

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: May 6, 2016 12:32 PM
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
<p>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2015-2016 #139 ("Regulation Of The Sale Of Marijuana And Marijuana Products")</p> <p>Petitioners: DEAN C. HEIZER II and GREGORY S. KAYNE</p> <p>v.</p> <p>Respondents: ALI PRUITT and RON CASTAGNA</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DAVID BLAKE; and SHARON EUBANKS</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Petitioners</i> John Paul Seman Jr., No. 18137 JPS LAW GROUP 1700 Lincoln Street, Suite 1530 Denver, Colorado 80203 Phone: (720) 377-0703 Fax: (303) 832-4818 E-mail: jseman@jps-law.net</p> <p>Kevin C. Paul, No. 20941 HEIZER PAUL LLP 2401 15th Street, Suite 300 Denver, CO 80202 Phone: (303) 595-4747 Fax: (303) 595-4750 E-mail: kpaul@hpfirm.com</p>	Case No.:
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #139 ("REGULATION OF THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS")</p>	

Dean C. Heizer II and Gregory S. Kayne (“Petitioners”), registered electors of the State of Colorado, through undersigned counsel, respectfully petition this Court pursuant to C.R.S §1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 201502016 #139 (“Regulation of the Sale of Marijuana and Marijuana Products”).

STATEMENT OF THE CASE

I. Procedural History of Proposed Initiative #139

Ali Pruitt and Ron Castagna (hereafter “Proponents”) proposed Initiative 2015-2016 #139 (the “Proposed Initiative” or “Initiative #139). A review and Comment meeting was held before the Offices of Legislative Council and Legislative Legal Services on April 7, 2016. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for the purposes of submission to the Title Board. The Title Board hearing was held on April 21, 2015 to establish the subjects of the Proposed Initiative and set their titles. On April 27, 2016, Petitioners filed a Motion for Rehearing, alleging that the Proposed Initiative contained multiple subjects, that the titles set impermissibly connected different subjects and would thereby force voters to vote “yes” on subjects they could vote “no” on if presented as stand-alone questions, and that the titles are vague and misleading and fail to reflect the true and complete intent of the

Proponents and the central features of the Proposed Initiative. A rehearing was held on April 29, 2016, at which time the Title Board denied the Motion for Rehearing.

II. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. §1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. §1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. §1-40-107(2).

As required by C.R.S. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiatives filed by the Proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the rulings on the Motion for Rehearing as reflected by the titles and ballot title and submission clauses set by the Title Board. Petitioners believe that the Title Board erred in denying the Motion for Rehearing. Consequently, this matter is properly before this Court.

GROUND FOR APPEAL

In violation of C.R.S. §1-40-106, -107, the title set by the Title Board is unfair, misleading, and does not fairly and correctly express the true meaning of

the Proposed Initiative. The following is an advisory list of issues to be addressed in the Petitioners' brief:

1. Initiative #139 contains and addresses at least two separate and distinct subjects in violation of Colo. Const. art. V, § (5) including the separate subjects of packaging standards for marijuana and marijuana products, the purported health risks health risks of marijuana, specific labelling requirements for marijuana and marijuana products, and limitations on the potency of marijuana and marijuana products.
2. The ballot title set for Initiative #139 impermissibly rolls together separate and independent concepts in violation of C.R.S. §1-40-106 because it seeks a “yes” vote from voters who might well vote “no” on one or more of the separate subjects presented if proposed separately.
3. Initiative #139 is both vague and misleading and fails to correctly and fairly express the true intent and meaning of the measure in violation of C.R.S. §1-40-106(3)(b) by failing to define “retail marijuana”, failing to distinguish whether the title encompasses recreational marijuana or medical marijuana or both, and failing to state that the real purpose and intent is to subvert the will of the people of Colorado by establishing a potency limit of sixteen

percent tetrahydrocannabinol, thereby effectively undermining the voter-passed Amendment 64.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative contains multiple subjects and should be returned to the Proponents or, alternatively, is not fair and accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 6th day of May, 2016.

