

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2015) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #156</p> <p>Petitioners: 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>Supreme Court Case No.:</p>
<p><i>Attorneys for Petitioner John Grayson Robinson</i></p> <p>Thomas M. Rogers III, #28809 Hermine Kallman, #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</p>	
<p>PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #156 ("PROHIBITION ON SALE OF MARIJUANA AND LIQUOR AT FOOD STORES")</p>	

Petitioner John Grayson Robinson, a registered elector of the State of Colorado, pursuant to C.R.S. § 1-40-107(2), respectfully petitions this Court to review the actions of the Ballot Title Setting Board with respect to the setting of the title and submission clause for Proposed Initiative 2015-2016 #156 (“Prohibition on Sale of Marijuana and Liquor at Food Stores”), and states:

STATEMENT OF THE CASE

I. Procedural History of Proposed Initiative #156

On March 25, 2016, Proponents Bruce Dierking and Jeanne McEvoy filed Proposed Initiative 2015-2016 #156 (the “Initiative”) with the Office of Legislative Council. The review and comment meeting was held under C.R.S. § 1-40-105(1) on April 8, 2016. Later that same day, Proponents submitted the original, amended, and final versions of the Initiative to the Secretary of State for title setting. On April 20, 2016, the Title Board set the Initiative’s title. On April 27, 2016, Petitioner timely filed a Motion for Rehearing on the basis that the Title Board lacked jurisdiction to set title because the Initiative violates the single subject requirement of article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5, and further that it is impossible to set title as it is impossible to ascertain from the text of the Initiative its intent and meaning. The Title Board held a rehearing on April 29, 2016 and denied the Petitioner’s motion.

II. Jurisdiction

Under C.R.S. § 1-40-107(2), Petitioner is entitled to Colorado Supreme Court review of the Title Board's actions in setting the Initiative's title. Petitioner filed a timely Motion for Rehearing, *see* C.R.S. § 1-40-107(1), and subsequently filed this Petition for Review within seven days from the date of the rehearing, *see* C.R.S. § 1-40-107(2). As required by C.R.S. § 1-40-107(2), attached to this Petition are certified copies of: 1) the Proponents' original, amended, and final drafts of the Initiative; 2) the title set by the Title Board on April 20, 2016; (3) the Motion for Rehearing filed by the Petitioner; and (4) the Title Board's rulings on the Motion for Rehearing as reflected by the title and submission clause set by the Board after rehearing on April 29, 2016. Petitioner respectfully submits that the Title Board erred in denying this motion for rehearing on the issues set forth below. For these reasons, this matter is properly before the Colorado Supreme Court.

GROUND FOR APPEAL

The following is an advisory list of the issues to be addressed in the Petitioner's brief:

- 1) The Initiative violates the single subject requirement of article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5. It targets

two heavily regulated products—alcohol and marijuana—in one measure such that they are not necessarily or properly connected to each other.

- 2) The Title Board should not have set title for the Initiative as it is impossible to ascertain its intent and meaning to clearly reflect it in the title. The language of the measure appears to prohibit issuance of a liquor license to a food store that already sells alcoholic beverages (presumably already under a valid license) which leads to an absurd result. It is impossible to ascertain from the Initiative to what establishments it is intended to apply.

PRAYER FOR RELIEF

Petitioner respectfully request that this Court determine that the Proposed Initiative 2015-2016 #156 contains multiple incongruous subjects and is incomprehensible, and the Title Board lacked jurisdiction to set title for the Initiative.

Respectfully submitted this 5th day of May, 2016.

s/ Thomas M. Rogers III

Thomas M. Rogers III

Hermine Kallman

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Attorneys for Petitioner John Grayson Robinson

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2016, a true and correct copy of the foregoing was served on the following via email and U.S. Mail as follows:

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

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Leeann.morrill@state.co.us
Attorney for the Title Board

s/Jonelle Martinez _____



STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #156 'Prohibition on Sale of Marijuana and Liquor at Food Stores'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 2nd day of May, 2016.

