DATE FILED: May 20, 2016 5:03 PM

SUPREME COURT, STATE OF COLORADO **2 East 14th Avenue** **Denver, Colorado 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 Initiative 2015-2016 #139 ("Regulation Of The Sale Of Marijuana And Marijuana Products") **Petitioners**: DEAN C. HEIZER II and GREGORY S. KAYNE v. **Respondents**: ALI PRUITT and RON CASTAGNA and **Title Board**: SUZANNE STAIERT; DAVID BLAKE; and SHARON EUBANKS	▲COURT USE ONLY▲
Attorneys for Petitioners John Paul Seman Jr., No. 18137 JPS LAW GROUP 1700 Lincoln Street, Suite 1530 Denver, Colorado 80203 Phone: (720) 377-0703 Fax: (303) 832-4818 E-mail: jseman@jps-law.net Kevin C. Paul, No. 20941 HEIZER PAUL LLP 2401 15th Street, Suite 300 Denver, CO 80202 Phone: (303) 595-4747 Fax: (303) 595-4750 E-mail: kpaul@hpfirm.com	Case No.: 2016SA158
PETITIONERS' OPENING 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 3,167 words.

Further, the undersigned certifies that 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 (R.__, p.__), 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.AR. 32.

By: s/John Paul Seman Jr.

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Dean C. Heizer II and Gregory S. Kayne ("Petitioners"), registered electors of the State of Colorado, through undersigned counsel, respectfully submit this Opening Brief in support of their petition for review of the title, ballot title, and submission clause (jointly, the "Title") set for proposed Initiative 2015-2016 #139 ("Regulation of the Sale of Marijuana and Marijuana Products") ("Initiative #139" or the "Initiative").

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board (the "Board") erred in determining that Initiative #139 is limited to a single subject?
2. Whether Initiative #139 impermissibly requires a single vote on multiple, distinct subjects?
3. Whether the Title is misleading and likely to create confusion?

STATEMENT OF THE CASE

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

Petitioners appeal the single-subject and title setting determinations of the Board with respect to Initiative #139, which would add new packaging standards; add new labeling requirements; add a new State-sanctioned list of alleged health risks; and add new and arbitrary "potency" standards and limitations regarding

medical marijuana, recreational marijuana, or possibly both, to the Colorado Constitution.

Ali Pruitt and Ron Castagna (hereafter "Proponents") proposed Initiative #139. A review and comment meeting was held April 7, 2016 and the Board thereafter reviewed and set titles for the Initiative. On April 27, 2016, Petitioners moved for rehearing, asserting that the Initiative contained multiple subjects, that it required a single vote on those distinct and unrelated subjects, and that the Title was vague and misleading. The Board held a rehearing on April 29, 2016, and denied Petitioners' motion. Petitioners timely filed their petition for review before this Court pursuant to C.R.S. § 1-40-107(2).

II. Statement of Facts

Proponents' final draft of Initiative #139, attached as Exhibit A, proposes substantial additions to Article XVIII of the state constitution.

First, the Initiative adds a new, constitutional requirement that "edible retail marijuana products" offered for sale be "individually packaged." *Id*.

Second, the Initiative would mandate that marijuana products in edible form be offered for sale in a "single serving" containing "no more than 10mg of active tetrahydrocannabinol ("THC")." *Id.* at Sections 16 (2) (r) and (5.5) (I).

Third, Initiative #139 requires that all marijuana, in any form, have printed on its packaging "the following identified health risks, including but not limited to: increased chance of a harmful reaction due to higher tetrahydrocannabinol levels; birth defects and reduced brain development; increased risk of brain and behavioral problems in babies; breathing problems; permanent loss of brain abilities; altered senses and mood swings, impaired body movement and impaired thinking; depression, anxiety, and temporary paranoia; potential for long-term addiction, [and] the potency of the product." *Id*. at Section 16 (5.5) (a) (I) (A), (B).