JPS LAW GROUP

By: s/John Paul Seman Jr.
John Paul Seman Jr., No. 18137
1700 Lincoln Street, Suite 1530
Denver, Colorado 80203
Phone Number: (720) 377-0703
FAX Number: (303) 832-4818
E-mail: jseman@jps-law.net

HEIZER PAUL LLP

By: s/Kevin C. Paul
Kevin C. Paul, No. 20941
2401 15th Street, Suite 300
Denver, Colorado 80202
Phone Number: (303) 595-4747
FAX Number: (303) 595-4750
E-mail: kpaul@hpfirm.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2016 a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #139 ("REGULATION OF THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS")** was filed and served via the Integrated Colorado Courts E-Filing System to the following:

Frank McNulty
Spencer Fane
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
E-mail: fmcnulty@spencerfane.com
Attorneys for Respondents Ali Pruitt and Ron Castagna

And via U.S. Mail, postage pre-paid to:

Suzanne Staiert
Colorado Department of State
1700 Broadway, Suite 200
Denver, Colorado 80203

David C. Blake
Chief Deputy Attorney General
Office of the Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, Colorado 80203

Sharon Eubanks
Deputy Director
Office of Legislative Legal Services
State Capitol Building
200 E. Colfax, Room 091
Denver, Colorado 80203

s/John Paul Seman Jr.

John Paul Seman Jr.

In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

RECEIVED 1:20 P.M.

APR 08 2016 S.WARD

Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

SECTION 1. In the constitution of the state of Colorado, amend section 16 to article XVIII as follows:

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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) "CHILD-RESISTANT" MEANS PACKAGING THAT IS:

(I) DESIGNED OR CONSTRUCTED TO BE SIGNIFICANTLY DIFFICULT FOR CHILDREN UNDER FIVE YEARS OF AGE TO OPEN AND NOT DIFFICULT FOR NORMAL ADULTS TO USE PROPERLY AS DEFINED BY 16 C.F.R. 1700.20 (1995);

(II) OPAQUE SO THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL; AND,

(III) RESEALABLE FOR ANY PRODUCT.

~~(a)~~(b) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised Statutes.

~~(b)~~(c) "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.

~~(e)~~(d) "Department" means the department of revenue or its successor agency.

~~(d)~~(e) "EDIBLE RETAIL MARIJUANA PRODUCT" MEANS ANY RETAIL MARIJUANA PRODUCT WHICH IS INTENDED TO BE CONSUMED ORALLY, INCLUDING BUT NOT LIMITED TO, ANY TYPE OF FOOD, DRINK, OR PILL.

~~(d)~~(f) "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)~~(g) "Locality" means a county, municipality, or city and county.

~~(f)~~(h) "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)~~(i) "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)~~(j) "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)~~(k) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

~~(j)~~(l) "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)~~(m) "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)~~(n) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

~~(m)~~(o) "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)~~(p) "POTENCY" MEANS THE PERCENTAGE OF TETRAHYDROCANNABINOL AND OTHER PSYCHOACTIVE CANNABINOIDS IN MARIJUANA OR MARIJUANA PRODUCTS.

~~(o)~~(q) "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.

~~(p)~~(r) "SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT" MEANS AN EDIBLE RETAIL MARIJUANA PRODUCT FOR SALE TO CONSUMERS CONTAINING NO MORE THAN 10MG OF ACTIVE TETRAHYDROCANNABINOL.

~~(q)~~(s) "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 consistently 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.

(5.5) CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS. (a) IN ORDER TO ACCOMMODATE PUBLIC HEALTH AND SAFETY AS THEY RELATE TO MARIJUANA IN COLORADO, AND TO ENSURE THAT THE PUBLIC IS WELL EDUCATED ON THE SIDE EFFECTS AND POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS, MARIJUANA AND MARIJUANA PRODUCTS THAT ARE OFFERED FOR SALE MUST:

(1) BE CONTROLLED AND SOLD IN CHILD-RESISTANT PACKAGING AS MARIJUANA OR AS A SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT THAT IS INDIVIDUALLY PACKAGED.

