

<p>COLORADO SUPREME COURT Colorado State Judicial Bldg. 2 E. 14th Ave., 4th Floor Denver, CO 80203</p>	<p>DATE FILED: May 19, 2016 9:13 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. Appeal from the Ballot Title Board</p>	
<p>In re 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 Rodriquez and Lewis Tulper, and</p> <p>Title Board: Suzanne Staiert, David Blake, and Sharon Eubanks.</p>	<p>▲ Court Use Only ▲</p>
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<p align="center">Respondents James Rodriquez and Lewis Tulper's Opening Brief</p>	

Table of Contents

Table of Authorities	iii
Certificate of Compliance	vi
Statement of Issues Presented for Review.....	1
Statement of the Case.	1
Procedural History.	1
Description of Proposed Initiative #126.....	2
Summary of Argument.....	5
Argument.	6
A. Under the standard of review, this Court generally defers to the Title Board.....	6
B. An initiative meets the single-subject rule if its provisions are related or connected to one another	7Error! Bookmark not defined.
C. Because its provisions all relate to increasing the number of liquor licenses a person may hold, Initiative 126 easily meets the single subject requirement.....	10
Conclusion.....	13
Certificate Of Service.....	14

Table of Authorities

	Page(s)
Cases	
<i>In re 1997–1998 No. 74</i> , 962 P.2d 927 (Colo.1998)	9
<i>People ex. rel. Elder v. Sours</i> , 31 Colo. 369, 74 P. 167 (1903).....	9
<i>Havens v. Board of County Comm’rs</i> , 924 P.2d 517 (Colo.1996)	7
<i>In re Proposed Ballot Initiative on Parental Rights</i> , 913 P.2d 1127 (Colo. 1996).....	7
<i>In re Title & Ballot Title & Submission Clause for 2005–2006 # 55</i> , 138 P.3d 273 (Colo.2006)	10
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 # 25</i> , 974 P.2d 458 (Colo.1999)	8
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 No. 256</i> , 12 P.3d 246 (Colo.2000)	8
<i>In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative “1996–17”</i> , 920 P.2d 798 (Colo.1996) (per curiam).....	7, 8
<i>In re Title, Ballot Title & Submission Clause for 2007–2008 # 61</i> , 184 P.3d 747 (Colo.2008)	9
<i>In re Title, Ballot Title, & Submission Clause for 2009–2010 No. 45</i> , 234 P.3d 642 (Colo. 2010)	7
<i>In re Title, Ballot Title & Submission Clause for 2011–2012 No. 3</i> , 274 P.3d 562 (Colo. 2012)	7, 8, 9

<i>In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 200A,</i> 992 P.2d 27 (Colo. 2000)	9
<i>In re Title, Ballot Title and Submission Clause, and Summary For 1999-2000 No. 255,</i> 4 P.3d 485 (Colo. 2000)	8
<i>Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129,</i> 333 P.3d 101 (Colo. 2014)	10, 13
<i>Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89,</i> 328 P.3d 172 (Colo. 2014)	8, 9
<i>Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90,</i> 328 P.3d 155 (Colo. 2014)	7, 8, 9
<i>In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995,</i> <i>by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II,</i> 898 P.2d 1076 (Colo.1995)	8, 9
<i>In re Title, Ballot Title, Submission Clause, & Summary Adopted March 20,</i> <i>1996, by the Title Bd. Pertaining to Proposed Initiative</i> 1996–6, 917 P.2d 1277 (Colo.1996)	7
<i>In re Title, Ballot Title, Submission Clause, & Summary with Regard to a</i> <i>Proposed Petition for an Amendment to the Constitution of the State of Colo.</i> <i>Adding Section 2 to Article VII,</i> 900 P.2d 104 (Colo.1995) (Scott, J., concurring)	8
<i>In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No. 29,</i> 972 P.2d 257 (Colo. 1999)	7

Statutes

C.R.S. § 1–40–106.5(1)(e)	9
C.R.S. § 12-47-301	3
C.R.S. § 12-47-401(1)	3

C.R.S. § 12-47-401(4)	3, 4
C.R.S. § 12-47-408(1)	3
C.R.S. § 12-47-408(4)	3, 5
Other Authorities	
<i>Proposed Initiative “Pub. Rights in Waters II”</i>	8

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 3075 words.

