And the concern, Mr. Chairman, that you raised  
19   about the legalization issue. We certainly do not want  
20   voters to suggest that we are managing to change federal  
21   law. We can't. Under the Colorado initiative process  
22   we understand that. Whether we'd like to or not, that's  
23   something we can't do. So, again, if there's a concern  
24   in a manner similar to alcohol to suggest that it would  
25   be legal at all levels, we don't want to have that

1 concern out there.

2 So in sum -- and, again, I would defer to the  
3 proponents themselves -- from our perspective it would  
4 acceptable to us in all eight of the titles to drop the  
5 words "in a manner similar to alcohol."

6 MR. HOBBS: Question for Mr. Ramey?

7 Mr. Ramey, on a -- with respect to this threat  
8 about federal versus state regulation or federal  
9 prohibition and state regulation, how would you feel  
10 about modifying the title to insert the word "state," so  
11 it might read something like in the second line -- if  
12 you can pop up the second line -- providing for state  
13 regulation of marijuana?

14 MR. RAMEY: I think that would be acceptable. I  
15 don't think we'd have any problem with that. I mean, I  
16 think that's the fact. I'm willing to defer to my  
17 clients (inaudible).

18 MR. HOBBS: Okay. State regulation.

19 Mr. Tvert, if you want to identify yourself for  
20 the record.

21 MR. TVERT: Mason Tvert. I'm one of the two  
22 proponents of the initiative.

23 I think the only situation that that would bring  
24 up is that localities are also given the power to  
25 regulate, so I think that, you know, we talked in the

1 last meeting about the desire for this being so  
2 succinct, and we cut it down to concerning marijuana. I  
3 think simply providing for the regulation of marijuana  
4 really gets to the point of what it's doing and then it  
5 goes on to explain what that entails.

6 MR. RAMEY: I stand corrected. That's the point  
7 that I missed. We do have a local regulatory component  
8 in there, and it states would suggest to somebody that  
9 all the regulations at the state level (inaudible).  
10 So I agree with that.

11 MR. HOBBS: Any other questions for Mr. Ramey?

12 MR. GELENDER: I don't -- yes, just one, which is  
13 the only thing that -- I do think that the phrase in a  
14 manner that's similar to alcohol -- no -- obviously, no  
15 one feels strongly about it -- I think that includes me.  
16 It does, I think, in light of, you know, some of the  
17 things, you know, as I pointed out for the string of  
18 similarities before. I think it does add some level of  
19 value to the voter.

20 My question was: Is do you believe the rest of  
21 the trailer is sufficiently inclusive if we take that  
22 out or would you suggest other modifications as well?

23 MR. RAMEY: I would not. I think it's sufficient  
24 if we take that out. I think the remaining trailer, I  
25 guess, of the -- of the title works adequately and, I

1 mean, to the extent these go forward, there'll be a  
2 campaign on this and there'll be political messages on  
3 both sides, and we can argue all the other issues both  
4 sides, all sides, there may be more than two sides, to  
5 our heart's content.

6 But I -- I do think -- we came out last week  
7 thinking the titles were good with that phrase in it.  
8 I'm hearing a lot of objection, and I can't honestly say  
9 that the objections that I'm hearing are completely  
10 crazy or off the wall. And I know Mr. Hobbs has heard  
11 me many years argue that -- that objections are without  
12 merit. I really can't say that with these, other than  
13 to take objection to being characterized as deceitful.

14 But I would take the phrase out, and if we want  
15 to present the message in -- in campaign where we can do  
16 that, we'll do it, but we absolutely do not want to have  
17 something floating around the title that could either be  
18 characterized as a catch phrase and tilt the argument  
19 one way or another in the official title or have  
20 anything in there that could mislead the voters.

21 MR. HOBBS: Maybe this is just a comment but for  
22 the time you say is there any idea -- I actually think  
23 the phrase is okay. I don't think it's an infamous  
24 full catch phrase, and I think it's helpful to the  
25 voters, and I think it's consistent with our obligation

1 to briefly, you know, clearly state the essence of the  
2 measure. But it looks like we can live without it. You  
3 know, the very next clause says "permitting people 21  
4 years of age or older to consume unlimited quantity,"  
5 and I think that's kind of the real essence. So it gets  
6 back to my concern about regulation versus legalization.

