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SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
In the Matter of The Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #127 (Establishment of State-Owned Bank) **Petitioners:** EARL STAELIN AND DAVID RUNCO, v. **Respondents:** BARBARA M.A. WALKER AND DON CHILDEARS, and **Title Board:** JASON GELENDER, TROY BRATTON, and DAVID BLAKE.	▲ **COURT USE ONLY** ▲
Attorneys for Respondent Barbara M.A. Walker: Deanne R. Stodden, #33214 COAN, PAYTON & PAYNE, LLC 999 18TH Street, Suite S1500 Denver, CO 80202 Telephone: 303.861-8888 Email: dstodden@cp2law.com	Case No.: 2016SA148

ANSWER BRIEF OF RESPONDENT BARBARA M.A. WALKER

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief complies with C.A.R. 28(g). It contains 1,988 words.

This brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Deanne R. Stodden

Deanne R. Stodden
COAN, PAYTON & PAYNE, LLC
Attorneys for Respondent Barbara M.A. Walker

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Respondent, Barbara M.A. Walker ("Respondent Walker"), a registered elector of the State of Colorado, through her undersigned counsel, respectfully submits this Answer Brief in support of the Title Board's decision to deny setting a title, ballot title, and submission clause for proposed Initiative 2015-2016 #127 ("Initiative 127" or the "Initiative").

SUMMARY OF THE ARGUMENT

In their Opening Brief, the Proponents fail to demonstrate that the Proponents' striking of the language in Subsection (3) (d) of the Initiative alluding to the State-Owned Bank accepting deposits from the marijuana industry, and adding the language in Subsection (6) (b) after the Review and Comment Hearing were not substantial amendments to the Initiative. In addition, the Proponents have failed to demonstrate that these changes were made in direct response to a question or comment from the representatives of the Offices of Legislative Council and Legislative Legal Services ("Legislative Offices"). As a result, the Title Board's decision to deny setting a title, ballot title and submission clause should be affirmed.

ARGUMENT

I. Standard of Review and Preservation of Issue.

Respondent Walker agrees with Proponents', Respondent Childears' and the Title Board's statements concerning applicable standard of review and preservation of the issue.

II. The Proponents Fail to Demonstrate that the Removal of Subsection (3) (d) and the Addition of Subsection (6) (b) Are Not Substantial Amendments to the Initiative.

In their Opening Brief, the Proponents argue that the Title Board erred in finding that the removal of Subsection (3) (d) from the Initiative and the addition of Subsection (6) (b) were substantial changes to the Initiative. Despite the fact that Subsection (3) (d) was only three lines and Subsection (6) (b) is twelve lines and despite the fact that the language is not the same, the Proponents argue that removing Subsection (3) (d) and "moving" it to Subsection (6) (b) is merely a clarification. *Proponents' Opening Brief, p. 5, 8.* To the contrary, the removal of Subsection (3) (d) was not just "moving" a provision. It was a calculated maneuver designed to conceal the Initiative's true intent, which is to bank the marijuana industry. The Proponents acknowledge that marijuana industry funds "was the concern of the provision," (*Id. at 5)*, yet, by removing the language that was in Subsection (3) (d), the Proponents removed the only language that would have possibly indicated the true intent of the Initiative.

The Proponents revealed the intent behind removing the language in Subsection (3) (d) in their response to the Title Board's question "Why did you strike it?" The Proponent stated that Subsection (3) (d) was stricken because the Proponents assumed "[the objectors] would want to raise the argument that we are trying to appeal to the marijuana industry to get it passed or it's a second subject and it unduly highlights that particular issue." *Audio for April 28, 2016 Title Board Rehearing.*[1] It was difficult to discern the true intent of the Initiative from the initial version, but it is virtually impossible to discern the true intent of the Initiative from the amended version. The intent of accepting deposits from and providing banking services for the marijuana industry is effectively buried in the new Subsection (6) (b), which "lists a number of the issues that will be considered by the bank." *Proponents' Opening Brief, p. 12*. Clearly, removing or adding language for the specific purpose of hiding the intent of the initiative and thereby avoiding an objection to an initiative is substantive in nature and the public was entitled to a public hearing after the changes were made.