Wayne W. Williams
SECRETARY OF STATE



S. WARD
2:50 PM

RECEIVED

APR 08 2015

SALE OF INTOXICANTS AT FOOD STORES – FINAL #156 Colorado Secretary of State

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

SECTION 1. In Colorado Revised Statutes, **add** section 12-47-401.5 as follows:

12-47-401.5. NO MARIJUANA OR LIQUOR IN FOOD STORES – EXCEPTIONS.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND CONSISTENT WITH SECTION 16(1)(b) OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, THE STATE OR LOCAL LICENSING AUTHORITY MUST NOT ISSUE A LICENSE TO A FOOD STORE THAT OFFERS FOR SALE, IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION, THE FOLLOWING INTOXICANTS THAT ARE REGULATED PURSUANT TO ARTICLES 43.3, 43.4, AND 47 OF TITLE 12:

- (a) MARIJUANA OR MARIJUANA PRODUCT, AS DEFINED IN SECTION 16(2)(f), (k) OF ARTICLE XVIII OF THE COLORADO CONSTITUTION;
- (b) SPIRITUOUS LIQUOR, VINOUS LIQUOR, OR MALT LIQUOR; OR
- (c) BOTH.

FOR PURPOSES OF THIS SECTION, A “FOOD STORE” MEANS ANY ESTABLISHMENT THAT OFFERS 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.

(2) AS AUTHORIZED BY SECTION 12-47-202(1)(b), THE STATE LICENSING AUTHORITY SHALL ADOPT RULES, CONSISTENT WITH THIS PART 4, TO DEFINE “FOOD ITEMS” AND RELATED TERMS. SUCH RULES SHALL BE EFFECTIVE JULY 1, 2017.

SECTION 2. In Colorado Revised Statutes, 12-47-901, **add** (5)(p) as follows:

12-47-901. UNLAWFUL ACTS – EXCEPTIONS. (5) It is unlawful for any person to sell at retail pursuant to this article:

(p) FOR OFF-PREMISES CONSUMPTION, SEALED CONTAINERS THAT CONTAIN MALT, VINOUS, OR SPIRITUOUS LIQUORS OR MARIJUANA OR MARIJUANA PRODUCT AT A FOOD STORE.

SECTION 3. In Colorado Revised Statutes, 12-47-903, **amend** (2.5) as follows:

12-47-903. VIOLATIONS – PENALTIES. (2.5) A person violating the provisions of section 12-47-901(1)(a.5) OR (5)(p) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

SECTION 4. THIS ACT TAKES EFFECT JANUARY 1, 2017.

RECEIVED

APR 08 2016

S. WARD
2:50 P.M.

Colorado Secretary of State

SALE OF INTOXICANTS AT FOOD STORES - REDLINE

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

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FOR PURPOSES OF THIS SECTION, A "FOOD STORE" ~~SHALL MEANS~~ ANY ESTABLISHMENT THAT OFFERS 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.

(2) ~~THE PROHIBITION IN THIS SECTION DOES NOT APPLY TO A LICENSED "RESTAURANT" AS DEFINED IN SUBSECTION (30) OF SECTION 12-47-103 OF THE COLORADO REVISED STATUTES, "MEDICAL MARIJUANA CENTER" AS DEFINED IN SECTION 12-43-4-104(8) OF THE COLORADO REVISED STATUTES, OR "RETAIL MARIJUANA STORE" AS DEFINED IN SECTION 16 (2) (n) OF ARTICLE XVIII OF THE STATE CONSTITUTION.~~

(3) ~~AS AUTHORIZED BY SECTION 12-47-202(1)(b), THE DIVISION OF LIQUOR ENFORCEMENT STATE LICENSING AUTHORITY SHALL ADOPT RULES, CONSISTENT WITH THIS PART 4, TO DEFINE "FOOD ITEMS" AND RELATED TERMS. SUCH RULES SHALL BE EFFECTIVE JULY 1, 2017.~~

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SECTION 3. In Colorado Revised Statutes, 12-47-903, amend (2.5) as follows:

12-47-901. VIOLATIONS – PENALTIES. (2.5) A person violating the provisions of section 12-47-901(1)(a.5) OR (5)(p) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

SECTION 4. THIS ACT TAKES EFFECT JANUARY 1, 2017.

