

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>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”)</p> <p>Petitioner: John Grayson Robinson</p> <p>v.</p> <p>Respondents: Bruce Dierking and Jeanne McEvoy</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DAVID BLAKE; and SHARON EUBANKS</p>	<p style="text-align: right;">DATE FILED: May 19, 2016 5:10 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">RESPONDENTS’ OPENING BRIEF ON PROPOSED INITIATIVE 2015-2016 #156 (“PROHIBITION ON SALE OF MARIJUANA AND LIQUOR AT FOOD STORES”)</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 these rules. Specifically, the undersigned certifies that:

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

Choose one:

It contains 1,474 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, 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.

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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STATEMENT OF ISSUES PRESENTED

Did the Title Board have jurisdiction to set a title over a ballot measure that addressed the single subject of preventing the sale of certain intoxicants at food stores?

Did the Title Board correctly comprehend the limited nature of this measure and thus set an accurate, clear, and fair ballot title?

STATEMENT OF THE CASE

A. Statement of Facts

Initiative #156 is a simple measure. It prohibits state and local liquor licensing authorities from granting any license to a food store that will pair with the sale of food either marijuana or full-strength beer, wine, or spirituous liquors. #156 defines “food store” as a retail outlet that acquires more than 15% of its annual gross income from the sale of “food items.” It assigns to the Colorado division of liquor enforcement the responsibility to adopt appropriate regulations defining “food items.” This measure’s effective date is July 1, 2017.

B. Nature of the Case, Course of Proceedings, and Disposition Below.

Bruce Dierking and Jeanne McEvoy (hereafter “Proponents”) proposed Initiative 2015-2016 #156 (“#156”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legal Services. Thereafter the Proponents submitted a final version of the Proposed Initiative to

the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on April 20, 2016 to establish the Proposed Initiative's single subject and set a title. On April 27, 2016, Petitioner filed a Motion for Rehearing, alleging that the Board did not have jurisdiction to set a title, the title was misleading, did not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion. The rehearing was held on April 29, 2016, at which time the Title Board denied the Motion for Rehearing. The Board set this title:

Shall there be a change to the Colorado Revised Statutes prohibiting a state or local licensing authority from granting a liquor license to a food store that offers for sale, in sealed containers for off-premises consumption, full-strength beer, wine, liquor, marijuana, or marijuana products?

SUMMARY

The sole single subject argument advanced – that marijuana and alcohol are heavily regulated substances and thus cannot comprise one subject – is facially inaccurate. The Colorado Constitution already recognizes that, once marijuana had been legalized, these two substances are to be regulated in the same manner. This measure simply advances that goal.

The clear title argument advanced – that the measure is so vague as to prevent the setting of a clear title – is forced and inaccurate. The Title Board

understood, as will voters, that this measure simply ensures public safety by prohibiting certain liquor licensees (defined as “food stores”) from selling alcohol and either marijuana or food. The title communicates the central features of #156.

Therefore, the Title Board’s decision should be affirmed.

LEGAL ARGUMENT

I. Initiative #156 contains a single subject.

A. Standard of review.

A proposed initiative must contain no more than one subject. Colo. Const., art. V, § 1(5.5). To violate this requirement, a measure must contain at least two distinct and separate purposes that are not dependent upon or connected with each other. *In re Title, Ballot Title, Submission Clause for Initiative 2011-2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012) (citations omitted). The topics included in such an initiative will be incongruous rather than properly connected. *Id.*

In reviewing a challenge to the Title Board's decision, the Court will employ all legitimate presumptions in favor of the propriety of the Board's actions. *Id.* Further, the Board's finding that an initiative contains a single subject is overturned only “in a clear case.” *Id.* The single subject rule must be liberally construed to facilitate the fundamental right of initiative. *In re Proposed Initiative 1997–1998 #74*, 962 P.2d 927, 929 (Colo.1998).

The single subject analysis is not one that stretches a measure beyond its express wording or guesses about the way in which it may be applied. The problem with an unbounded single subject review is clear.

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. Such analysis, however, is neither required by the single subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.

Id.