7 MR. RAMEY: Well, I -- and I don't want to --  
8 exactly. If we're suggesting "in a manner similar to  
9 alcohol," that phrase, and I see how it could carry the  
10 suggestion that we're now wholly legal at all levels.  
11 We don't want to suggest that because we're not.

12 MR. HOBBS: And I agree with you that -- that  
13 it -- it's a different argument that has been made here  
14 that the phrase is possibly a catch phrase, and there  
15 are arguments against it. So if it -- if it removes an  
16 obstacle to everyone's satisfaction to remove that  
17 phrase, and we're still okay with the title -- and I  
18 think we probably are -- I'm inclined to do that based  
19 on what I've heard so far.

20 MR. RAMEY: It would be acceptable to the  
21 proponents.

22 MR. HOBBS: Thank you.

23 Anyone else wish to testify on behalf of the  
24 proponents of the measure?

25 If not, let me next turn then to Mr. Donahue

1 again if you'd like to respond to what you've heard so  
2 far.

3 MR. DONAHUE: Thank you, Deputy Secretary. The  
4 regulation of marijuana. Who is regulating it? How is  
5 it regulated? Is the Department of Revenue regulating  
6 it? Is each city regulating it? Is the secretary of  
7 state regulating it? Who is regulating marijuana?

8 This is a completely new area, completely new  
9 commodity for the State of Colorado. It is illegal on  
10 the federal level, and I understand that you take no  
11 position on this vis-à-vis federally. But with the  
12 regulation of marijuana that leaves the whole slew --  
13 that was just me sitting there thinking who, how -- who,  
14 what, where, when, why -- you know, the whole litany of  
15 journalistic questions.

16 With the regulation of marijuana they have  
17 nothing to compare it to, they have nothing to -- they  
18 have no -- they are even more in the dark, I think. I  
19 think this is just not -- not deceiving -- deceiving  
20 them but rather to just saying the regulation of  
21 marijuana leaves it completely up to their imagination.

22 Because for -- for Kathleen maybe the regulation  
23 of marijuana for her means no regulation, means you can  
24 grow it like tomatoes. Maybe for the proponents it  
25 means that the DOR tracks it from seed to sale. Maybe

1 for me it means 18 and over. Maybe for someone else it  
2 means that it's still illegal. What's the regulation?  
3 Are we regulating it back to prohibition?

4 I'm even more confused now taking that phrase out  
5 than with that phrase in. I think that -- and as I  
6 said, I'm very well versed in this. What's the  
7 regulation? What would the common voter think? Because  
8 you'll have people -- you'll have people, you know, in  
9 Rifle that think regulation is one thing; people in  
10 Boulder will think regulation is another thing. So  
11 the -- that will make it specific to whatever the  
12 person's mind-set is and it won't give a clear intention  
13 of what the proponents propose with this initiative.

14 And so that's why I believe not only -- I think  
15 that taking the "in a manner similar to alcohol" makes  
16 it even worse, and I think it's -- it's going from bad  
17 to worse in my opinion.

18 MR. HOBBS: Mr. Gelender.

19 MR. GELENDER: Well, Mr. Donahue, I guess my  
20 question then would be what's your proposed solution?  
21 Are you now just asking us just not to set a title at  
22 all?

23 MR. DONAHUE: Yes. I think it would be fair to  
24 the people of Colorado to get the accurate title as this  
25 is a new area.

1 MR. GELENDER: And we are -- to be clear, we  
2 are (inaudible) -- it was not in the written motion. I  
3 don't think you're making now the single subject  
4 argument. You just seem to be making an argument that  
5 it's not possible to get a clear title with this or?