Fourth, the Initiative would impose a new, and unprecedented, requirement that "the potency of marijuana and marijuana products will be controlled with an upward potency limit that does not exceed 16%." *Id.* at Section 16 (5.5) (b).

Fifth, the Initiative would impose a new constitutional requirement that all marijuana, in any form, be offered for sale in a package that is "resealable for any product." *Id*. at Section 16 (2) (a) (III) and (5.5) (a) (I).

Sixth, the Initiative would create a new, constitutional mandate that all marijuana be offered for sale in packaging that is "opaque so that the packaging does not allow the product to be seen without opening the packaging material." *Id.* at Section 16 (2) (a) (II) and (5.5) (I)

Seventh, Initiative #139 would establish that the term "potency" means "the percentage at the point of sale of tetrahydrocannabinol by total weight in marijuana or marijuana products," but not "edible retail marijuana products." *Id*. at Section 16 (2) (p).

Eighth, the Initiative would establish that the term "potency" with respect to "edible retail marijuana products" means "the weight at the point of sale of tetrahydrocannabinol evenly distributed in an edible retail marijuana product." *Id*.

And ninth, the Initiative would impose a new constitutional requirement that all marijuana and marijuana products offered for sale in Colorado be "sold in child-resistant packaging." Initiative #139 at Article 18 § 16 (5.5) (I).

The Title set by the Board identifies some of the Initiative's proposed constitutional mandates, but omits others. In addition the Title inaccurately describes the "potency limit" as "16% tetrahydrocannabinol."

SUMMARY OF THE ARGUMENT

Initiative # 139 contravenes the single subject rule in that it provides for nine substantive constitutional additions that address five separate and distinct subjects. By doing so, the Initiative would permit the Proponents to "log roll" support for provisions of the Initiative that would otherwise be rejected if considered on their own merits.

The Title established for Initiative # 139 is misleading and potentially confusing. It fails to define a critical term and misstates both the scope of the Initiative and the discretion it creates with respect to potency limitations.

For these reasons, the Initiative should be remanded to the Title Board with directions to return it to Proponents.

ARGUMENT

I. Initiative # 139 Violates the Single Subject Requirement.

Initiative # 139 compiles a series of constitutional amendments that address five separate, distinct, and independent subjects. As a consequence, the Initiative violates the single subject mandate set forth in Article V, Section 1 (5.5) of the state constitution. The Board was therefore in error to set the Title and its determination to do so should be reversed.

A. Standard of Review and Preservation of the Issues on Appeal.

In reviewing a challenged initiative under the single subject rule, this Court employs legitimate presumptions in favor of the Board's single subject determination. Nevertheless, the Court must engage in a limited analysis of the initiative's meaning to determine whether the single subject requirement found in Colo. Const., art. V, §1 (5.5), has been violated. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 172, No. 173, No.*

174, and No. 175, 985 P.2d 243, 245 (Colo. 1999); *Hayes v. Spalding*, 333 P.3d 76, 79 (Colo. 2014).

The single subject issues raised in this appeal were presented to the Board during the motion for rehearing and thus preserved for Court review. *See* Motion for Rehearing on Initiative 2015-2016 #139 at 2 (attached as Exhibit B).

B. Initiative # 139 Addresses a Series of Five Distinct Subjects

The Board erred in determining that Initiative # 139 contains a single subject, rather than a collection of distinct and separate subjects that are not dependent upon one another.

The Initiative contains not less than nine, distinct, substantive additions to Article XVIII, Section 16 of the Colorado Constitution. These nine new constitutional provisions fall neatly into a series of five subjects: (1) marijuana and marijuana product packaging; (2) marijuana and marijuana product labeling; (3) the amount of THC permissible in a single serving of marijuana or a marijuana product intended for oral consumption; (4) the maximum "potency" levels applicable to marijuana and marijuana products; and (5) the alleged health risks of inhaling or ingesting marijuana.