B. Initiative #156 addresses only the single subject of limiting the sale of intoxicants at food stores.

Objectors argue that Initiative #156 comprises multiple subjects, as it addresses “two heavily regulated substances” – alcohol and marijuana. This argument resolves itself in favor of the Title Board’s decision to exercise its authority to set a ballot title for this measure.

A restriction on selling these two substances – in the next aisle over from groceries – is one subject. Both of the regulated substances are known intoxicants. *See People v. Grant*, 174 P.3d 798, 805 (Colo. App. 2007) (addressing “intoxicants” as encompassing alcohol and drugs). Both are regulated as a matter of the state’s police powers rather than some inalienable right. C.R.S. §§ 12-47-102(1); 12-43.4-102(1). Both are subject to the oversight, regulation, and enforcement power of the Colorado Department of Revenue. C.R.S. §§ 12-47-

201(1) (executive director of Department of Revenue is chief administrative officer for the state licensing authority as to the manufacture, distribution, and sale of alcohol beverages); 12-43.3-201(1) (executive director of Department of Revenue is the chief administrative officer for the state licensing authority as to medical marijuana and retail marijuana).

Most importantly, the Colorado Constitution specifically acknowledges the like regulatory treatment to be given to marijuana and alcohol. “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). Such like treatment includes “additional regulations to ensure that consumers are informed and protected.” *Id.* at § 16(1)(b)(V).

If Objectors are correct, multiple statutes already on the books violate the legislative single subject requirement, which is applied in the same manner as the single subject requirement for statewide ballot measures. Colo. Const., art. V, § 21 (“No bill... shall be passed containing more than one subject”); *see* C.R.S. §§ 1-40-106.5(1)(c) (single subject requirement applied in same manner for initiatives and legislation). For instance, criminal statutes and marijuana regulatory laws address both types of intoxicants. *See, e.g.*, C.R.S. §§ 18-8-203(1)(a), (b) (prohibiting introduction of “contraband” at a detention facility, including alcohol

and marijuana); 12-43.4-402(7)(a), (b) (prohibiting sale of alcohol or alcohol-infused marijuana products at licensed retail marijuana stores). Given that marijuana laws already prohibit the sale of alcohol on marijuana-licensed premises, *id.*, it is entirely reasonable that the alcohol laws would catch up, at least in part, to prohibit marijuana sales at liquor-licensed food stores.

Thus, the Title Board correctly found Initiative #156 to be a single subject.

II. The titles set for #156 are clear and fair.

A. Standard of review.

The Title Board has considerable discretion in setting the titles for a ballot initiative. *No. 3, supra*, 274 P.3d at 555 (citations omitted). This Court will only reverse the Board's designation if the titles are “insufficient, unfair, or misleading.” *Id.* To make that determination, the Court examines the titles as a whole to determine if they are fair, clear, accurate, and complete. *Id.* As such, the Court accords the language of the proposed initiative and the titles set by the Board their plain meaning. *Id.*

B. The titles set for #156 accurately and adequately describe the measure.

Contrary to Objectors’ allegation, this measure is not so indefinite as to defy description in the clear and fair title that was set. Initiative #156 establishes a condition on liquor licensing authorities: they may issue licenses only if the operator of the licensed premises will not also sell food or marijuana there.

Petitioner's confusion is hard to understand, given the ease with which the Board dealt with this measure and the relative simplicity with which it is described in the ballot title. The Title Board was able to, and did, set a full and fair ballot title for this measure, which should be upheld here.

The ballot title states what the measure does: impose a limit on liquor licensing authorities. The nature of that limit is also clear from the title: licenses will not be issued to any "food store that offers for sale, in sealed containers for off-premises consumption, full-strength beer, wine, liquor, marijuana, or marijuana products." Based on the easily identifiable reach of the initiative text that is concisely communicated by the ballot title, the Board's decision should be upheld.

CONCLUSION

The Title Board's decision should be upheld, as it is consistent with the constitutional single subject requirement and the statutory clear titles requirement.

Respectfully submitted this 19th day of May, 2016.

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **RESPONDENTS' OPENING BRIEF ON PROPOSED INITIATIVE 2015-2016 #156 ("PROHIBITION ON SALE OF MARIJUANA AND LIQUOR AT FOOD STORES")** was sent this day, May 19, 2016 via ICCES to counsel for the Title Board and counsel for the Objectors:

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