6 MR. DONAHUE: It's not for the specific language,  
7 yes. I think it does fall in the single subject because  
8 as I -- maybe I didn't put it eloquently. The single  
9 subject for the regulation of marijuana is a hanging --  
10 it's a hanging -- it leaves people hanging. What's --  
11 what's the -- where's the rest of that title?

12 MR. GELENDER: Well, the answer to that question  
13 to me, Mr. Donahue, is the answer to that title is the  
14 words that follow it where then it doesn't leave it  
15 totally to people's imagination because then it talks  
16 about 21 years of age or older limit -- limited of  
17 quantity limit, licensing of certain kinds of specified  
18 facilities, (inaudible) low box seem to regulate or  
19 prohibit, requirement of taxation.

20 MR. DONAHUE: Yeah. And I think they're --

21 MR. GELENDER: There is clarification following.

22 MR. DONAHUE: Okay. I perceive that, yes, I  
23 think that is. But then it does exceed the medical  
24 marijuana code. It says that nine times. It says in  
25 the event if you take every specific instance that



1 compares it to alcohol, even if we get rid of alcohol,  
2 it says the medical marijuana code. So maybe my  
3 proposal would be the regulation of marijuana as I put  
4 similar to the -- similar to medical marijuana with the  
5 Department of Revenue as the enforcement division as  
6 when you regulate it you have to have an enforcement  
7 division. There has to be some sort of body, and I  
8 think that gives people in Colorado a clear indication  
9 of what they are voting for if they say, okay, it's  
10 being regulated. It's being regulated similar to  
11 something else, and it appears that people who are  
12 regulating it, you know, who, what, and where. And  
13 that's what I believe would be the best title for this  
14 initiative.

15 Does that answer your question, sir?

16 MR. GELENDER: Yes, I think so.

17 MR. HOBBS: Mr. Donahue, would you feel better if  
18 we amended the title to say that it's regulation by the  
19 Department of Revenue?

20 MR. DONAHUE: I think so. I think it would be  
21 regulation and enforcement because it does say criminal  
22 enforcement.

23 MR. HOBBS: And one reason I was thinking about  
24 doing that is because we -- if we were to say at the  
25 beginning "providing for the regulation or regulation

1 and enforcement of marijuana by the Colorado Department  
2 of Revenue," that might cement pretty well with the  
3 clause that comes about midway through the title that  
4 says "permitting local government to regulate or  
5 prohibit such facility." It's right after we say --

6 MR. DONAHUE: Okay.

7 MR. HOBBS: -- provide for still. We go on to  
8 say provides for licensing of certain facilities, and  
9 then we say in the title permitting local government to  
10 regulate or prohibit the facilities. And so if we  
11 haven't said who at the state level or that it is the  
12 state --

13 MR. DONAHUE: Yeah.

14 MR. HOBBS: -- then it may be a little confusing  
15 to generally refer to local government regulations.

16 MR. DONAHUE: Yeah. And I think the other  
17 confusing thing that sets this all in motion is that  
18 they're attempting -- the proponents want to put this  
19 initiative into our constitution and as the 14th  
20 Amendment stipulates local governments can't regulate a  
21 constitutional amendment. Sure they can regulate  
22 alcohol because it's a code, it's not in the  
23 constitution of Colorado. But I have yet to see a city  
24 or municipality around the State of Colorado that can  
25 tell a woman, yes, you may vote or, no, you may not or

1 tell people, you know, what water fountain to drink at  
2 because this will be a constitutional amendment and the  
3 regulation by a local municipality would be flying  
4 directly in face of the 14th Amendment and...

5 MR. HOBBS: Any other questions?

6 Thank you.

7 Is there anyone else who wishes to testify? Yes,  
8 sir, if you'll come forward and identify yourself for  
9 the record, please.