In *In re "Public Rights in Waters II"*, 898 P.2d 1076 (Colo. 1995), this Court determined that an initiative addressing elections for water conservation and

conservancy districts, while also requiring support for public trust water rights, violated the single subject rule. *Id*. at 1079-80. As the Court explained, "[i]t was of no moment that both subjects related to water: 'The common characteristic that the paragraphs [of the initiative] all involve 'water' is too general and too broad to constitute a single subject.'" *In re the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 # 43*, 46 P.3d 438, 441-42 (Colo. 2002) (quoting *Public Rights in Waters II* at 1080). Rather, the initiative at issue sought to address more than one purpose and the proponents' effort to characterize it under a single, overarching theme could not save it. *In re 2001-02 # 43* at 442.

As in *Public Rights in Waters II*, Initiative # 139 includes multiple provisions addressing five distinct subjects. The fact that each of these subjects in some way addresses the overarching theme of "marijuana" is insufficient to satisfy the single subject rule. Rather, just as in *Public Rights in Waters II*, Initiative # 139 impermissibly seeks to gather five separate and distinct purposes under a broad, general theme. As a consequence, the Initiative violates the constitutional single subject requirement and this Court should decline to permit it to appear on the ballot.

C. Initiative # 139 attempts to "log roll" support for multiple, independent subjects.

Initiative # 139 compiles provisions addressing five separate and distinct subjects into a single measure. In doing so, the Initiative impermissibly attempts to "logroll" support for its multiple purposes that are not dependent upon one another and that could not be enacted on their individual merits. As a consequence, this Court should remand Initiative # 139 to the Board with instructions to set aside the Title.

In *Hayes v. Spalding*, this Court explained that the constitutional single subject rule is "intended to prevent proponents from engaging in 'log rolling' or 'Christmas tree tactics,'" *id*. at 85 (quoting *In re Proposed Initiative for 2001-2002 # 43*, 46 P. 3d 438, 441 (Colo. 2002)), "in which proponents attempt to garner support for their initiative from 'various factions which may have different or even conflicting interests.'" *In re # 43* at 443 (quoting *Public Rights in Waters II* at 1079). The point is to prevent proponents "from combining multiple subjects to attract a 'yes' vote from voters who might vote 'no' on one or more of the subjects if they were proposed separately." *Hayes* at 80 (citing *In re Proposed Initiative for 1997-1998 # 84*, 961 P. 2d 456, 458 (Colo. 1998)); *see also In re Proposed Initiative for 1997-98 # 30*, 959 P.2d 822, 825 (Colo. 1998) ("One concern which led to voter enactment in 1994 of the multiple subject ban is that proponents would

combine different proposals in the hopes of getting unrelated subjects passed by enlisting support for the entire initiative from advocates of the separate subjects – 'thereby securing the enactment of subjects that could not be enacted on their merits alone.'" (quoting *In re Parental Choice on Education*, 917 P.2d 292, 294 (Colo. 1996)).

Much as those measures this Court has previously rejected for "log rolling," Initiative # 139 compiles separate, distinct, and substantively independent provisions – some of which voters might choose to support and others of which those same voters might well choose to reject – under a single title.

There is simply no reason that a voter who supported requiring that all marijuana and marijuana products be sold in child proof containers would necessarily also support a mandate that all marijuana sold in Colorado have a minimal THC content.

Likewise, a voter's support for a constitutional provision mandating that marijuana product labels disclose the potency of particular products has absolutely no necessary, or even rational, link to that same voter's position regarding the list of alleged "health risks" Initiative # 139 proposes for official state recognition.

In short, Initiative # 139 poses precisely the log rolling danger that the single subject rule is intended to protect against. In light of its separate, distinct, and

substantively independent provisions, there is no basis upon which to conclude that the Initiative would permit the "up-or-down" vote the state constitution requires. Rather, voters who sincerely desire to assure that marijuana products are distributed in child-safe containers, but who have no interest in the adoption of an arbitrary and baseless "potency" limit would, nevertheless, be confronted with voting for one in order to obtain the other. Forcing such a choice is exactly the tactic the single subject rule is intended to prohibit.

