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Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2015) Appeal from the Ballot Title Board	▲**COURT USE ONLY**▲
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 No. 156 **Petitioners:** John Grayson Robinson **v.** **Respondents:** Bruce Dierking and Jeanne McEvoy **and** **Title Board:** Suzanne Staiert, David Blake, and Sharon Eubanks.	Supreme Court Case No.: 16SA157
Attorneys for Petitioner John Grayson Robinson Thomas M. Rogers III, No. 28809 Hermine Kallman, No. 45115 LEWIS ROCA ROTHGERBER CHRISTIE LLP 1200 Seventeenth Street, Suite 3000 Denver, CO 80202 Phone: 303.623.9000 Fax: 303.623.9222 Email: trogers@lrrc.com hkallman@lrrc.com	

PETITIONER'S ANSWER BRIEF

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 1,438 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
Attorney for Petitioner John Grayson Robinson

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

RESPONSE TO RESPONDENTS' STANDARD OF REVIEW

In describing the appropriate standard of review, Respondents incorrectly suggest that this is a case about whether the title the Board set is appropriate. In fact, Petitioner argues that the Board did not have jurisdiction to set title in the first place, which is a question of law that this Court reviews *de novo*. *Hayes v. Ottke*, 293 P.3d 551, 554 (Colo. 2013).

ARGUMENT

I. Respondents attempt to gloss over a drafting mistake that renders the Initiative incomprehensible.

At no point, including in their brief to this Court, have Respondents offered an interpretation of the Initiative's principal language, which nonsensically prohibits granting a liquor license "to a food store that offers for sale" liquor (or marijuana). Because Proponents filed the Initiative just in time for the last Title Board meeting of the year, they could not correct their drafting error. Instead, they are attempting to gloss over this error by asserting that voters will broadly understand the Initiative to prohibit issuing liquor licenses to stores that "also sell food or marijuana." Resp'ts' Br. 6; *see also id.* at 1 (providing that the Initiative prohibits pairing "the sale of food [and] either marijuana or . . . liquors"). But that

is simply not what the text of the Initiative says, and the law does not allow Proponents to read into their Initiative a meaning inconsistent with its plain language. *In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 No. 75*, 138 P.3d 267, 271 (Colo. 2006) (in assessing the initiative's meaning and title, the Court "employ[s] the usual rules of statutory construction").

Instead of confronting the problematic language head on, Respondents rely on the "ease with which the Board dealt with this measure" as proof of its clarity. Resp'ts' Br. 7. But even the Board is still confused about the actual meaning of the Initiative. The Board recognizes that, on its face, the language prohibits "granting a liquor license to a food store if that store sells marijuana or alcohol." Title Bd.'s Br. 3. But the Title Board incorrectly interprets that language to "prevent the sale of intoxicants in food stores." *Id.*. That interpretation is incorrect for two reasons. First, it conflicts with the title set by the Board, which states that the Initiative prohibits only the granting of a "<u>liquor</u> license" (Certified Record at 7 (emphasis added)); the Initiative does not prohibit the issuance of a license to sell any other intoxicant, including marijuana. Second, the Initiative does not, in fact, prevent granting a liquor license to a food store. Instead, it only prohibits granting a liquor license to a food store that sells a) liquor or b) marijuana. Thus, the Initiative would not prevent a food store that does not currently sell either substance from

getting a liquor license. In sum, the Initiative's language is so impenetrable that the Board is still uncertain about its meaning—even after closely considering it during the initial hearing, during the reconsideration process, and while preparing its brief. The average voter cannot be expected to understand the Initiative any better.

The Title Board seeks to render the question of incomprehensibility off limits to the Board and this Court by suggesting that it is a question of application. However, in other cases, this Court has reversed the Board's action on the basis that the measure is incomprehensible. *See, e.g.*, *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 44*, 977 P.2d 856, 858 (Colo. 1999). Furthermore, the Board's primary role is to "capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice." *Id.* Allowing incomprehensible measures with incomprehensible titles to be put on the ballot does not enable informed voter choice. On the contrary, it requires voters to make a decision without understanding what they are voting for or against. The question of comprehensibility is well within the Board's and this Court's purview. *Id.*

II. A unifying theme should not be accepted as a single subject.

Even applying their interpretation of the Initiative (which, as described above, is not a fair characterization of the text as written), Respondents and the

Title Board agree that the Initiative has two distinct effects: 1) barring the sale of liquor in food stores and 2) barring the sale of marijuana in food stores. However, Respondents and the Title Board argue that, because these substances both fall under the broad umbrella of "intoxicants," they should be conflated into a single subject.