10 MR. ROBERT (unidentifiable): My name is Robert  
11 Finch (sic) of the Colorado Coalition for Patients and  
12 Caregivers, and I -- my point is somewhat tangential but  
13 going back to the -- what the point that was raised by  
14 the representative of the secretary of state's office  
15 last time, that the sentence is unduly long and unclear,  
16 he suggested that amending it to be an amendment to the  
17 Colorado constitution concerning marijuana. That is  
18 impossibly vague. But the language you have there is  
19 very unclear. That first -- that first clause is  
20 impossibly vague. That's not the appropriate -- it's  
21 simply excess verbiage. It -- it is clearly equivalent  
22 to that excise the word "concerning marijuana" and "in  
23 connection therewith." "Therewith" I would point out is  
24 a legalism and not familiar to most teachers of English  
25 who will be reading it.

1           So simply have it read "in order to the Colorado  
2 constitution providing for the regulation of marijuana."  
3 That introduces the subject most clearly, very quickly  
4 at the beginning and then continue on. That's much  
5 clearer. Thank you.

6           MR. HOBBS: Again, does anyone have any  
7 questions?

8           Your point is well taken, and I think some day  
9 we're going to end up following that format, but we  
10 haven't for a couple of reasons. One is we're required  
11 to state a single subject first, usually signaled by the  
12 word "concerning." And the other reason pushing us in  
13 this direction is that our statute says we are supposed  
14 to generally follow the way that general assembly sets  
15 titles, and this is the typical format of the general  
16 assembly. I agree "therewith," you know, "in connection  
17 therewith" is awkward --

18           MR. ROBERT (Unidentifiable): And I don't think  
19 it's (inaudible). You'll note the objection but the  
20 result was unfortunate.

21           MR. HOBBS: Thank you.

22           Ms. Kriho, you need to come to the microphone.

23           MS. KRIHO: Just the point -- Laura Kriho again.

24           Just to point out for matter of clarification and  
25 why we're concerned with having the regulatory agency in

1 there is because there are going to be other initiative  
2 proposals that come to you, and that is going to be one  
3 of the hallmarks of their differences is what agency  
4 controls it. We have people writing language now with  
5 the Department of Revenue, the Department of Public  
6 Health and Environment and the Agriculture Department,  
7 of the three that are being tossed around now. There  
8 may be more. So I think that it's really important --  
9 you know, if I look at this thing, what it is going to  
10 look like next to our ballot title? How it is going to  
11 be distinguished from the title that we are going to  
12 want for our initiative? And that's going to be one of  
13 the hallmarks of the differences. That was all.

14 MR. HOBBS: Thank you.

15 Anyone else waiting to testify?

16 Mr. Ramey.

17 MR. RAMEY: Mr. Chairman, if I can just comment  
18 very briefly just on the two issues about having the  
19 regulatory agency in there, and again going back to the  
20 manner similar to marijuana. I do want to emphasize  
21 that there are -- there are as many and more  
22 distinctions between our regulatory structure than the  
23 medical marijuana structure. One primarily being the  
24 age limitation of 21 years of age or older under the  
25 commission that doesn't apply at all under medical

1 marijuana. That again is a reason we don't want to have  
2 that comparison in sort of the mirror of the concern of  
3 having "in a manner similar to alcohol."

4 And with regard to the Department of Revenue,  
5 there is nothing terribly objectionable about  
6 identifying that department in this title other -- maybe  
7 a bit of surplusage but the problem -- I think the more  
8 technical problem is that local -- localities -- and I  
9 use that phrase definitionally; it could be cities,  
10 counties, whatever -- will have some measure of  
11 regulatory authority under any circumstances under our  
12 measure and may, under certain circumstances, become the  
13 primary regulatory authority for a period of time if the  
14 Department of Revenue declines to adopt regulation. So  
15 if we said Department of Revenue, there is a possibility  
16 that it could turn out not to be the Department of  
17 Revenue. It could be the locality. So that would be  
18 the only reason, I think, that we would object to  
19 identifying that department, that particular regulatory  
20 authority in this language.

21 MR. HOBBS: Could it be -- and I just want to  
22 explore that because I think that's an important point.

23 We -- you know, as I indicated, I'm concerned  
24 about the portion that while -- we're looking at number  
25 29 on this phrase. The title for number 29 that -- in

1 line -- beginning at the end of line five it says  
2 "permitting the local government to regulate," but  
3 that's just with respect to those facilities. I think  
4 you're raising another issue really is the fact that  
5 regulation if the Department of Revenue fails to act.