In conclusion, Initiative # 139 clearly violates the single subject mandate. Its nine substantive amendments to the state constitution address five separate and independent subjects. Proponents' effort to compile all of these subjects under a single title because they each relate to the sale of marijuana falls well short of the mark.

Moreover, the Initiative poses precisely the log rolling danger that the single subject rule is intended to counter. In short, Initiative #139 would very likely confront voters with the need to vote for provisions they vehemently disagree with in order to obtain passage of a single provision they just as actively support.

Therefore, based upon all of the foregoing, Petitioners respectfully request this Court to remand Initiative # 139 to the Title Board with instructions to set aside the Title and to return the Initiative to Proponents.

II. The Title set for Initiative # 139 violates the clear title requirement.

A. Standard of review and preservation of issues on appeal.

Although this Court grants legitimate presumptions in favor of the Board's actions, it must, nevertheless, examine an initiative's text to assure that the title and submission clause "correctly and fairly express the true intent and meaning" of the measure. *See* C.R.S. § 1-40-106 (3) (b). The title and submission clause should enable the electorate, *whether familiar or unfamiliar with the subject matter of a particular proposal*, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45,* 234 P.3d 642, 648 (Colo. 2010) (emphasis added). "[A] material omission can create misleading titles." *In re Title, Ballot and Submission Clause 1999-2000 #258A,* 4 P.3d 1094, 1098 (Colo. 2000).

Petitioners argued that the Title is misleading before the Board on rehearing. *See* Exhibit B at 3.

B. The Title may mislead voters regarding the scope of Initiative # 139.

The Title set by the Board states, in full:

> An amendment to the Colorado constitution concerning the controlled sale of *retail* marijuana, and, in connection therewith, requiring that *retail*

marijuana be sold in child-resistant packaging; requiring edible *retail* marijuana products to be sold as individually packaged, single-serving products; requiring warnings on *retail* marijuana and *retail* marijuana product packaging regarding the health risks and potency of the product; and limiting all *retail* marijuana and *retail* marijuana products sold at *retail* to a potency limit of 16% tetrahydrocannabinol.

See Exhibit C (emphasis added). Although the Title repeatedly uses the term "retail marijuana," that term is not defined in either the text of the Initiative or in the balance of Article XVIII, § 16 of the constitution. While the term "retail marijuana" appears in certain statutes and regulations, nothing in either the Title or the text indicates that Initiative # 139 is intended to adopt the term as it is used elsewhere.

In *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238 (Colo. 1990), this Court remanded a title, ballot title and submission clause because they failed to include the initiative's proposed definition of the term "abortion." *Id*. at 242. Noting that existing statutes related to abortion differed from the definition adopted in the initiative, this Court determined that "without this definition, [the title and the ballot title and submission clause] do not fully inform the signors of the initiative petition and the

persons voting on the initiative; and, consequently, do not fairly reflect the contents of the proposed initiative." *Id.* The Court therefore remanded the title, and the ballot title and submission clause to the Title Board with directions for revision. *Id*.

Here, the text of the Initiative indicates that its new, constitutional mandates are intended to apply to all "marijuana and marijuana products that are offered for sale." *See* Exhibit A at Section 16 (5.5). The Title, however, modifies the terms "marijuana" and "marijuana products" with the term "retail." Thus, the Title could well suggest to voters – particularly those who are unfamiliar with the Initiative's subject matter and who have no knowledge of the related statutes and regulations -- that the Initiative's new constitutional mandates apply only to certain types of marijuana, referred to as "retail marijuana," but not to others, such as that marijuana offered for sale exclusively to medical marijuana patients.

Because the Title includes repeated use of a critical, but undefined, term, it could potentially mislead voters regarding the true scope, and potential effects, of Initiative # 139. Therefore, as it has before, this Court should remand the Title to the Board for revision in accordance with the clear title requirement.

