

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 25, 2016 1:38 PM</p>
<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 Initiative 2015-2016 #115 (“Change to the “Colorado Beer Code” Definition of Fermented Malt Beverages to Include All Beer Products”)</p> <p>Petitioners: JOHN GRAYSON ROBINSON AND JOHN BLAKE HARRISON</p> <p>v.</p> <p>Respondents: JEFF JULIN AND CHARLIE BROWN</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; SHARON EUBANK; AND FREDERICK R. YARGER</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>PETITIONERS’ ANSWER BRIEF</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):

- It contains _____ 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 (R.__P.__), not to an entire document, where the issues was raised on rule on.

For the party responding to the issue:

It contains under a separate heading, a statement of whether each 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/Matthew K. Tieslau

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Petitioners, John Grayson Robinson and John Blake Harrison, respectfully submit this Answer Brief in support of their challenge to the title, ballot title, and submission clause as set by the Title Board for Initiative 2015-2016 #115 (hereinafter “Initiative”).

I. SUMMARY OF THE ARGUMENT

The Opening Briefs of the Proponents and Title Board fail to demonstrate that the ballot title and submission clause as set by the Title Board comport with the clear title requirement as set forth in Article V, section 1(5.5) of the Colorado Constitution and § 1-40-106(3)(b), C.R.S. (2015). Proponents and the Title Board both assert that the one sentence title is enough to adequately appraise voters of the effect of a yes or no vote on the Initiative, and that the ballot title fully and accurately describes what the Initiative proposes to accomplish. However, a closer analysis of the Initiative reveals central features that are not described in the title such as: (1) changes to the innate composition of businesses licensed to sell beer in Colorado; (2) changes to the range of alcohol by weight beer that certain licensed businesses may carry; and (3) discrepancies in the number of licenses certain businesses may obtain to sell beer. As such the Title Board erred in setting a title that is misleading and confusing to voters.

Petitioners’ Answer Brief will address points of contention arising from the Opening Briefs surrounding the points made above. Arguments from Petitioners’

Opening Brief not addressed herein are not conceded; instead Petitioners elect not to restate those legal arguments in the interest of this Court's time, but specifically incorporates them by reference.

II. ARGUMENT

A. Initiative #115 Violates the Clear Title Requirement

1. Standard of Review and Preservation of Issue

Petitioners agree with both Proponents' and the Title Board's statements concerning the applicable standard of review. Petitioners disagree with Proponents' statement that Petitioners did not preserve "the basis of the argument that the Initiative failed to meet the" clear title requirement. Proponents' Opening Brief ("Props.' Br."), 3. Proponents seem to vaguely claim that some of the bases of Petitioners' argument regarding the clear title requirement were "not clearly presented to the Board." *Id.* at 4. However, Proponents cannot point to any specific bases of Petitioners' argument which were not raised before the Title Board. In fact, all of Petitioners' arguments were properly raised in Petitioners' Motion for Rehearing on April 13, 2016, and their Petition for Review of Final Action on January 13, 2016. Ex. D and F of Petitioners' Opening Brief (Pets.' Br.) This is further supported by the Title Board's acknowledgment that Petitioners preserved their argument in their Motion for Rehearing. Title Board's Opening Brief ("Title Board's. Br."), 4.

2. The Proponents' and Title Board's Arguments Fail to Acknowledge the Far Reaching Impacts of the Initiative

Both Proponents and the Title Board assert in their opening briefs that the Initiative's core purpose is a definitional change to the alcohol content limitations on fermented malt beverages. Props.' Br., 8 ("The intent of the Initiative is to repeal the alcohol limitation in the definition of fermented malt beverages"); Title Board's Br., 7 ("the core of the proposed initiative . . . is the elimination of the distinction between 3.2% and full-strength beer"). While these statements are facially true, both Proponents and the Title Board then try to hide behind the definition change in order to avoid ever discussing other central features of the Initiative which have not adequately been set forward in a clear title.

For example, Proponents focus on how "the remainder of Article 46 remains unchanged," and that there are "no alterations to licensing procedures and no changes in licensing fees." Props.' Br., 9. The Title Board similarly seems to shrug off the far reaching changes of the Initiative, stating that "it is obvious that the existing licensing and permitting scheme would be altered," but concludes that "the minutiae of licensing are a byproduct of the core of the proposed initiative." Title Board's Br., 6-7. Neither Proponents' nor the Title Board's briefs then attempt to examine other features of the Initiative. This simplified representation of the Initiative's central features does not do justice to the *actual affect* the Initiatives text will have on alcoholic beverage licensing.

As discussed in Petitioners' Opening Brief, there are central features of the Initiative that the language of both the Initiative and the ballot title and submission clause fail to convey. For example, the Initiative will change: the innate composition of businesses licensed under Colorado to sell 3.2% and up alcohol by weight beer; the relationship between the number of licenses related business entities may obtain to sell full strength beer; and the range of alcohol by weight beer that licensed businesses may carry (.2% and up alcohol by weight for businesses licensed under Article 46 v. 3.2% and up alcohol by weight for those licensed under Article 47). Pets.' Br., 10-17.