6 MR. RAMEY: That's correct, Mr. Chairman, and  
7 that refers to the fact that the local governments will  
8 have regulatory authority under any circumstances. But  
9 there is the backup regulatory authority if the  
10 Department of Revenue does not act. I don't want to  
11 speculate about the possibilities that that would come  
12 to pass. But it's in the text in the measure.

13 MR. HOBBS: You know, and it's sort of a slippery  
14 slope because once we start getting into more details, I  
15 mean, I am -- I am, at least in my own mind, wondering  
16 if that's a detail. I mean, it's sort of a fail safe --  
17 the primary intent of the proponents I think is that the  
18 Colorado Department of Revenue do the regulation at the  
19 state level.

20 MR. RAMEY: Yes.

21 MR. HOBBS: But in case they don't and in  
22 anticipation of that possibility, there is a provision  
23 that kicks in.

24 MR. RAMEY: And, Mr. Chair, I do -- I do take  
25 your -- your point on that. I mean, I don't know where

1 you cross the line in implementation details or not  
2 but -- but the line may be there in this particular  
3 case, and we may have a misleading issue again in there  
4 if the title locks in the regulatory authority and the  
5 regulatory authority is not actually locked in in the  
6 text of our measure.

7 MR. HOBBS: Thank you.

8 MR. RAMEY: Yes.

9 MR. HOBBS: Anybody else wish to testify?

10 Mr. Donahue, one more time?

11 MR. DONAHUE: Back again for the first time.

12 I think he pointed out clearly because the more  
13 we talk about who is regulating it, the state is going  
14 to regulate this little bit down in Alamosa, is the  
15 whole state going to regulate for 21, but who is going  
16 to regulate for the kids who are using medical  
17 marijuana. I think it kind of brings this whole milieu  
18 to a head and shows that it's very -- it's a very  
19 confusing title that has been set, and that it's almost  
20 impossible to change it without creating even more  
21 confusion to the average voter.

22 And like I said before, I'm very well-versed.  
23 I've read these things on planes. I've taken hours out  
24 of my time to read these, and I'm still very much  
25 confused. And the more we change it and the more we do



1 it, it just makes it more confusing, and I believe the  
2 average voter would be -- it would be doing a disservice  
3 by trying to -- you know, I don't think the title should  
4 be set once again or it should be set saying exactly  
5 what it is because it's very confusing, and the more we  
6 tinker with it and the more that we say, oh, well, we'll  
7 just use marijuana. Well, then, where does that lead?

8 Well, we can't put the regulation agency because  
9 that's only for the state because if the DOR decides not  
10 to in only this specific instance. I think that the  
11 whole thing is very confusing and it's just leading us  
12 down a path, like you said, or a slippery slope to  
13 confusion of the public to not know what they're voting  
14 for to just think, Oh, it's marijuana, so whatever my  
15 feelings are, we don't know what the title is. It's  
16 just very much a -- it's more of an ethos, pathos --  
17 more of an ethos, you know, argument than a pathos  
18 argument, so that's all I have to say, gentlemen.

19 MR. GELENDER: Well, Mr. Donahue, I think this is  
20 part of the standard issue that faces the Title Board.  
21 We have in this case an eight- or ten-page proposal, and  
22 there's a reason why it's eight or ten pages to provide  
23 all of the details that the proponents think is  
24 necessary, and yet we're charged with setting titles  
25 that are supposedly succinct, identifies the central

1 features and inevitably distilling something down to 7  
2 lines or so we're inevitably leaving out things or  
3 oversimplifying things and it -- what I'm hearing is,  
4 yes, we're leaving out things or we're oversimplifying  
5 things, but it's not that complicated a measure, given  
6 that it takes eight or ten pages, it's not -- there's  
7 nothing about it that I can think of that we don't  
8 understand. It's just the usual challenge of how do we  
9 in approximately seven lines capture the central  
10 features of the measure. And it seems like that's  
11 pretty good. That's not to take too much pride in it so  
12 far because I'm going to propose a change or two anyway  
13 but...