Similarly, the Title is misleading with respect to the potency limitation included in Initiative # 139. The Initiative text states that "the potency of

marijuana and marijuana products will be controlled with an upward potency limit *that does not exceed* 16%." Exhibit A at p. 4, Section 16 (5.5) (b) (emphasis added). The text further provides that the General Assembly is authorized to adopt legislation "related to the controlled sale of marijuana and marijuana products" that does not contravene the Initiative. *Id.* at Section 16 (5.5) (c). Taken together, these provisions indicate that (i) Initiative # 139 does not actually establish a potency limit, but only a threshold beyond which that limit may not be set, and (ii) the General Assembly could, through legislation, establish a substantially lower potency limit.

Nothing in the Title indicates to voters that this is the case. Rather, the Title states that Initiative # 139 would limit "all retail marijuana and retail marijuana products sold at retail *to a potency limit of 16%* tetrahydrocannabinol." *See* Exhibit C. Voters reading the Title may therefore believe that Initiative # 139 sets, through a constitutional amendment, a 16 percent THC potency limit for all marijuana and marijuana products. In fact, the Initiative does no such thing, permitting legislation to establish multiple potency limits for different marijuana products, so long as all remain beneath the 16 percent potency threshold. As a consequence, the Title set for Initiative # 139 is misleading, could easily give rise

to substantial voter confusion regarding the potency limit, and contravenes the clear title requirement.

In sum, the Title does not assure that average voters, with no particular knowledge regarding the multiple subjects the Initiative addresses, will understand that they are voting for a measure that applies to all marijuana and marijuana products, including those offered exclusively to medical marijuana patients, and that authorizes the adoption of multiple THC potency limits at levels substantially less than 16 percent. The Title therefore fails the clear title requirement and this Court should remand it to the Board.

CONCLUSION

For all of the reasons set forth above, this Court should conclude that Initiative # 139 addresses multiple, independent subjects. In doing so, the Initiative would potentially require that voters support provisions they actually oppose in order to vote in favor of those that they support. This Hobson's choice does not comport with the single subject rule.

Moreover, the Title set by the Board is unclear, misleading and confusing. It does nothing to assure that voters understand the actual scope of the Initiative or that the Initiative permits THC potency limitations at any level well less than 16 percent.

The Petitioners therefore respectfully request this Court to remand Initiative # 139 to the Title Board with directions that it be returned to the Proponents.

Respectfully submitted this 20th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2016, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was filed and served via the Integrated Colorado Courts E-Filing System to the following:

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In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

EXHIBIT A

2015-2016 #139 - Final

RECEIVED 1:20 P.M.
APR 08 2016 S. WARD
Colorado Secretary of State
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Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, **amend** subsection (2) of section 16 to article 18; and **add** subsection (5.5) of section 16 of article 18 as follows:

Section 16. Personal use and regulation of marijuana.

(2) Definitions. As used in this section, unless the context otherwise requires,

(a) "CHILD-RESISTANT" MEANS PACKAGING THAT IS:

(I) DESIGNED OR CONSTRUCTED TO BE SIGNIFICANTLY DIFFICULT FOR CHILDREN UNDER FIVE YEARS OF AGE TO OPEN AND NOT DIFFICULT FOR NORMAL ADULTS TO USE PROPERLY AS DEFINED BY 16 C.F.R. 1700.20 (1995);

(II) OPAQUE SO THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL; AND,

(III) RESEALABLE FOR ANY PRODUCT.

~~(a)~~(b) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised Statutes.

~~(b)~~(c) "Consumer" means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

~~(c)~~(d) "Department" means the department of revenue or its successor agency.

~~(d)~~(e) "EDIBLE RETAIL MARIJUANA PRODUCT" MEANS ANY RETAIL MARIJUANA PRODUCT WHICH IS INTENDED TO BE CONSUMED ORALLY, INCLUDING BUT NOT LIMITED TO, ANY TYPE OF FOOD, DRINK, OR PILL.

~~(d)~~(f) "Industrial hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

~~(e)~~(g) "Locality" means a county, municipality, or city and county.