It does not exceed 30 pages.

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

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R., p.____), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

s/ Scott E. Gessler

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Statement of Issues Presented for Review.

Proposed Ballot Initiative #126 allows owners of two types of liquor licenses to own ten total licenses, which can be any combination of two types of licenses. An initiative contains one single subject if it tends to effect or to carry out one general object or purpose. Is allowing liquor license owners the ability to own a maximum of ten licenses a single subject?

Statement of the Case.

The Petitioner, John Grayson Robinson (“Robinson”), asks this Court to overturn the Title Board’s finding that Proposed Ballot Initiative #126 (“Initiative 126”) contains a single subject. Robinson does not challenge the title and submission clause set by the Board.

Procedural History.

On April 20, 2016, the Title Board unanimously found that Initiative 126 contained a single subject, and the Board then proceeded to set a title and submission clause. Robinson filed a motion for rehearing seven days later, on April 27, 2016, challenging only the Title Board’s single subject determination. In his motion for rehearing, Robinson claimed that Initiative 126 contained four separate and distinct subjects:

1. The measure changed the limit of one license for a retail liquor store license owner.
2. The measure allowed a retail liquor store licensee to also own a license for a liquor-licensed drugstore.
3. The measure changed the limit of one license for a liquor-licensed drugstore; and
4. The measure allowed a liquor-licensed drugstore licensee to also own a retail liquor store license.¹

The next day, April 28, 2016, the Board unanimously rejected Robinson's challenge, again finding that Initiative 126 contained a single subject. Robinson filed this appeal on May 5, 2016. On appeal he has condensed his claim of four separate subjects into a claim of two separate subjects. Specifically, he claims the measure:

1. Allows a maximum of ten licenses for two types of liquor licenses; and
2. Allows a retail liquor store licensee to own one or more licenses for a liquor-licensed drugstore, and vice-versa.²

Description of Proposed Initiative #126.

Initiative 126 is a relatively short and straightforward measure. (For the Court's convenience, it is reproduced in whole at the end of this description.) The measure

¹ *Motion for Rehearing.*

² *Petition for Review.*

changes the statutes governing Colorado’s liquor laws, by increasing the number of licenses held by an owner of two types of liquor licenses: a retail liquor store (referred to as a “retailer”) or a liquor-licensed drugstore (referred to as a “drugstore”).

Under current law, Colorado issues 22 types of licenses to businesses that manufacture, sell, or serve alcohol.³ Licenses range from liquor wholesalers to art establishments, to vintner’s restaurants. Initiative 126 affects owners of two types of licenses: retailer licenses and drugstore licenses. Both are commonly referred to as package goods stores, because they may only sell packaged liquor for consumption off-premises.⁴

Most important for this case, each type of licensee may generally own only one license, although exceptions exist for arts licenses, airline licenses, and financial institution licenses.⁵ This prohibition on multiple licenses includes not only owners of the entity holding the license, but extends to part owners, shareholders, or any person interested directly or indirectly in the licensed establishment.⁶ The same prohibitions apply to both retailer licensees and drugstore licensees.

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

³ C.R.S. 12-47-401(1).

⁴ C.R.S. §§ 12-47-407(1) and 408(1). Each type of establishment may allow tastings under C.R.S. § 12-47-301.

⁵ C.R.S. §§ 12-47-407(4) and 408(4).

⁶ C.R.S. §§ 12-47-407(4) and 408(4).

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. For example, a person may own ten retail licenses, or five retail licenses and five drugstore licenses, or ten drugstore licenses.