14 MR. DONAHUE: Okay. Yeah -- like I said, I think  
15 it -- I think you guys are doing the best job you can,  
16 but I think with what you're working with is a measure  
17 that is very confusing to the average voter, and it will  
18 be very confusing to distill it down to seven lines  
19 because there's so many very important things because as  
20 we would be the first place in the world to legalize or  
21 regulate medical cannabis for everyone over the age of  
22 21. I think we have to have something that very clearly  
23 shows the intent of the proponent because this is a  
24 completely new arena for all of us.

25 And the other ones where you have to distill it

1 down, you can rely on case law, you can rely on  
2 precedent from other ones. This one has no precedent  
3 but one, save for one, medical marijuana. And with the  
4 regulation going into that, that's the only precedent we  
5 can look at to say this is what it looks like because  
6 nobody -- the average voter will not, no matter how  
7 heartily you do your job, know in seven lines what it is  
8 because they have no prior knowledge unless we go all  
9 the way back to, you know -- unless you say something  
10 regulate marijuana as was before the, you know -- what  
11 is it -- marijuana tax act, but then that would bring in  
12 the federal law.

13 So, like I said, it's just confusing and as it's  
14 a new arena, I think that it would be -- behoove all of  
15 us and the people of Colorado to make sure they know  
16 exactly what they're voting for, and I don't feel that  
17 this -- even with the discussion we've had -- is going  
18 to give that -- give the fair shake to the people of  
19 Colorado.

20 MR. GELENDER: And just remember to be a little  
21 stubborn about this. This isn't the only resource that  
22 voters have. I mean, you're in a petition circulating  
23 state. For example, the text of the measure is in front  
24 of finders if they want to read it. The text of the  
25 measure will be available to people who are considering

1 whether to vote for a measure in the Blue Book and  
2 through other sources. The Blue Book will provide more  
3 of a summary. So there's a number of other resources.  
4 Then the campaigns themselves explain what a measure is.  
5 We can only do so much in a ballot title.

6 MR. DONAHUE: I understand. And I think with  
7 that too goes to the willingness what is the motivation?  
8 What is their intent? If they're so willingly willing  
9 to drop "similar to alcohol" and just make marijuana,  
10 what is the intent now because the whole thing -- you  
11 know, the whole first thing said there's five legs  
12 that's similar, age restriction, driving, you know. So  
13 if that was the crux of it but they so readily drop that  
14 crux, how are we to determine what their intent of this  
15 language is now?

16 MR. HOBBS: Thank you very much.

17 MR. DONAHUE: Thank you very much.

18 MR. HOBBS: Last call briefly from anyone before  
19 I turn to Board discussion?

20 If not, then -- then we'll turn to Board  
21 discussion, and I'll open it up if there's suggestions  
22 from the Board or any changes to title that we stressed,  
23 we'll proceed.

24 MR. GELENDER: We make a motion?

25 MR. HOBBS: I think what -- what we could do is

1 see if there's support for any changes.

2 MR. GELENDER: Okay. And then?

3 MR. HOBBS: And this is a little backwards, but I  
4 think our usual procedure is then we'll amend the title,  
5 if there's sufficient votes for it, and then at the end  
6 if we have amended the title, then we would have a  
7 motion that takes the form of moving, that the motion  
8 for rehearing be granted to the extent that the Board  
9 had to change the titles. So we sort of -- it's kind of  
10 an awkward thing. We -- we don't ever -- we don't start  
11 by saying shall we rehear this. We've sort of already  
12 been hearing it if that makes any sense at all.

13 MR. GELENDER: Right.

14 MR. HOBBS: I guess I would like to see if  
15 there's two members of the Board that want to make any  
16 changes to the title?

17 MR. GELENDER: Well, there's one member of the  
18 Board at least who is willing to make some members  
19 changes to the title.