~~(f)~~(h) "Marijuana" or "marihuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which

is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

~~(g)~~(i)"Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

~~(h)~~(j) "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

~~(i)~~(k) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

~~(j)~~(l) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

~~(k)~~(m) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

~~(l)~~ (n)"Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

~~(m)~~(o) "Medical marijuana center" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

~~(n)~~(p) "POTENCY" MEANS THE PERCENTAGE AT THE POINT OF SALE OF TETRAHYDROCANNABINOL BY TOTAL WEIGHT IN MARIJUANA OR MARIJUANA PRODUCTS, EXCLUDING EDIBLE RETAIL MARIJUANA PRODUCTS. FOR EDIBLE RETAIL MARIJUANA PRODUCTS, POTENCY MEANS THE WEIGHT AT THE POINT OF SALE OF TETRAHYDROCANNABINOL EVENLY DISTRIBUTED IN AN EDIBLE RETAIL MARIJUANA PRODUCT.

~~(n)~~(q) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

~~(p)~~(r) "SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT" MEANS AN EDIBLE RETAIL MARIJUANA PRODUCT FOR SALE TO CONSUMERS CONTAINING NO MORE THAN 10MG OF ACTIVE TETRAHYDROCANNABINOL.

~~(o)~~(s) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

(5.5) CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS. (a) IN ORDER TO ACCOMMODATE PUBLIC HEALTH AND SAFETY AS THEY RELATE TO MARIJUANA IN COLORADO, AND TO ENSURE THAT THE PUBLIC IS WELL EDUCATED ON THE SIDE EFFECTS AND POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS, MARIJUANA AND MARIJUANA PRODUCTS THAT ARE OFFERED FOR SALE MUST:

(I) BE CONTROLLED AND SOLD IN CHILD-RESISTANT PACKAGING AS MARIJUANA OR AS A SINGLE-SERVING EDIBLE RETAIL MARIJUANA PRODUCT THAT IS INDIVIDUALLY PACKAGED.

(II) HAVE PRINTED ON THE MARIJUANA PACKAGING OR MARIJUANA PRODUCT PACKAGING, ALONG WITH LABELING CONTROLS AT THAT TIME, THE FOLLOWING:

(A) IDENTIFIED HEALTH RISKS, INCLUDING, BUT NOT LIMITED TO:

(i) INCREASED CHANCE OF A HARMFUL REACTION DUE TO HIGHER TETRAHYDROCANNABINOL LEVELS;

(ii) BIRTH DEFECTS AND REDUCED BRAIN DEVELOPMENT;

(iii) INCREASED RISK OF BRAIN AND BEHAVIORAL PROBLEMS IN BABIES;

(iv) BREATHING PROBLEMS;

(v) PERMANENT LOSS OF BRAIN ABILITIES;

(vi) ALTERED SENSES AND MOOD SWINGS;

(vii) IMPAIRED BODY MOVEMENT AND IMPAIRED THINKING;

(viii) DEPRESSION, ANXIETY, AND TEMPORARY PARANOIA;

(ix) POTENTIAL FOR LONG-TERM ADDICTION.

(B) THE POTENCY OF THE PRODUCT.

(b) THE POTENCY OF MARIJUANA AND MARIJUANA PRODUCTS WILL BE CONTROLLED WITH AN UPWARD POTENCY LIMIT THAT DOES NOT EXCEED 16%.

(c) THE COLORADO GENERAL ASSEMBLY IS AUTHORIZED TO ADOPT BY BILL MEASURES THAT ADVANCE THE PUBLIC'S INTEREST IN THE PUBLIC HEALTH AND SAFETY RELATED TO THE CONTROLLED SALE OF MARIJUANA AND MARIJUANA PRODUCTS IN COLORADO SO LONG AS ITS ACTIONS DO NOT CONTRAVENE THIS SUBSECTION 5.5.

(d) NOTHING IN THIS SUBSECTION (5.5) WILL BE CONSIDERED UNREASONABLY IMPRACTICAL AND IS IN THE INTEREST OF PUBLIC HEALTH AND SAFETY.