Regardless of the combination of licenses, however, a licensee may only sell packaged liquor for consumption off-premises, since that restriction remains in place for both retail liquor stores and liquor-licensed drugstores.

The full text of Initiative 126 follows:

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

SECTION 1. In Colorado Revised Statutes, 12-47-407, **amend** (4) as follows:

12-47-407. Retail liquor store license.

(4) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), it is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article. ~~; except that such a person~~

(b) (I) AN OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN A RETAIL LIQUOR STORE may have an interest in:

(A) An arts license ~~or~~ GRANTED UNDER THIS ARTICLE;

(B) An airline public transportation system license granted under this article; ~~or in~~

(C) A financial institution referred to in section 12-47-308 (4).

(II) AN OWNER SHALL BE LIMITED TO A MAXIMUM OF TEN LICENSES ISSUED UNDER THIS SECTION AND SECTION 12-47-408 COMBINED.

SECTION 2. In Colorado Revised Statutes, 12-47-408, **amend** (4) as follows:

12-47-408. Liquor-licensed drugstore license.

(4) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), it is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a liquor-licensed drugstore to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article.;~~except that such a person~~

(b) (I) AN OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN A LIQUOR-LICENSED DRUGSTORE may have an interest in:

(A) An arts license ~~or~~ GRANTED UNDER THIS ARTICLE;

(B) An airline public transportation system license granted under this article; ~~or in~~

(C) A financial institution referred to in section 12-47-308(4).

(II) AN OWNER SHALL BE LIMITED TO A MAXIMUM OF TEN LICENSES ISSUED UNDER THIS SECTION AND SECTION 12-47-407 COMBINED.

SECTION 3. Effective date. This act takes effect January 1, 2017.

Summary of Argument.

Because it liberally construes the single-subject rule to further the right of initiative, this Court should defer to the Title Board's single-subject determination.

Here, the provisions of Initiative 126 are all related or connected to one another. The central focus of Initiative 126 is to allow two types of liquor sellers (those serving packaged liquor for off-premises consumption) a maximum of ten licenses. Accordingly, provisions allowing retailers to obtain up to ten retail or drugstore licenses, and provisions allowing drugstores to obtain up to ten retail or drugstore licenses, all carry out this central focus.

Indeed, by collapsing his earlier claim of four separate subjects into a claim of two separate subjects, Robinson implicitly admits the close connection among Initiative 126's provisions.

Finally, Initiative 126 does not present the dangers of multiple subjects. It does not combine disparate subjects to gain support. Voter approval of a maximum of ten licenses for package good sellers – whether they are retailer licenses or drugstore licenses – presents the same public policy arguments. And for the same reason, there are no hidden provisions that would create surprise.

Argument.

A. Under the standard of review, this Court generally defers to the Title Board.

The standards for reviewing Title Board actions are well established.

Under Colorado statute, the Title Board has considerable discretion in determining the title and submission clause. Accordingly, this Court liberally construes the single-subject standards to ensure that the rights of proponents are not unduly restricted.⁷ Because of this deference, when reviewing the Board's actions this Court "employ[s] all legitimate presumptions in favor of the propriety of the [Title] Board's actions."⁸ For that reason, the Court will only overturn the Board's single-subject determination in a "clear case."⁹

B. An initiative meets the single-subject rule if its provisions are related or connected to one another.

When reviewing a measure for single subject, this Court avoids "interpretations that unduly limit or curtail the exercise of the initiative or referendum rights of the people of Colorado".¹⁰ The subject matter of an initiative must be necessarily and

⁷ *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 160 (Colo. 2014)(citations omitted); *Title, Ballot Title & Submission Clause for 2009–2010 No. 24*, 218 P.3d 350, 353 (Colo. 2009); *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative "1996–17"*, 920 P.2d 798, 802 (Colo.1996) (per curiam). *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996).

