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Colorado Secretary of State

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/initiatives/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:

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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 Steve Ward
(steven.ward@sos.state.co.us)**

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

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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