EXHIBIT B

RECEIVED
APR 27 2016
Colorado Secretary of State
S.WARD
4:47P.M.
DATE FILED: May 20, 2016 5:03 PM

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2015-2016 #139

MOTION FOR REHEARING OF OPPONENTS TO PROPOSED INITIATIVE NO. 139: "REGULATION OF THE SALE OF MARIJUANA & MARIJUANA PRODUCTS"

Colorado registered electors Dean C. Heizer II and Gregory S. Kayne (the "Movants"), by and through their undersigned counsel, John Paul Seman, Jr., of JPS Law Group, and Heizer | Paul LLP, hereby request a rehearing before the Colorado Ballot Title Setting Board (the "Board") with respect to Initiative 2015-2016 No. 139, regarding Regulation of the Sale of Marijuana and Marijuana Products ("No. 139"). As set forth below, Movants respectfully object to the title, the ballot title, and the submission clause set by the Board based upon the following:

I. BACKGROUND

On April 21, 2016, the Board approved the following title for No. 139:

> An amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, **requiring** that retail marijuana be sold in **child-resistant packaging; requiring** edible retail marijuana products to be sold as **individually packaged, single-serving products; requiring warnings** on retail marijuana and retail marijuana product packaging **regarding the health risks and potency of the product; and limiting** all **retail marijuana** and retail marijuana products sold at retail **to a potency limit of 16%** tetrahydrocannabinol.

See Colorado Secretary of State, Results for Proposed Initiative #139 (www.sos.state.co.us/pubs/elections/imitiatives/titleboard/results/2015-2016) (emphasis added).

The Board then set the ballot title and submission clause as follows:

> Shall there be an amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol?

See id.

II. GROUNDS FOR RECONSIDERATION

A. NO. 139 IMPERMISSABLY ADDRESSES MULTIPLE SUBJECTS.

No. 139 addresses at least two separate and distinct subjects. It is therefore prohibited by article V, section 5 of the Colorado Constitution and the Board should therefore decline to set a title, ballot title, and submission clause.

Each initiative that proposes an amendment to the State Constitution shall contain only **one subject**, clearly expressed in the title set for that initiative. *See* Colo. Const. Art. V., § 1(5.5) (the "Single Subject Rule"); *see* also C.R.S. § 1-40-106.5 (Single-subject requirements for initiated measures); *In re Title, Ballot Title, Submission Clause*, 974 P.2d 458, 463 (Colo. 1999) (proposed initiative violates single subject rule where it "has at least two distinct and separate purposes which are not dependent upon or connected with each other.").

Under the umbrella of "Controlled sale of marijuana and marijuana products," No. 139 would add provisions to Article XVIII, Section 16 of the Colorado Constitution that create the following:

1. New "child-resistant" packaging standards;
2. New edible marijuana product "single-serving" packaging standards;
3. New "health risks" labeling requirements;
4. New "potency" labeling requirements;
5. A new mandate that marijuana and marijuana products "be controlled like alcohol;" and
6. A new limitation on the "potency" of marijuana and marijuana products.

Taken together, these provisions impermissibly address at least the following four separate and independent subjects: (i) packaging of marijuana and marijuana products; (ii) the purported health risks of marijuana; (iii) labelling requirements for marijuana and marijuana products; and (iv) marijuana and marijuana product potency limitations. None of these subjects is clearly expressed in the title set for No. 139. As a consequence, the Board should reconsider its initial determination and should conclude that no title can be set.

B. NO. 139 SEEKS A "YES" VOTE FROM VOTERS WHO MIGHT WELL VOTE "NO" ON ONE OR MORE OF ITS SUBJECTS IF PROPOSED SEPARATELY.