"[A]n initiative grouping distinct purposes under a broad theme will not satisfy the single subject requirement." *In re Title & Ballot Title & Submission Clause for 2005-2006 No. 55*, 138 P.3d 273, 278 (Colo. 2006), *as modified on denial of reh'g* (June 26, 2006).

> [The measure at issue] contains multiple subjects connected only by the broad theme of restricting non-emergency services. The concept of a single subject at first glance appears straightforward. However, an initiative may be offered as a single subject by stating the subject in broad terms. If an initiative states vague terms, then it may appear to present a single subject. But when the details necessary to understand the subject are considered, the initiative may involve separate subjects.

Id. at 275. Where it appears that a measure may be attempting to hide multiple subjects behind a common theme, the Court looks to the measure's purpose. If the various provisions of an initiative do not address a common purpose, the initiative violates the single subject requirement. *Id.*; *see also In re Title, Ballot Title &*

Submission Clause, & Summary for 1999-2000 No. 258(A), 4 P.3d 1094, 1099 (Colo. 2000).

Here, there is no such common purpose. Respondents suggest that the purpose is restricting the sale of "intoxicants." But neither the Initiative nor state law defines "intoxicants." *See 2005-2006 No. 55*, 138 P.3d at 279 ("We observe that the theme of Initiative # 55 is restricting non-emergency services. However, the Initiative does not thereafter define 'non-emergency' and 'services,' categorize the types of services to be restricted, or set forth the purpose or purposes of restricting non-emergency services."). Instead, "intoxicants" is a vague theme Respondents use to mask that the Initiative's dual purposes are to restrict the sale of two distinct substances in food stores: liquor and marijuana.

The absence of a common purpose distinguishes the Initiative from those to which Respondents have compared it. For example, in their opening brief, Respondents liken the Initiative to C.R.S. § 12-43.4-402(7), which provides that "A licensed retail marijuana store may only sell retail marijuana." Although the section then goes on to identify several items that therefore may not be sold in marijuana stores—including cigarettes, alcohol, and food (other than marijuana edibles)—this specifying language supports the measure's stated single purpose: requiring that marijuana stores only sell marijuana products. It is not the case that

the Initiative at issue here similarly provides that food stores may only sell food. Instead, the Initiative (as interpreted by Respondents) seeks to bar the sale of two distinct items, each of which constitutes its own subject for the purposes of Colorado Constitution article V, Section 1(5.5).

Furthermore, though the Colorado Constitution provides that several rules long applied to liquor will also apply to marijuana—*e.g.*, purchasers must be at least twenty-one-years-old and must show proof of age, driving under the influence shall be illegal, Colo. Const. art. XVIII, § 16(1)(b)—these substances are, in many ways, regulated very differently. Petitioner gave examples of these differences in his opening brief, but, generally, it is fair to say that marijuana is regulated more strictly than liquor. *Compare* C.R.S. § 12-43.4-402 *and* 1 C.C.R. § 212-2, *with* C.R.S. § 12-47-407 *and* 1 C.C.R. § 203-2; *see also* 21 U.S.C. § 811 (classifying marijuana as a Schedule I drug under the Controlled Substances Act). Accordingly, the law does not support lumping liquor and marijuana together under a single category of substance.

On the contrary, the differences in the these regulatory schemes demonstrate that decision-makers have seen cause to treat liquor and marijuana differently, and voters may feel the same. In fact, Proponents likely added the second purpose—prohibiting the sale of marijuana in food stores—to win the support of voters who

might otherwise favor the sale of liquor in food stores. The Court should not require voters to take up those distinct issues in an all-or-nothing measure.

CONCLUSION

Because Initiative 156 is incomprehensible and because it improperly addresses more than a single subject, Petitioner requests that the Court reverse the Title Board's decision to set title.

Respectfully submitted this 2nd day of June, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

s/ Thomas M. Rogers III
Thomas M. Rogers III
Hermine Kallman
Attorneys for Petitioner John Grayson Robinson

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:

Mark G. Grueskin
1600 Stout Street, Suite 1000
Denver CO 80202
Attorney for Respondents Bruce Dierking and Jeanne McEvoy

Cynthia H. Coffman
LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Attorney for the Title Board

s/Hermine Kallman
of Lewis Roca Rothgerber Christie LLP