

<p>COLORADO SUPREME COURT 1300 Broadway Denver, Colorado 80203</p>	<p>DATE FILED: May 19, 2016 7:30 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Title Board</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>▲ COURT USE ONLY ▲</p>
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<p>OPENING BRIEF OF TITLE BOARD</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 those rules.

Specifically, the undersigned certifies that:

1. The brief complies with C.A.R. 28(g) because it contains 1,206 words.

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

I acknowledge that the 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/ LeeAnn Morrill
Attorney for the Title Board

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Title Board members Suzanne Staiert, David Blake, and Sharon Eubanks (hereinafter “the Board”), by and through undersigned counsel, hereby submit the Opening Brief of Title Board.

STATEMENT OF THE ISSUES

Whether the Board had jurisdiction to set title because the proposed initiative contains only one subject?

STATEMENT OF THE CASE

James Rodriguez and Lewis Tulper (hereinafter “Proponents”), seek to circulate Proposed Initiative 2015-2016 #126 (“#126”), to obtain the requisite number of signatures to place a measure on the ballot to amend C.R.S. §§ 12-47-407, which governs “Retail liquor store license,” and 12-47-408, which governs “Liquor-licensed drugstore license.” Proponents submitted the final draft of #126 to the Board on April 8, 2016. *See Attachment to Petition for Review, at 2.*

The Board conducted an initial public hearing on April 20, 2016, at which it determined #126 contains a single subject and proceeded to

set title. *See Attachment to Petition for Review*, at 7. John Grayson Robinson (hereinafter “Objector”) timely filed a motion for rehearing on April 27, 2016, challenging only the Board’s single subject determination. *See Attachment to Petition for Review*, at 8. A rehearing was held on April 28, 2016, at which the Board again determined #126 contains a single subject and denied Objector’s motion for rehearing. *See Attachment to Petition for Review*, at 10. Objector timely filed a petition for review with this Court on May 5, 2016.

STATEMENT OF FACTS

Currently, “[i]t is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store [or a liquor-licensed drugstore] to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licenses pursuant to this article[.]” §§ 12-47-407(4) and 12-47-408(4), C.R.S. (2016). But “such a person may have an interest in an arts license or an airline public transportation system license granted under this article, or in a financial institution referred to in section 12-47-

308(4) [or section 12-47-407(4)].” *Id.* Measure #126 would amend these provisions of law for the sole purpose of authorizing such persons to hold a combined maximum of ten liquor licenses issued under sections 407 and/or 408. *See Attachment to Petition for Review*, at 2.

SUMMARY OF THE ARGUMENT

As proposed, #126 contains one subject. Namely, it amends existing statutes governing liquor store licenses issued to persons under C.R.S. §§ 12-47-407 and 12-47-408 to authorize such persons to hold a maximum of ten licenses issued thereunder combined. As such, the Board properly determined that it had jurisdiction to set title because #126 contains a single subject.

ARGUMENT

I. THE MEASURE CONTAINS ONE SUBJECT.

Objector contends that the Board erred by setting title because #126 contains multiple subjects. For the following reasons, the Court should reject this contention.

A. The single subject rule.

The Board must abide by the single subject rule when considering proposed initiatives. Indeed, Colo. Const., art. V, § 1(5.5), states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. *If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.*

(emphasis added). Colorado law further prevents the Board from setting a title for a measure that contains “incongruous 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.” § 1-40-106.5(1)(e)(I), C.R.S. (2016). Multiple subjects also are prohibited because their “surreptitious” nature may cause “surprise and

fraud [to be] practiced upon the voters.” § 1-40-106.5(1)(e)(II), C.R.S. (2016).

A proposed measure violates the single subject rule if “it relates to more than one subject, and has at least two distinct and separate purposes that are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for 2005-06 #55*, 138 P.3d 273, 277 (Colo. 2006) (“#55”); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002) (“#21”). In contrast, a proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). The single subject rule serves to prevent both the joinder of multiple subjects to secure the support of various factions, and voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (“#43”).

B. Standard of single subject review by this Court.

Whether a proposed initiative contains a single subject is a question of law that must be determined by the Board before it exercises jurisdiction to set a title. As such, this Court reviews *de novo* the Board's decision that #126 contains a single subject. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #219*, 999 P.2d 819, 820-22 (Colo. 2000).

In determining whether the single subject requirement has been satisfied, the Court will not address the merits of a proposed initiative, interpret it, or construe its future legal effects. #21, 44 P.3d at 215-16; #43, 46 P.3d at 443. However, the Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. #55, 138 P.3d at 278. To do so, the Court will "examine sufficiently the initiative's central theme to determine whether it contains a hidden purpose under a broad theme." *In re Title, Ballot*

Title and Submission Clause for 2007-08 #17, 172 P.3d 871, 875 (Colo. 2007) (“#17”). Through its exam, the Court will “determine unstated purposes and their relationship to the central theme of the initiative.” #55, 138 P.3d at 278. If the unstated theme is consistent with the general purpose, the single subject requirement will be met. *Id.*

C. Application of the single subject rule to #126.

The Board correctly determined that #126 contains only one subject. With limited exceptions, current law prohibits a person who holds a retail liquor license or a drugstore liquor license issued under C.R.S. §§ 12-47-407 and 12-47-408 from owning or being interested in any other business that is licensed under Article 47 of Title 12, C.R.S. *See* §§ 12-47-407(4) and 12-47-408(4), C.R.S. (2016).

Measure #126 would amend current law for the sole purpose of permitting such persons to hold a combined maximum of ten liquor licenses issued under sections 407 and/or 408. *See* Attachment to Petition for Review, at 2. There simply are no “hidden” or “unstated”

purposes in #126. #17, 172 P.3d at 875; #55, 138 P.3d at 278.

Accordingly, the Board properly determined that it contains a single subject.

CONCLUSION

For the above-stated reasons, the Court should affirm the Board's decision that #126 satisfied the single subject rule.

DATED: May 19, 2016.

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CERTIFICATE OF SERVICE

This is to certify that on May 19, 2016, I electronically filed a true and correct copy of the foregoing **OPENING BRIEF OF TITLE BOARD** with the Clerk of the Court via the ICCES e-filing system, and served the following counsel of record for the parties via ICCES:

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