(2) HAVE PRINTED ON THE MARIJUANA PACKAGING OR MARIJUANA PRODUCT PACKAGING, ALONG WITH LABELING CONTROLS AT THAT TIME, THE FOLLOWING:

(A) IDENTIFIED HEALTH RISKS, INCLUDING, BUT NOT LIMITED TO:

(I) INCREASED CHANCE OF A HARMFUL REACTION DUE TO HIGHER TETRAHYDROCANNABINOL LEVELS;

(II) BIRTH DEFECTS AND REDUCED BRAIN DEVELOPMENT;

- (III) INCREASED RISK OF BRAIN AND BEHAVIORAL PROBLEMS IN BABIES;
- (IV) BREATHING PROBLEMS;
- (V) PERMANENT LOSS OF BRAIN ABILITIES;
- (VI) ALTERED SENSES AND MOOD SWINGS;
- (VII) IMPAIRED BODY MOVEMENT AND IMPAIRED THINKING;
- (VIII) DEPRESSION, ANXIETY, AND TEMPORARY PARANOIA;
- (IX) POTENTIAL FOR LONG-TERM ADDICTION.

(B) THE POTENCY OF THE PRODUCT.

(b). MARIJUANA AND MARIJUANA PRODUCTS MUST BE CONTROLLED LIKE ALCOHOL. THE POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS WILL BE CONTROLLED WITH AN UPWARD POTENCY LIMIT THAT DOES NOT EXCEED 16%.

(c) THE COLORADO GENERAL ASSEMBLY IS AUTHORIZED TO ADOPT BY BILL MEASURES THAT ADVANCE THE PUBLIC'S INTEREST IN THE PUBLIC HEALTH AND SAFETY RELATED TO THE CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS IN COLORADO SO LONG AS ITS ACTIONS DO NOT CONTRAVENE THIS SUBSECTION 5.5.

(d) NOTHING IN THIS SUBSECTION (5.5) WILL BE CONSIDERED UNREASONABLY IMPRACTICAL AND IS IN THE INTEREST OF PUBLIC HEALTH AND SAFETY.

(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.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #139¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol?

Hearing April 21, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:27 p.m.

¹ Unofficially captioned “**Regulation of the Sale of Marijuana and Marijuana Products**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

APR 27 2016

S. WARD
4:47 P.M.

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR
PROPOSED INITIATIVE 2015-2016 #139

MOTION FOR REHEARING OF OPPONENTS TO PROPOSED INITIATIVE NO. 139:
"REGULATION OF THE SALE OF MARIJUANA & MARIJUANA PRODUCTS"

Colorado registered electors Dean C. Heizer II and Gregory S. Kayne (the "Movants"), by and through their undersigned counsel, John Paul Seman, Jr., of JPS Law Group, and Heizer | Paul LLP, hereby request a rehearing before the Colorado Ballot Title Setting Board (the "Board") with respect to Initiative 2015-2016 No. 139, regarding Regulation of the Sale of Marijuana and Marijuana Products ("No. 139"). As set forth below, Movants respectfully object to the title, the ballot title, and the submission clause set by the Board based upon the following:

I. BACKGROUND

On April 21, 2016, the Board approved the following title for No. 139:

An amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, **requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol.**

See Colorado Secretary of State, Results for Proposed Initiative #139 (www.sos.state.co.us/pubs/elections/initiatives/titleboard/results/2015-2016) (emphasis added).

The Board then set the ballot title and submission clause as follows:

Shall there be an amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol?

See id.

