

<p><b>COLORADO SUPREME COURT</b>  Colorado State Judicial Bldg.  2 E. 14th Ave., 4th Floor  Denver, CO 80203</p>	<p>DATE FILED: June 2, 2016 11:54 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2),  C.R.S.  Appeal from the Ballot Title Board</p>	
<p><b>In re the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative  2015-2016 #126</b></p> <p><b>Petitioner:</b>  John Grayson Robinson</p> <p>v.</p> <p><b>Respondents:</b>  James Rodriquez and Lewis Tulper,    <b>and</b></p> <p><b>Title Board:</b>  Suzanne Staiert, David Blake, and Sharon Eubanks.</p>	<p>▲ Court Use Only ▲</p>
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<p align="center"><b>Respondents James Rodriquez and Lewis Tulper's  Answer Brief</b></p>	

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## 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).

Choose one:

It contains 1,669 words.

It does not exceed 30 pages.

The 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.

/s/ Scott E. Gessler  
Scott E. Gessler, #28944

## **Statement of Issues Presented for Review.**

The Proponents incorporate the “Statement of Issues Presented for Review” from their *Opening Brief*.

## **Statement of the Case.**

The Proponents incorporate the “Statement of the Case” from their *Opening Brief*.

## **Summary of Argument.**

Structurally, Robinson argues that each individual provision in Proposed Initiative #126 constitutes a separate subject. But he has repeatedly shifted which provisions constitute a separate subject, showing that he cannot consistently identify separate subjects. The single subject requirement does not require each implementation detail to be a separate initiative.

Furthermore, Robinson’s argument that each type of license is a separate subject – or conversely that a single subject must modify all similar items in an enumerated statutory list – produces an absurd result. A rule that each item in a statutory list constitutes a separate subject would limit the right of initiative to simplistic, one-item initiatives.

Finally, Robinson’s claim that the creation of a new “exception” to the prohibition on owning multiple liquor licenses ignores entirely how the expansion of liquor licenses can take place only as part of the overall increase in the number of licenses. It is not a separate exception, but rather the very mechanism that gives licensees the flexibility to own up to ten separate licenses.

## **Argument**

### **I. Robinson identifies interlocking provisions and attempts to argue that each constitutes a separate subject.**

Robinson looks at the proposed ballot initiative, identifies each provision within the initiative, and then declares each provision to be a separate “subject.” This Court has rejected this approach. Implementation details do not constitute separate subjects.<sup>1</sup>

This flaw is evident throughout his *Opening Brief*, because Robinson frequently shifts which implementation details he complains create separate subjects. In framing his argument in the “Statement of Issues Presented for Review,” Robinson claims “multiple subjects” because the proposed initiative’s three central features ( it involves (1) two distinct types of licenses; (2) increases the numbers of licenses one licensee

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<sup>1</sup> *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000). *See also In re Initiative for 1997–98 # 74*, 962 P.2d at 929.

can own; and (3) allows a licensee to own two types of licenses as part of the new limit)<sup>2</sup> are three separate, discrete subjects.

Yet in the next paragraph in the “Statement of the Case” and again two pages later in the “Summary of the Argument,” Robinson instead argues only two separate subjects -- an increase in the number of licenses, and a licensee’s ability to combine two types of licenses as part of the new limit.<sup>3</sup>

Robinson’s “Argument” abandons his claim that the increase from one to ten licenses is a separate subject and instead argues that making changes to two licenses constitutes two subjects<sup>4</sup> (which he argues should be separated into two ballot measures),<sup>5</sup> and that allowing a licensee to own two types of licenses as part of the ten-license cap is another, third, subject.<sup>6</sup> These subjects are inconsistent with both his *Motion to Reconsider*, which claimed four separate subjects, and his *Petition for Review*, which claimed two separate subjects.

Robinson’s shifting single-subjects vividly demonstrate that he cannot consistently identify the subjects that he claims violate the single subject rule. Rather, he has identified the proposed measure’s implementation details and constructed

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<sup>2</sup> Robinson’s *Op. Br.* 1.

<sup>3</sup> *Id.* at 1 and 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 7.

arguments that each forms a separate subject. Robinson analysis, would require the proponents to divide Proposed Initiative #126 into at least four separate initiatives:

1. An initiative to increase the number of licenses that a retail liquor store licensee may hold from one retail liquor store license to ten retail liquor store licenses.
2. An initiative to increase the number of licenses that a liquor-licensed drugstore licensee may hold from one liquor-licensed drugstore license to ten liquor-licensed drugstore licenses.
3. An initiative to allow a retail liquor store licensee to own one or more liquor-licensed drugstore licenses as part of the ten retail liquor store licenses.
4. An initiative to allow a liquor-licensed drugstore licensee to own one or more retail liquor store licenses as part of the ten liquor-licensed drugstore licenses.

Robinson's approach produces an absurd result. The single subject requirement does not require proponents to "nibble away" at a statutory change by running multiple initiatives to cover each and every modification of an interconnected statutory framework.