In their Opening Brief, Proponents turn to the Cambridge Dictionary for a definition of "substantial." *Id. pp. 9-10*. However, the Court need not look to a

[1] Audio for the Rehearing can be found on the Secretary of State's website at http://www.sos.state.co.us/pubs/info_center/audioArchives.html. Open page by clicking on "April 28, 2016", "Part 4" which started at 13:32. The response to the question "Why did you strike it?" starts at approximately 10:43 of the recording.

dictionary, since this Court has defined both a substantial and a non-substantial amendment in several cases. A non-substantial amendment is one that is editorial in nature, or "promotes the use of plain, nontechnical language," (*See In Re: The Matter of Proposed Initiative for an Amendment to Article XVI, Section 6, Colorado Constitution, Entitled "W.A.T.E.R.*", 875 P.2d 861, 867 (Colo. 1994) or "encourage[s] linguistic refinement." *See In Re: Proposed Initiated Constitutional Amend. Concerning Limited Gaming in the Town of Idaho Springs,* 830 P.2d 962, 968 (Colo. 1992).

By contrast, the adoption of language in a subsequent draft of a proposal that "substantially alters the **intent and meaning of central features** of the initial proposal *is* a substantial amendment. The public's right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices." *Id. (Emphasis added*).

The changes made to Initiative 127 were not to designed to utilize nontechnical language or refine the language contained in the Initiative, nor were they editorial in nature. The changes made to the Initiative were designed to conceal the intent of the Initiative and to avoid an objection and, much like the initiative in

Limited Gaming, the changes effectively altered the central features of the Initiative. As such, the changes were substantial and, in the absence of a second public hearing, the Title Board correctly determined it did not have jurisdiction to set a title for the Initiative.

III. The Proponents Fail to Address Whether the Removal of Subsection (3) (d) and the Addition of Subsection (6) (b) were Changes Made in Direct Response to a Question or Comment from the Legislative Offices.

C.R.S. § 1-40-105(2) states in relevant part:

> "If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors for comment in accordance with subsection (1) of this section prior to submittal to the secretary of state as provided in subsection (4) of this section."

Thus, Section 105(2) requires a two-prong analysis: 1) was the change substantial and 2) was the change made in direct response to a question or comment from the Legislative Offices. In their Opening Brief, the Proponents only argue one of the two prongs. Proponents do not argue that the changes were made in direct response to a question or comment from the Legislative Offices, presumably because they were not. As previously discussed, by the Proponents' own admission, the changes were made to avoid an objection to the Initiative. Thus, because the changes to the Initiative after the Review and Comment Hearing were substantive and they were not in direct response to a question from the Legislative Offices, under both prongs

of the analysis required by C.R.S. 1-40-105(2), the Initiative should have been resubmitted for review and comment and another public hearing and, in the absence of such, the Title Board correctly found that it did not have jurisdiction to set a title.

CONCLUSION

The Proponents of Initiative #127 made substantial amendments to the Initiative after the Review and Comment Hearing that were not in direct response to questions or comments from the Legislative Offices. These amendments to the Initiative altered the intent and meaning of the central features of the Initiative. Because the Proponents did not resubmit the measure to the Legislative Offices for review and public comment as required under both Article V, Section 1 (5) of the Colorado Constitution and C.R.S. § 1-40-105 (2), the Title Board correctly found that it was without jurisdiction to set the title, ballot title and submission clause, and summary for Initiative #127. Therefore, the Court should affirm the Title Board's April 28, 2016, action regarding Initiative 2015-2016 #127.

Respectfully submitted this 31st day of May 2016.

COAN, PAYTON & PAYNE, LLC

/s/ Deanne R. Stodden
Deanne R. Stodden, #33214
Attorneys for Respondent Barbara M.A. Walker

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2016, a true and correct copy of the foregoing **ANSWER BRIEF OF RESPONDENT BARBARA M.A. WALKER** was filed and served via the Colorado ICCES system to the following:

Earl H. Staelin
1873 S. Bellaire Street, Suite 1401
Denver, CO 80222
Attorney for Petitioners

Jason R. Dunn
David Meschke
Brownstein Hyatt Farber Schreck LLP
410 17th Street
Denver, CO 80202
Attorneys for Respondent Don Childears

LeAnn Morrill
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Attorney for the Title Board

s/ Deanne R. Stodden
Deanne R. Stodden

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.