20 I think based on the discussion we heard here I  
21 do not have any objection to removing the language "in a  
22 manner similar to alcohol." The proponents seem fine  
23 with it. The opponents want it.

24 I do want to talk a little bit about  
25 Mr. Donahue's point that -- argument that this makes

1 things sort of even worse. As I mentioned before, I  
2 think I didn't agree with that argument on the grounds  
3 that after we say providing for the regulation of  
4 marijuana, which is quite broad, we do limit that quite  
5 a bit by summarizing some of the sort of salient points  
6 about that regulation, not -- so, therefore, I think  
7 this would be the elimination of all (inaudible). I  
8 would be fine with that.

9 MR. HOBBS: And I'm fine with that as well.

10 Do you have any reaction to the idea of adding  
11 the agencies, the state agencies in the title?

12 MR. GELENDER: Yes, I will oppose adding the  
13 agency to the title. One, because I think it could  
14 cause confusion in terms of the local government  
15 enforcement. And secondary -- if there is going to be  
16 enforcement on the criminal side if, for example, people  
17 want to exceed the quantity limit on this or have a  
18 secondary market or something like that or, you know,  
19 continue to provide marijuana on an unlicensed basis, it  
20 seems to me that other state agencies, like the Colorado  
21 Bureau of Investigation or perhaps other local agencies  
22 by county and local law enforcement may get involved,  
23 but I think it would be misleading in the regulation to  
24 a particular department.

25 MR. HOBBS: Okay. I won't make that motion then.

1           But I -- I do support eliminating the phrase "in  
2 a manner similar to alcohol." I'll go ahead and make  
3 that motion that for all eight titles -- and I think  
4 this works for all eight, but somebody present if I'm  
5 wrong, somebody jump up and tell me -- but I'll --  
6 Ms. Gomez will mark it on the titles and stuff for  
7 number 29. I'll lay on the screen in the room. But I  
8 would move that we strike the phrase "in a manner  
9 similar to alcohol" in all eight titles, numbers 29  
10 through 36. Is there a second?

11           MR. GELENDER: Second.

12           MR. HOBBS: All those in favor say aye.

13           Aye.

14           All those opposed, no.

15           That motion carries two to zero.

16           Are there any other changes the Board members  
17 want to propose to the title that has previously been  
18 set?

19           MR. GELENDER: None from me.

20           MR. HOBBS: I don't have anything else. So then  
21 I will move that -- for all eight -- actually let me,  
22 before I do that.

23           Mr. Ramey, this is a bit repetitious, but I think  
24 at the last Title Board meeting you did indicate that  
25 the proponents' intent is to circulate only one measure.

1 MR. RAMEY: That's correct.

2 MR. HOBBS: And because we have similar titles on  
3 these, I'd like to maybe have that reaffirmed.

4 MR. RAMEY: Yes. There will only be one measure  
5 circulated. I'm not sure a decision as been made yet as  
6 to which one it is, but a decision has been made that it  
7 will be one and only one.

8 MR. HOBBS: Thank you.

9 Then I'll go ahead and make the motion that the  
10 Board grant the motion for rehearing to the extent that  
11 we have amended the titles and denied the motion for  
12 rehearing in all other respects.

13 Is there a second?

14 MR. GELENDER: Second.

15 MR. HOBBS: Any further discussion? If not, all  
16 those in favor say aye.

17 Aye.

18 All those opposed, no.

19 That motion carries two to zero.

20 That concludes actions on the Motion for  
21 Rehearing on numbers 29 through 36. The time is  
22 2:59 p.m., and that concludes our agenda. And thank you  
23 all for coming and for participating. Much appreciated.

24 MR. RAMEY: Thank you.

25



REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

I, Jennifer W. Hulac, Registered Professional Reporter and Notary Public within and for the State of Colorado, do hereby certify that this rehearing was reduced to typewritten form from a disk and that the foregoing constitutes a true and correct transcript.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature

and seal this 31st day of July, 2011.

My commission expires November 5, 2012.



*Jennifer W. Hulac*  
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Jennifer W. Hulac  
Registered Professional Reporter