## **II. A single subject may encompass two types of liquor sales licenses.**

Robinson explains in detail that Colorado contains multiple types of licenses permitting alcohol sales, and he argues that because Proposed Initiative #126 modifies two types of licenses, it must have two subjects. He assumes, for argument sake, that a proposal could encompass all seven types of liquor licenses that allow some form of sale for off-premises consumption. These arguments are without merit.

First, treating each specific license type as separate and discrete subject is absurd. This approach would severely restrict the right of initiative by requiring separate initiative for each enumerated item in a statutory list—a form that indicates a logical, non-separate relationship between these items. No decision by this Court supports such a cramped reading of the single subject requirement. Furthermore, never has this Court articulated a standard that if a measure can be divided into two separate measures, it must contain two separate subjects. Such a standard would disqualify all but the most simplistic ballot initiatives.

Second, the legal standard is whether or not the provisions are logically connected with one another, regardless of whether the single subject is described in broad or narrow terms. Proposed Initiative #126 easily meets this standard, as the *Opening Brief* discusses.

Third, the provisions in Proposed Initiative #126 all relate to a single subject that is specific and discrete: the subject of increasing the number of alcohol licenses a person may hold. This subject is narrower than other subjects this Court has upheld, such as “public trust doctrine”<sup>7</sup> or “creation of a public right to Colorado’s environment”<sup>8</sup>

Finally, Robinson unavailingly tries to redefine the single subject and then adopt an all-or-nothing approach. Thus, he argues that seven licenses allow the sale of liquor for off-premises consumption, and then claims that the initiative must include all seven. But the additional licenses identified by Robinson are not identical to licenses for Retail Liquor Stores and Liquor-Licensed Drugstores. These two licenses allow a licensee to *only* sell packaged liquor for off-premises consumption. The other five licenses allow an organization to sell liquor for off-premises consumption, plus some other type of liquor sales. For example, wineries, wine festivals, brew pubs, vintner’s restaurants, and distilleries all sell liquor in other ways, such as selling liquor for on-premises consumption or selling liquor to wholesalers.

But even assuming that Robinson’s additional licenses are just like licenses for Retail Liquor Stores or Liquor Licensed Drugstores, the single subject standard

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<sup>7</sup> *Matter of Title, Ballot Title, Submission Clause, and Summary Adopted March 20, 1996, By the Title Bd. Pertaining to Proposed Initiative 1996-6*, 917 P.2d 1277, 1281 (Colo. 1996).

<sup>8</sup> *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014).

doesn't require an all-or-nothing approach. Proposed Initiative #126 can selectively modify two of seven licenses, regardless of whether all of the licenses fall within a single category. Never has this court identified an enumerated list of items and then required an all-or-nothing approach.

**III. Enabling Retail Liquor Store licensees to own Liquor-Licensed Drugstore licenses (and vice-versa) is a critical mechanism by which a licensee can increase the number of licenses from one to ten.**

Robinson argues that the measure creates a new exception to the prohibition on owning multiple licenses, by allowing either a retail liquor store licensee or a liquor licensed drugstore licensee to own a new type of license. But he ignores entirely that allowing a new type of license is, in fact, the mechanism by which a packaged-goods retailer can own up to ten licenses.

The so-called "exception" cannot be viewed in isolation from the other provisions. It is not an add-on. The "exception" only exists as part of the new cap on liquor licenses. For example, the owner of a retail liquor store license can own an arts license, regardless of whether he or she has reached the limit of ten licenses. And a person with an interest in a retail liquor store can own unlimited arts licenses. But a new liquor-licensed drugstore license counts towards the limit of ten licenses, and in fact reduces the number of retail liquor store licenses a person may own. Thus, the

“exception” does not stand on its own but only exists only as part of the new, ten-license limit. It is necessarily connected to the other provisions.

Finally, limiting a retail liquor store licensee to only a single type of license increase and limiting a liquor-licensed drugstore licensee to only that single type of license increase would defeat one of the central purposes of the measure. As currently written, Proposed Initiative #126 gives flexibility to those who only sell packaged liquor for off-premises consumption, by allowing them to own up to ten licenses though any combination of retail liquor store licenses and liquor-licensed drugstore licenses. Robinson argues that this flexibility constitutes multiple subjects. Yet this flexibility is one of the measure’s goals—to give those who only sell packaged goods for off premises consumption the flexibility to grow and expand their business beyond one geographical location. To be sure, Proposed Initiative #126 does not allow an unlimited number of licenses. It does not allow a licensee to choose any type of liquor license. Rather, the measure contains several interlocking provisions that increase the number of licenses in a limited, integrated manner. By any measure, this constitutes a single subject.

**Conclusion.**

FOR THESE REASONS, this Court should

1. Affirm the Ballot Title and Submission Clause set by the Title Board for Proposed Initiative #126, and

2. Grant Rodriguez and Tulper all such further relief as is just, proper, or appropriate.

Respectfully submitted this 2<sup>nd</sup> day of June 2016,

KLEND A GESSLER & BLUE, LLC

By:           s/ Scott E. Gessler          

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## Certificate of Service

I hereby certify that on this 2<sup>nd</sup> day of June 2016, I served a true and correct copy of the foregoing by electronic service through ICCES to the following:

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