II. GROUNDS FOR RECONSIDERATION

A. NO. 139 IMPERMISSABLY ADDRESSES MULTIPLE SUBJECTS.

No. 139 addresses at least two separate and distinct subjects. It is therefore prohibited by article V, section 5 of the Colorado Constitution and the Board should therefore decline to set a title, ballot title, and submission clause.

Each initiative that proposes an amendment to the State Constitution shall contain only one subject, clearly expressed in the title set for that initiative. *See* Colo. Const. Art. V., § 1(5.5) (the "Single Subject Rule"); *see also* C.R.S. § 1-40-106.5 (Single-subject requirements for initiated measures); *In re Title, Ballot Title, Submission Clause*, 974 P.2d 458, 463 (Colo. 1999) (proposed initiative violates single subject rule where it "has at least two distinct and separate purposes which are not dependent upon or connected with each other.").

Under the umbrella of "Controlled sale of marijuana and marijuana products," No. 139 would add provisions to Article XVIII, Section 16 of the Colorado Constitution that create the following:

1. New "child-resistant" packaging standards;
2. New edible marijuana product "single-serving" packaging standards;
3. New "health risks" labeling requirements;
4. New "potency" labeling requirements;
5. A new mandate that marijuana and marijuana products "be controlled like alcohol;" and
6. A new limitation on the "potency" of marijuana and marijuana products.

Taken together, these provisions impermissibly address at least the following four separate and independent subjects: (i) packaging of marijuana and marijuana products; (ii) the purported health risks of marijuana; (iii) labelling requirements for marijuana and marijuana products; and (iv) marijuana and marijuana product potency limitations. None of these subjects is clearly expressed in the title set for No. 139. As a consequence, the Board should reconsider its initial determination and should conclude that no title can be set.

B. NO. 139 SEEKS A "YES" VOTE FROM VOTERS WHO MIGHT WELL VOTE "NO" ON ONE OR MORE OF ITS SUBJECTS IF PROPOSED SEPARATELY.

The Single Subject Rule prohibits attempts to roll together multiple subjects in order to attract the votes of those who would favor one of those subjects, but would oppose the others. *See, e.g., In re Proposed Initiative for 2005-2006 #74*, 136 P.3d 237, 242 (Colo. 2006); *In re Proposed Initiative for 1997-1998 #84*, 961 P.2d 456, 458 (Colo. 1998). Initiative No. 139 clearly combines multiple, disparate subjects in an attempt to attract voters who might oppose

one of these subjects if it were standing alone. Specifically, some voters may favor enshrining in the Colorado Constitution additional packaging and labelling requirements for retail marijuana, particularly to make such products "child-resistant", but not favor, or even understand, prohibiting the lawful sale of all forms of marijuana for which the ill-defined "potency" exceeds "16%". Therefore, the Board should determine that No. 139 violates the Single Subject Rule and that a title cannot be set for it.

C. NO. 139 IS BOTH VAGUE AND MISLEADING AND THE BOARD CANNOT FAIRLY SET A TITLE FOR IT.

A measure's title and submission clause must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. §1-40-106(3)(b). The title and submission clause should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010) "[A] material omission can create misleading titles." *In re Title, Ballot and Submission Clause 1999-2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000).

The title and submission clause for measure #139 are misleading and confusing because they fail to describe important aspects of the measure. Among other defects, the title and submission clause:

1. Fails to reflect what is meant by "retail marijuana" and does not clearly distinguish whether the title encompasses recreational or medical marijuana, or both;
2. Fails to state that the real purpose of the measure is to subvert the will of the people of Colorado by establishing a potency limit of 16% tetrahydrocannabinol thereby effectively neutering the voter-passed Amendment 64.

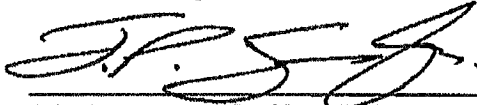
Therefore, the Board should determine that No. 139 fails to correctly and fairly express the true intent and meaning and that a title cannot be set for it.