These details are not "minutiae of licensing." They are central elements of an Initiative which was carefully crafted to make the licensing scene more favorable for chain stores, at the expense of independently owned stores. The fact of the matter is that Proponents are well aware of the current licensing scheme for businesses selling beer in Colorado, and that they insinuate that the Initiative is merely a definition change obscures a central intent of their initiative: to allow chain stores to obtain licenses to sell full strength beer at all retail outlets, and to do so outside of the one license per entity limit currently instituted in Article 47. Whether such a policy change is a wise one is a question appropriate for the voters of this state. However, couching the Initiative as a mere definition reform hides

the issue from voters and does not allow them to make a well informed vote on the matter.

This Courts recent decision in *In re Title, Ballot Title and Submission Clause for 2015-2016 No. 73* is again instructive. --P.3d--, 2016 CO 254 (Colo. 2016). In *In re No. 73* this Court examined an initiative that changed recall and successor election procedures. *Id.* at ¶2. In finding the ballot title in violation of the clear title requirement, this Court held that generally stating that an initiative involves modifying procedures within a certain subject matter, without in any way describing those procedures, was insufficient to adequately appraise voters of the proposal. *Id.* at ¶32. In *In re No. 73.*, this Court focused on such procedures as changing the number of signatures required to trigger recall election from 25% to 5% of active registered electors, and failing to mention that officials who resign from office curing a recall are also barred from holding office for six years. *Id.*

The instant Initiative encompasses an almost identical situation. While the language of the ballot title tracks the initiative, it is also so general that voters are not afforded an adequate opportunity to determine intelligently whether to support or oppose the initiative from the language alone. While it is true, as Proponents and the Title Board assert, that the title need not list “every nuance and feature of the proposed measure,” the ballot title as set by the Title Board does not even list all of the central features, let alone nuances. If Proponents and the Title Board are

to have their way, any voter examining the submission clause of the Initiative would be unaware of the drastic changes to the landscape of licensees this Initiative contemplates. Additionally, as the submission clause currently stands, it could easily be interpreted by a voter to mean that full-strength beer cannot be currently sold under Colorado law. *See* Ballot Title Setting Board, Proposed Initiative 2015-2016 #115 (April 6, 2016), Ex. B of Pets.’ Br. (“Shall there be a change . . . to allow businesses licensed under Colorado law to . . . sell malt beverages that contain more than 3.2% alcohol by volume”) Thus the submission clause is not only incomplete, it is potentially directly misleading.

Finally, to the extent both Proponents and the Title Board claim that the Initiative accurately describes the alcohol content definition change, an examination of their points belies their own contentions. For example, Proponents claim that “[w]ith the exception of the change to the alcohol content limitation . . . Article 46 remains unchanged.” Props.’ Br., 9. Similarly, the Title Board in discussing the definitional change states: “there are currently two categories of beer under Colorado law . . . and . . . these two categories will be collapsed into a single definition that *applies to all beer.*” Title Board Br., 7 (emphasis added). These statements simply do not hold up under examination. The current licensing structure regulates two different ranges of beer. Fermented malt beverages are defined as containing .2% through 3.2% alcohol by weight. §14-46-103(1), C.R.S.

(2015). Malt liquors are defined as containing more than 3.2% alcohol by weight. §14-47-103(19), C.R.S (2015). However, the Initiative only modifies the definition for fermented malt beverages, and not malt liquors. Thus, if the initiative is adopted there will still be two categories of licensed beverages, fermented malt beverages and malt liquors. However, now fermented malt beverages will cover beer .2% and up alcohol by weight, while malt beverages will still contain the previous 3.2% and up alcohol by weight. Thus, unlike how the Title Board characterized the issue, there will not be a single definition that applies to all beer. Instead, there will be overlapping definitions with the potential for conflict. None of this is reflected in the ballot title for the Initiative, and both the Proponents' and Title Board's failure to recognize this conflict shows that there truly are areas the ballot title and submission clause have failed to encompass.

As such, Petitioners reassert their argument contained within their Opening Brief that the ballot title and submission clause as set by the Title Board is in violation of the clear title requirement. Proponents and the Title Board try to hide behind the definitional changes of the Initiative, and expect that voters will be able to untangle the rest of the Initiatives changes to beverage licensing from a one-sentence ballot title. However, it is clear that the ballot title and submission clause as set by the Title Board is woefully inadequate for appraising voters what the effect of a yes or no vote will mean on the Initiative.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Petitioners respectfully request that the Court find that the ballot title and submission clause is in violation of the clear title requirement and remand this matter to the Title Board with instructions to amend the title consistent with the concerns set forth above.

Respectfully submitted this 25th day of May, 2016.

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CERTIFICATE OF SERVICE

I certify that on this 25th day of May, 2016, a true and correct copy of the foregoing **PETITIONERS' ANSWER BRIEF** was filed and served thru ICCES addressed to the following:

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