⁸ *In re Title, Ballot Title & Submission Clause for 2011–2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012); *In re Title, Ballot Title, & Submission Clause for 2009–2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010).

⁹ *In re Title, Ballot Title, & Submission Clause for 2011–2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012); *In re Title, Ballot Title, Submission Clause, & Summary Adopted March 20, 1996, by the Title Bd. Pertaining to Proposed Initiative 1996–6*, 917 P.2d 1277, 1280 (Colo.1996).

¹⁰ *In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No. 29*, 972 P.2d 257, 261 (Colo. 1999). *See also Havens v. Board of County Comm'rs*, 924 P.2d 517, 524 (Colo.1996).

properly connected rather than disconnected or incongruous.¹¹ A proposed initiative that “tends to affect or carry out one general objective or purpose presents only one subject,” and provisions necessary to effectuate the purpose of the measure are properly included within its text.”¹²

It is enough that the provisions of a proposal are connected,¹³ and a measure may have multiple implementation details as part of a single subject. “An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation.”¹⁴ In short, “implementation details that are directly tied to the initiative’s central focus do not

¹¹ *Matter of Title , Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155 (Colo. 2014); *In re Title, Ballot Title & Submission Clause for 2011–2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012); *In re Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative “Pub. Rights in Waters II”*, 898 P.2d 1076, 1079 (Colo.1995).

¹² *Matter of Title, Ballot Title , and Submission Clause for 2013-2014 #89*, 328 P.3d 172 (Colo. 2014); *Matter of Title , Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155 (Colo. 2014). *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 No. 256*, 12 P.3d 246, 253 (Colo.2000). *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 # 25*, 974 P.2d 458, 463 (Colo.1999); *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 900 P.2d 104, 113 (Colo.1995) (Scott, J., concurring).

¹³ *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 # 256*, 12 P.3d 246, 254 (Colo. 2000); *See also In re Proposed Initiative for 1999–2000 # 25*, 974 P.2d at 463.

¹⁴ *In re Title, Ballot Title and Submission Clause, and Summary For 1999-2000 No. 255*, 4 P.3d 485, 495 (Colo. 2000) (quoting *In re 1997–1998 No. 74*, 962 P.2d 927, 929 (Colo.1998)).

constitute a separate subject.¹⁵

By contrast, a proposed initiative “cannot seek to accomplish multiple, discrete, unconnected purposes.”¹⁶ An initiative violates the single subject requirement if it “relates to more than one subject” and has at least “two distinct and separate purposes” that do not depend upon one another.¹⁷

The single subject requirement serves two functions:

1. To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits; and

2. To prevent surreptitious measures and apprise the people of the subject of each measure, that is, to prevent surprise and fraud from being practiced upon voters.¹⁸

This court has repeatedly stated that the single-subject requirement combats

¹⁵ *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000)(internal quotations omitted). See also *In re Initiative for 1997-98 # 74*, 962 P.2d at 929.

¹⁶ *Matter of Title, Ballot Title , and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014); See also, *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II*, 898 P.2d 1076, 1080 (Colo.1995).

¹⁷ *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159 (Colo. 2014); *In re Title, Ballot Title & Submission Clause for 2011-2012 No. 3*, 274 P.3d 562, 565; *In re Title, Ballot Title & Submission Clause for 2007-2008 # 61*, 184 P.3d 747, 750 (Colo.2008); See also *People ex. rel. Elder v. Sours*, 31 Colo. 369, 403, 74 P. 167, 177 (1903).

¹⁸ C.R.S. § 1-40-106.5(1)(e).

two dangers. First, by prohibiting the combination of disparate subjects for the purpose of garnering support from various factions that may have different or conflicting interests, it prevents the approval of measures that would otherwise fail on their own merits. Second, “it ensures that the initiative depends upon its own merits for passage” and “protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex bill.”¹⁹

C. Because its provisions all relate to increasing the number of liquor licenses a person may hold, Initiative 126 easily meets the single subject requirement.