CONCLUSION

Based on the forgoing, Mr. Heizer and Mr. Kayne request a rehearing of the Title Board for Initiative 2015-2016 #139. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents, and therefor the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Heizer and Mr. Kayne respectfully request the Title Board amend the title and submission clause consistent with the concerns set forth above and as set forth in Exhibit A.

Respectfully submitted this 27th day of April, 2016 by:

JPS Law Group



John Paul Semaan Jr., No. 18137
1700 Lincoln Street, Suite 1530
Denver, CO. 80203
Phone: 720-377-0703
Fax: 303-832-4818
Email: jseman@jps-law.net

Heizer Paul LLP

/s/ Kevin C. Paul
Kevin C. Paul, No. 20941
2401 15th St., Suite 300
Denver, CO. 80202
Phone: 303-595-4747
Fax: 303-595-4750
Email: kpaul@hpfirm.com

Attorneys for Dean C. Heizer II and Gregory S. Kayne

Objectors' addresses:

Dean C. Heizer II
4458 S. Coors Court
Morrison, CO. 80465

Gregory S. Kayne
1135 N. Ogden Street, No. 18
Denver, CO. 80218

Exhibit A

**Colorado Secretary of State
Title Board
Attn: Title Board
1700 Broadway, Suite 200
Denver, CO 80290**

**Electronic copy to Steve Ward
(steven.ward@sos.state.co.us)**

**Electronic copy to Title Board
(initiatives@sos.state.co.us)**

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE, BALLOT
TITLE, AND SUBMISSION CLAUSE FOR
PROPOSED INITIATIVE 2015-2016 #139

AFFIDAVIT OF SERVICE

STATE OF COLORADO

COUNTY OF DENVER

)
) ss.
)

JOHN P. SEMAN JR., of lawful age, being first duly sworn upon oath,
states and declares:

That he is one of the attorneys for the Applicants herein; that on the 27th day of
April, 2016, he caused a copy of the attached MOTION FOR REHEARING OF
OPPONENTS TO PROPOSED INITIATIVE NO. 139:
"REGULATION OF THE SALE OF MARIJUANA & MARIJUANA PRODUCTS" to be
delivered to the persons listed on Exhibit A in the manner indicated therein.

By: Alexandra Zvereva

Subscribed and sworn to before me this 27th day of April, 2016.

Witness my hand and official seal.

My commission expires: March 28, 2019.

/s/ Alexandra Zvereva
Notary Public

Ballot Title Setting Board

Proposed Initiative 2015-2016 #139¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol?

Hearing April 21, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:27 p.m.

Rehearing April 29, 2016:

Motion for Rehearing denied.

Hearing adjourned 10:53 a.m.

¹ Unofficially captioned “**Regulation of the Sale of Marijuana and Marijuana Products**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



DATE FILED: May 6, 2016 12:32 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #139 'Regulation of the Sale of Marijuana and Marijuana Products'".....

.....

..... **IN TESTIMONY WHEREOF** I have unto set my hand

and affixed the Great Seal of the State of Colorado, at the
City of Denver this 2nd day of May, 2016.

Wayne W. Williams

SECRETARY OF STATE



RECEIVED 1:20 P.M.

APR 08 2016 S.WARD

Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

In the constitution of the state of Colorado, **amend** subsection (2) of section 16 to article 18; and **add** subsection (5.5) of section 16 of article 18 as follows:

Section 16. Personal use and regulation of marijuana.

(2) Definitions. As used in this section, unless the context otherwise requires,

(a) "CHILD-RESISTANT" MEANS PACKAGING THAT IS:

(I) DESIGNED OR CONSTRUCTED TO BE SIGNIFICANTLY DIFFICULT FOR CHILDREN UNDER FIVE YEARS OF AGE TO OPEN AND NOT DIFFICULT FOR NORMAL ADULTS TO USE PROPERLY AS DEFINED BY 16 C.F.R. 1700.20 (1995);

(II) OPAQUE SO THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL; AND,

(III) RESEALABLE FOR ANY PRODUCT.

