

SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiatives
2015-2016 #156 (“Prohibition on Sale of
Marijuana and Liquor at Food Stores”)

Petitioner: John Grayson Robinson

v.

**Respondents: Bruce Dierking and Jeanne
McEvoy**

and

**Title Board: SUZANNE STAIERT;
DAVID BLAKE; and SHARON
EUBANKS**

DATE FILED: June 2, 2016 4:20 PM

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Case No. 2016SA157

**RESPONDENTS’ ANSWER BRIEF ON PROPOSED INITIATIVE
2015-2016 #156 (“PROHIBITION ON SALE OF MARIJUANA AND
LIQUOR AT FOOD STORES”)**

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 1,108 words.

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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/ Mark G. Grueskin

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SUMMARY

Petitioner's two arguments – that Initiative #156 is incomprehensible and therefore cannot be titled and that Initiative #156 is comprised of multiple subjects – are inaccurate. These claims should be summarily dismissed so that the Proponents of this measure can proceed to petition circulation.

LEGAL ARGUMENT

I. The Title Board understood Initiative #156, a straightforward initiative.

Petitioner's Opening brief argues that this measure is grammatically flawed and "impossible to comprehend." Pet. Op. Brief at 5-6. This objection amounts to a convenient confusion. Initiative #156 is well within the understanding of the voters. Robinson's argument that #156 was incomprehensible was not persuasive to the Title Board. The Board understood that this measure limits liquor licensing authorities in their exercise of discretion to grant liquor licenses to entities that will couple the sale of alcohol with the sale of either food or marijuana.

In support of the argument that Initiative #156 is incomprehensible, Petitioner cites *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #44*, 977 P.2d 856, 858 (Colo. 1999). Pet. Op. Br. at 5. However, that opinion holds (and Robinson even quotes), "if the Board cannot comprehend the initiatives well enough to state their single subject in the titles the initiatives cannot be forwarded to the voters." There was no lack of clarity at the Title Board. The

Board did comprehend this initiative. Its members did not express any angst over the measure's plain, intended meaning and the limit on liquor licensing that is imposed by this measure.

In calling Initiative #156 “nonsensical and circular,” Robinson states, “The Initiative is not a prophylactic ban on a possible future activity; it directs the state to take certain steps under circumstances that will never arise.” Pet. Op. Br. at 6. Yet, Robinson has already conceded in a related matter before this Court that there are many food stores that are not satisfied with their current liquor licenses and will apply for expanded rights if given the chance. *See* Petitioner's Opening Brief, *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 205-2016 #61*, Case No. 2016SA31 at 17; Exhibit B thereto at 19:8-12 (1,500 convenience stores may seek new licenses for alcoholic products that they cannot now sell). Robinson is even the designated representative of that measure. In the same vein, there will almost certainly be new market entrants for all types of liquor licenses, whether the category exists today or not. Thus, it is not true and not at all credible that Robinson is befuddled by Initiative #156 or that this measure will have no effect on outlets that may seek new or expanded liquor licenses in the future.

Even if that were the case, Robinson asks the Court to deconstruct the measure in ways that exceed its title review responsibility. The Court will “not

construe the legal effect of the proposal as if it had been adopted.” *In re Title, Ballot Title & Submission Clause, & Summary for 1997–98 #62*, 961 P.2d 1077, 1082 (Colo. 1998). Instead, the Court focuses on an analysis of whether the title contains “a material and significant omission, misstatement, or misrepresentation.” *Id.*

Petitioner also suggests – incorrectly – that this measure merely mirrors existing law as it exists under the marijuana regulations. “In its second subject, the Initiative prohibits issuance of a liquor license to a food store that sells marijuana. **Under current law, food stores may not sell marijuana.** 1 C.C.R. § 212-2.402(j). The second subject does not cure the incomprehensibility of the first subject.” Pet. Op. Br. at 7, fn. 1 (emphasis added).

In making this argument, Petitioner did not make it clear that marijuana laws prohibit the licensing of “retail food establishments” for sale of marijuana rather than applying, as Initiative #156 does, to “food stores.” *See* C.R.S. §§ 12-43.3-307(1)(l); 12-43.4-306(1)(j) (marijuana licenses may not be held by “a retail food establishment or whole sale food registrant”). “Retail food establishment” is defined by statute. C.R.S. § 25-4-1602(14). It exempts a wide variety of retail food outlets including but not limited to donut shops, farmers markets, and establishments serving commercially prepared, prepackaged foods. C.R.S. § 25-4-1602(14)(h), (i), (j).

Thus, this existing law does not come close to occupying the field of retail food outlets that, as #156 does, include “any establishment that offer for sale food items at a retail premises, provided that 15% or more of the gross annual income from its total sales is derived from the sale of food items.” Proposed 12-47-401.5(1). As such, Petitioner is incorrect that Initiative #156 seeks to address a matter covered by the marijuana statutes.

Accordingly, this measure was aptly described by the Board, and the Court should uphold that title.

II. The Title Board properly found Initiative #156 to be a single subject.

Petitioner asserts that Initiative #156 violates the single subject requirement. First, he considers the regulation of “intoxicants” to be a “classic attempt at logrolling.” Pet. Op. Br. at 9. Yet, there is already a constitutional finding that the two intoxicants at issue here are related. “In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol....” Colo. Const., art. XVIII, § 16(1)(b). Petitioner’s argument is undone by the Constitution.

Petitioner also argues that marijuana regulation is more rigorous in certain ways than alcohol regulation. Pet. Op. Br. at 10. But the Constitution anticipates “similar” rather than the “same” regulation of the two intoxicants. “Similar” is defined as “having characteristics in common; very much alike; comparable.”

Webster's Third New International Dictionary 2120 (Philip Babcock Gove, ed., 1981), cited by *U.S. v. Martinez-Santos*, 184 F.3d 196, 204 (2nd Cir. 1999).

“Same” is defined as “resembling in every respect” or “identical.” *AirTouch Paging of Calif. v. PacBell*, 1999 WL 33732597 at 12 (N.D.Cal. 1999), citing Webster’s Ninth New Collegiate Dictionary (1984). Thus, Petitioner’s distinction is a matter of hair splitting.

In that regard, the Court has encountered argument such as this one.

“Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces.” *In re Proposed Initiative for 1997–98 #74*, 962 P.2d 927, 929 (Colo. 1998). This level of analysis “is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.” *Id.* And so Petitioner’s single subject objection is without merit.

CONCLUSION

The Title Board’s decision was based on the plain language of Initiative #156 and its clear meaning. That decision should be affirmed by the Court.

Respectfully submitted this 2nd day of June, 2016.

/s Mark Grueskin

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **RESPONDENTS' ANSWER BRIEF ON PROPOSED INITIATIVE 2015-2016 #156 ("PROHIBITION ON SALE OF MARIJUANA AND LIQUOR AT FOOD STORES")** was sent this day, June 2, 2016 via ICCES to counsel for the Title Board and counsel for the Objectors:

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