The Single Subject Rule prohibits attempts to roll together multiple subjects in order to attract the votes of those who would favor one of those subjects, but would oppose the others. *See, e.g., In re Proposed Initiative for 2005-2006 #74*, 136 P.3d 237, 242 (Colo. 2006); *In re Proposed Initiative for 1997-1998 #84*, 961 P.2d 456, 458 (Colo. 1998). Initiative No. 139 clearly combines multiple, disparate subjects in an attempt to attract voters who might oppose

one of these subjects if it were standing alone. Specifically, some voters may favor enshrining in the Colorado Constitution additional packaging and labelling requirements for retail marijuana, particularly to make such products "child-resistant", but not favor, or even understand, prohibiting the lawful sale of all forms of marijuana for which the ill-defined "potency" exceeds "16%". Therefore, the Board should determine that No. 139 violates the Single Subject Rule and that a title cannot be set for it.

C. NO. 139 IS BOTH VAGUE AND MISLEADING AND THE BOARD CANNOT FAIRLY SET A TITLE FOR IT.

A measure's title and submission clause must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. §1-40-106(3)(b). The title and submission clause should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010) "[A] material omission can create misleading titles." *In re Title, Ballot and Submission Clause 1999-2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000).

The title and submission clause for measure #139 are misleading and confusing because they fail to describe important aspects of the measure. Among other defects, the title and submission clause:

1. Fails to reflect what is meant by "retail marijuana" and does not clearly distinguish whether the title encompasses recreational or medical marijuana, or both;

2. Fails to state that the real purpose of the measure is to subvert the will of the people of Colorado by establishing a potency limit of 16% tetrahydrocannabinol thereby effectively neutering the voter-passed Amendment 64.

Therefore, the Board should determine that No. 139 fails to correctly and fairly express the true intent and meaning and that a title cannot be set for it.

CONCLUSION

Based on the forgoing, Mr. Heizer and Mr. Kayne request a rehearing of the Title Board for Initiative 2015-2016 #139. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents, and therefor the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Heizer and Mr. Kayne respectfully request the Title Board amend the title and submission clause consistent with the concerns set forth above and as set forth in Exhibit A.

Respectfully submitted this 27th day of April, 2016 by:

JPS Law Group

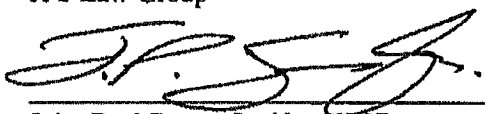

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Exhibit A

Colorado Secretary of State
Title Board
Attn: Title Board
1700 Broadway, Suite 200
Denver, CO 80290

Electronic copy to Title Board
(initiatives@sos.state.co.us

Electronic copy to Steve Ward
(steven.ward@sos.state.co.us)

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2015-2016 #139	

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

JOHN P. SEMAN JR., of lawful age, being first duly sworn upon oath, states and declares:

That he is one of the attorneys for the Applicants herein; that on the 27th day of April, 2016, he caused a copy of the attached MOTION FOR REHEARING OF OPPONENTS TO PROPOSED INITIATIVE NO. 139: "REGULATION OF THE SALE OF MARIJUANA & MARIJUANA PRODUCTS" to be delivered to the persons listed on Exhibit A in the manner indicated therein.

By: Alexandra Zvereva

Subscribed and sworn to before me this 27th day of April, 2016.

Witness my hand and official seal.

My commission expires: March 28, 2019.

/s/ Alexandra Zvereva
Notary Public

EXHIBIT C

Ballot Title Setting Board

Proposed Initiative 2015-2016 #139[1]

DATE FILED: May 20, 2016 5:03 PM

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

An amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol.

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

Shall there be an amendment to the Colorado constitution concerning the controlled sale of retail marijuana, and, in connection therewith, requiring that retail marijuana be sold in child-resistant packaging; requiring edible retail marijuana products to be sold as individually packaged, single-serving products; requiring warnings on retail marijuana and retail marijuana product packaging regarding the health risks and potency of the product; and limiting all retail marijuana and retail marijuana products sold at retail to a potency limit of 16% tetrahydrocannabinol?

Hearing April 21, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 12:27 p.m.

Rehearing April 29, 2016:
Motion for Rehearing denied.
Hearing adjourned 10:53 a.m.

[1] Unofficially captioned **"Regulation of the Sale of Marijuana and Marijuana Products"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.