RECEIVED

APR 08 2016

S. WARD
2:50 P.M.

Colorado Secretary of State

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- (c) BOTH.

FOR PURPOSES OF THIS SECTION, A “FOOD STORE” SHALL MEAN ANY ESTABLISHMENT THAT OFFERS 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.

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12-47-903. VIOLATIONS – PENALTIES. (2.5) A person violating the provisions of section 12-47-901(1)(a.5) OR (5)(p) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

SECTION 4. THIS ACT TAKES EFFECT JANUARY 1, 2017.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #156¹

The title as designated and fixed by the Board is as follows:

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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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?

*Hearing April 21, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:27 a.m.*

¹ Unofficially captioned “**Prohibition on Sale of Marijuana and Liquor at Food Stores**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

APR 27 2016

S. WARD
12:13 P.M.

Colorado Secretary of State

BEFORE COLORADO STATE TITLE SETTING BOARD

In re Ballot Title and Submission Clause for 2015-2016 Initiative #156 (“Prohibition on Sale of Marijuana and Liquor at Food Stores”)

JOHN GRAYSON ROBINSON, Objector.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objector, John Grayson Robinson, a registered elector of the State of Colorado, through his legal counsel, Lewis Roca Rothgerber Christie LLP, submits this Motion for Rehearing of the Title Board’s April 21, 2016 decision to set a title for 2015-2016 Initiative #156 (the “Initiative”), and states:

I. The Board Lacks Jurisdiction to Set Title for the Initiative

The Initiative violates the single subject requirement of article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5 by grouping two different categories of products – alcoholic beverages and marijuana – which are regulated by two different articles of the Code and which do not have a necessary and proper connection to each other.

II. The Title Set by the Title Board is Confusing and Misleading

The Board should not have set title to the Initiative as it is impossible to ascertain the intent of the Initiative to clearly reflect it in the title. The measure provides that the liquor licensing authority must not issue a license to a food store that offers for sale alcoholic beverages or marijuana; however, it is unclear how a food store could be selling alcoholic beverages without such a license to begin with. Likewise, a food store, by definition under current law, cannot sell marijuana, so it is unclear to what entities the measure is intended to apply. Accordingly, the measure is incomprehensible, and title cannot be set under *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 44*, 977 P.2d 856, 858 (Colo. 1999) (“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 and must, instead, be returned to the proponent.’”) (citing *In re Proposed Initiative for 1999-2000 No. 25*, 974 P.2d 458, 469 (Colo.1999)).

WHEREFORE, Objector respectfully requests that the Title Board set Initiative 156 for rehearing pursuant to C.R.S. § 1-40-107(1).

DATED: April 27, 2016.

s/Hermine Kallman

Thomas M. Rogers III

Hermine Kallman

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Email: trogers@lrrc.com

hkallman@lrrc.com

Address of Objector:

John Grayson Robinson

23752 E. Hinsdale Place

Aurora, CO 80016

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email and U.S. Mail as follows:

Bruce Dierking
7102 Rozena Drive
Longmont, CO

Jeanne McEvoy
10451 Truckee St., Unit E
Commerce City, CO

Mark G. Grueskin (via email)
1600 Stout Street, Suite 1000
Denver CO 80202
mark@rklawpc.com
Attorney for Proponents

s/Jonelle Martinez

Ballot Title Setting Board

Proposed Initiative 2015-2016 #156¹

The title as designated and fixed by the Board is as follows:

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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?

*Hearing April 21, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:27 a.m.*

*Rehearing April 29, 2016:
Motion for Rehearing denied.
Hearing adjourned 10:43 a.m.*

¹ Unofficially captioned “**Prohibition on Sale of Marijuana and Liquor at Food Stores**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.