

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2015) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #126</p> <p>Petitioner: John Grayson Robinson,</p> <p>v.</p> <p>Respondents: James Rodriguez and Lewis Tulper,</p> <p>and</p> <p>Title Board: Suzanne Staiert, David Blake, and Sharon Eubanks.</p>	<p>Supreme Court Case No.: 16SA156</p>
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<p>PETITIONER’S ANSWER BRIEF</p>	

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:

The brief complies with C.A.R. 28(g).

It contains 806 words.

The brief complies with C.A.R. 28(b).

For the party responding to the issue:
It contains under a separate heading a statement whether the party agrees with the other party's statement of standard of review.

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/ Thomas M. Rogers III

Thomas M. Rogers III

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Petitioner John Grayson Robinson, through his undersigned counsel, hereby submits this Answer Brief:

RESPONSE TO RESPONDENTS' STATEMENT OF ISSUES PRESENTED FOR REVIEW

In their Opening Brief, Respondents have framed the Initiative's single subject issue as follows: "Is allowing liquor license owners the ability to own a maximum of ten licenses a single subject?" That is an inaccurate characterization of what the Initiative does. The Initiative does not give *any* liquor license owner the ability to own a maximum of ten licenses. Instead, it singles out two license types among twenty-two currently permitted under Colorado; for each of the two license types, it expands the number of licenses an owner may have from one to ten; and for each of the two license types, it repeals the prohibition on ownership of another type of license. In addition, the measure only applies to two of the seven license types that permit the sale of alcohol for off-premises consumption.

Thus the issue presented to this Court is whether the Initiative has only a single subject when it (1) expands the number of licenses a retail liquor store owner may have; (2) expands the number of licenses a liquor-licensed drugstore owner may have; and (3) repeals the prohibition on both of these types of licenses from owning another type of license.

SUMMARY OF THE ARGUMENT

Even the Respondents are unable to articulate the single subject of the Initiative and admit that Initiative #126 changes current law in several ways. Nevertheless, they continue to insist that the Initiative contains only a single subject. Contrary to the Respondents' arguments, changing current law to expand the number of licenses a retail liquor store licensee may have *and* changing current law prohibiting a retail liquor store licensee from owning other types of licenses constitutes two distinct subjects. And the Initiative multiplies those changes by two in that it also seeks to make those changes for another type of license – a liquor-licensed drugstore license. Voters may reasonably support or oppose one of the proposed changes, but not others. Forcing an all-or-nothing proposition violates the single subject requirement.

RESPONSE TO RESPONDENTS' STANDARD OF REVIEW

Respondents' statement of the applicable standard of review is incomplete. While the Court will overturn the Board's decision in the "clear case," the issue of whether the Board had jurisdiction to set title is a question of law that this Court reviews *de novo*. *Hayes v. Ottke*, 293 P.3d 551, 554 (Colo. 2013).

ARGUMENT

Respondents admit that Initiative 126 seeks to change Colorado law in several ways, each of which constitutes a separate subject.

Respondents describe Initiative 126 as follows:

Initiative 126 changes the one-license statutory limits **in several ways**: **First**, it allows owners only – not shareholders, part owners or interested persons – to hold multiple licenses. **Second**, it allows the owners to hold up to ten licenses. **Third**, it allows retailer licensees to hold licenses for drugstores. **Fourth**, it allows drugstore licensees to hold licenses for retailers. And **fifth**, it applies the ten-license limit to any combination of retailer and drugstore licenses.

Resp'ts' Br. 3-4 (emphases added). Yet, Respondents insist that the Initiative contains only a single subject – allowing two types of liquor sellers a maximum of ten licenses. Nowhere in that statement of the Initiative's single subject is the surreptitious repeal of the current prohibition on those licensees to own another type of license reflected. According to the Respondents' arguments, the voters should somehow discern that expansion of the current limit from one to ten will necessarily and properly mean that those two types of licensees can also own another type of license.

Those arguments ignore the fact that the two prohibitions—the prohibition from owning more than one type of license for most license types and the prohibition from owning other types of licenses—are two distinct, long-standing policies under Colorado law. The voters may reasonably support the repeal of one

of those prohibitions—and even then, the voters may reasonably support the repeal of that prohibition with respect to one type of license only—but not the other prohibition. Put simply, the voters should not have to be forced into an all-or-nothing choice. Each of the four proposed changes may, and should, be presented to the voters as a separate initiative. *See In re Title, Ballot Title, & Submission Clause for 2009-2010, No. 24*, 218 P.3d 350, 353 (Colo. 2009) (“the single subject requirement protects against proponents that might seek to secure an initiative’s passage by joining together unrelated or even conflicting purposes and pushing voters into an all-or-nothing decision”).

CONCLUSION

Petitioner respectfully requests that this Court find that Initiative 126 contains multiple incongruous subjects, the Title Board lacked jurisdiction to set title for Initiative 126, and to reverse the action of the Title Board in setting title for Initiative 126.

Respectfully submitted this 2nd day of June, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2016, a true and correct copy of the foregoing was served on the following via ICCES:

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