(a)(b) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised Statutes.

(b)(c) "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.

(e)(d) "Department" means the department of revenue or its successor agency.

(d)(e) "EDIBLE RETAIL MARIJUANA PRODUCT" MEANS ANY RETAIL MARIJUANA PRODUCT WHICH IS INTENDED TO BE CONSUMED ORALLY, INCLUDING BUT NOT LIMITED TO, ANY TYPE OF FOOD, DRINK, OR PILL.

(d)(f) "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)(g) "Locality" means a county, municipality, or city and county.

(f)(h) "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)~~(i) "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)~~(j) "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)~~(k) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

~~(j)~~(l) "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)~~(m) "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)~~(n) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

~~(m)~~(o) "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)~~(p) "POTENCY" MEANS THE PERCENTAGE AT THE POINT OF SALE OF TETRAHYDROCANNABINOL BY TOTAL WEIGHT IN MARIJUANA OR MARIJUANA PRODUCTS, EXCLUDING EDIBLE RETAIL MARIJUANA PRODUCTS. FOR EDIBLE RETAIL MARIJUANA PRODUCTS, POTENCY MEANS THE WEIGHT AT THE POINT OF SALE OF TETRAHYDROCANNABINOL EVENLY DISTRIBUTED IN AN EDIBLE RETAIL MARIJUANA PRODUCT.

~~(p)~~(q) "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.

~~(p)~~(r) "SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT" MEANS AN EDIBLE RETAIL MARIJUANA PRODUCT FOR SALE TO CONSUMERS CONTAINING NO MORE THAN 10MG OF ACTIVE TETRAHYDROCANNABINOL.

~~(e)~~(s) "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.

(5.5) CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS. (a) IN ORDER TO ACCOMMODATE PUBLIC HEALTH AND SAFETY AS THEY RELATE TO MARIJUANA IN COLORADO, AND TO ENSURE THAT THE PUBLIC IS WELL EDUCATED ON THE SIDE EFFECTS AND POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS, MARIJUANA AND MARIJUANA PRODUCTS THAT ARE OFFERED FOR SALE MUST:

(I) BE CONTROLLED AND SOLD IN CHILD-RESISTANT PACKAGING AS MARIJUANA OR AS A SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT THAT IS INDIVIDUALLY PACKAGED.

(II) HAVE PRINTED ON THE MARIJUANA PACKAGING OR MARIJUANA PRODUCT PACKAGING, ALONG WITH LABELING CONTROLS AT THAT TIME, THE FOLLOWING:

(A) IDENTIFIED HEALTH RISKS, INCLUDING, BUT NOT LIMITED TO:

(i) INCREASED CHANCE OF A HARMFUL REACTION DUE TO HIGHER TETRAHYDROCANNABINOL LEVELS;

(ii) BIRTH DEFECTS AND REDUCED BRAIN DEVELOPMENT;

(iii) INCREASED RISK OF BRAIN AND BEHAVIORAL PROBLEMS IN BABIES;

(iv) BREATHING PROBLEMS;

(v) PERMANENT LOSS OF BRAIN ABILITIES;

(vi) ALTERED SENSES AND MOOD SWINGS;

(vii) IMPAIRED BODY MOVEMENT AND IMPAIRED THINKING;

(viii) DEPRESSION, ANXIETY, AND TEMPORARY PARANOIA;

(ix) POTENTIAL FOR LONG-TERM ADDICTION.

(B) THE POTENCY OF THE PRODUCT.

(b) THE POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS WILL BE CONTROLLED WITH AN UPWARD POTENCY LIMIT THAT DOES NOT EXCEED 16%.