Initiative 126 comfortably meets the single subject standard. All of the provisions in the proposal are connected to a central, unifying objective – to increase from one to ten the number of licenses a person can hold. The provisions of Initiative 126 consistently support a single purpose to increase the number of liquor licenses an individual can hold.

- 1) Initiative 126’s provisions all carry out the central purpose of expanding the ability of a person to hold up to 10 licenses to sell liquor.

These additional licenses only apply to owners of two types of licenses, which themselves represent a narrow category of liquor sales – packaged liquor for off-premises consumption only. Under the proposal, there are two ways a retailer license

¹⁹ *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101, 104 (Colo. 2014) (quotations and citations omitted); *In re Title & Ballot Title & Submission Clause for 2005–2006 # 55*, 138 P.3d 273, 277 (Colo.2006).

or a drugstore license can obtain up to nine additional licenses. First, each of the licensees can obtain additional, identical licenses. Thus, a retail liquor store licensee can obtain additional retail liquor store licenses, or a liquor-licensed drugstore licensee can obtain additional liquor-licensed drugstore licenses. Second, the licensees can obtain the other type of packaged-goods liquor license, *i.e.*, a retailer can obtain drugstore licenses, and a drugstore can obtain retailer licenses.

In short, a liquor licensee has two mechanisms by which he or she can obtain additional licenses to sell packaged liquor: obtain another, identical license; or obtain a different type of license for selling packaged liquor. In either instance, both mechanisms are connected to the same, extremely narrow goal – increasing the number of licenses from one to ten. Initiative 126 does not contain two subjects simply because it creates more than one mechanism for achieving its goal. Indeed, the manner in which a person may obtain additional licenses is a provision that goes to implementation. It does not create an entirely new subject.

In bringing this appeal, Robinson unintentionally recognizes that Initiative 126 has closely connected provisions that fall under one subject. In his *Motion for Rehearing*, Robinson claimed that Initiative 126 had four separate and distinct subjects. But on appeal, he has collapsed these seemingly four separate and distinct subjects into two subjects. Earlier he claimed that allowing a retailer to hold additional retail licenses,

and a drugstore to hold additional drugstore licenses, were two separate subjects. Now, he claims they are only one. And earlier he claimed that allowing a retailer to own a drugstore license, and allowing a drugstore to own a retailer license, were two separate subjects. Again, he now claims those two subjects are only one subject.

It is unsurprising that Robinson has consolidated subject headings, because all of his earlier claimed subjects in fact are tightly connected to one another. All four are the mechanisms for implementing the ten-license ownership provision. Robinson could have logically consolidated in a different manner—treating, for example, all provisions applying to retailers as one subject, and all provisions applying to drugstores as a separate subject. In that instance, the provisions are tightly connected to one another and can be combined under the same “subject.”

- 2) Because all the provisions consistently support an increase in liquor licenses, Initiative 126 does not give rise to the dangers associated with multiple subjects.

There is no danger that Initiative 126 combines incongruous measures that would draw support from different factions, or that the measure would create voter surprise. Initiative 126 allows those who sell packaged liquor for off-premises consumption, to get additional licenses to – sell packaged liquor for off-premises consumption. Those who support (or oppose) expanding the number of licenses for retailers will also support (or oppose) expanding the number of licenses for

drugstores. With respect to liquor, both sell the same types of goods and services, in the same manner.

For the same reason, Initiative 126 does not contain any surprises or “surreptitious provision[s] coiled up in the folds of a complex bill.”²⁰ All implementation mechanics are directly connected to its purpose of increasing the number of liquor licenses for those selling packaged liquor.

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.

²⁰ *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101, 104 (Colo. 2014) (quotations and citations omitted).

Respectfully submitted this 19th day of May 2016,

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Certificate of Service

I hereby certify that on this 19th day of May 2016, I served a true and correct copy of the foregoing by sending same in the U.S. first class mail, postage prepaid, addressed to the following:

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