(c) THE COLORADO GENERAL ASSEMBLY IS AUTHORIZED TO ADOPT BY BILL MEASURES THAT ADVANCE THE PUBLIC'S INTEREST IN THE PUBLIC HEALTH AND SAFETY RELATED TO THE CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS IN COLORADO SO LONG AS ITS ACTIONS DO NOT CONTRAVENE THIS SUBSECTION 5.5.

(d) NOTHING IN THIS SUBSECTION (5.5) WILL BE CONSIDERED UNREASONABLY IMPRACTICAL AND IS IN THE INTEREST OF PUBLIC HEALTH AND SAFETY.

RECEIVED 1:20 P.M.
APR 08 2016 S.WARD

Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

SECTION 1.—In the constitution of the state of Colorado, **amend** subsection (2) of section 16 to article 18XVIII; and **add** subsection (5.5) of section 16 of article 18 as follows:

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) “CHILD-RESISTANT” MEANS PACKAGING THAT IS:

(I) DESIGNED OR CONSTRUCTED TO BE SIGNIFICANTLY DIFFICULT FOR CHILDREN UNDER FIVE YEARS OF AGE TO OPEN AND NOT DIFFICULT FOR NORMAL ADULTS TO USE PROPERLY AS DEFINED BY 16 C.F.R. 1700.20 (1995);

(II) OPAQUE SO THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL; AND,

(III) RESEALABLE FOR ANY PRODUCT.

~~(a)~~(b) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised Statutes.

~~(b)~~(c) "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.

~~(e)~~(d) "Department" means the department of revenue or its successor agency.

~~(d)~~(e) "EDIBLE ~~R~~RETAIL ~~M~~MARIJUANA ~~P~~PRODUCT" MEANS ANY ~~R~~RETAIL ~~M~~MARIJUANA ~~P~~PRODUCT WHICH IS INTENDED TO BE CONSUMED ORALLY, INCLUDING BUT NOT LIMITED TO, ANY TYPE OF FOOD, DRINK, OR PILL.

~~(d)~~(f) "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)~~(g) "Locality" means a county, municipality, or city and county.

~~(f)~~(h) "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)~~(i) "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)~~(j) "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)~~(k) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

~~(j)~~(l) "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)~~(m) "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)~~ (n) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

~~(m)~~(o) "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)~~(p) "POTENCY" MEANS THE PERCENTAGE AT THE POINT OF SALE OF TETRAHYDROCANNABINOL AND OTHER PSYCHOACTIVE CANNABINOIDS BY TOTAL WEIGHT IN MARIJUANA OR MARIJUANA PRODUCTS, EXCLUDING EDIBLE RETAIL MARIJUANA PRODUCTS. FOR EDIBLE RETAIL MARIJUANA PRODUCTS, POTENCY MEANS THE WEIGHT AT THE POINT OF SALE OF TETRAHYDROCANNABINOL EVENLY DISTRIBUTED IN AN EDIBLE RETAIL MARIJUANA PRODUCT.

~~(n)~~(q) "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.

~~(p)~~(r) "~~SINGLE-SERVING~~ ~~EEDIBLE~~ ~~RRETAIL~~ ~~MMARIJUANA~~ ~~PPRODUCT~~" MEANS AN ~~EEDIBLE~~ ~~RRETAIL~~ ~~MMARIJUANA~~ ~~PPRODUCT~~ FOR SALE TO CONSUMERS CONTAINING NO MORE THAN 10MG OF ACTIVE TETRAHYDROCANNABINOL.

(e)(s) "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:~~

~~—— (1) 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 consistently 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.~~

(5.5) CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS. (a) IN ORDER TO ACCOMMODATE PUBLIC HEALTH AND SAFETY AS THEY RELATE TO MARIJUANA IN COLORADO, AND TO ENSURE THAT THE PUBLIC IS WELL EDUCATED ON THE SIDE EFFECTS AND POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS, MARIJUANA AND MARIJUANA PRODUCTS THAT ARE OFFERED FOR SALE MUST:

~~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.~~