

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 25, 2016 3:22 PM</p>
<p>Original Proceeding Pursuant to §1-40-107 (2), C.R.S.(2015) Appeal from the Ballot Title Board</p>	
<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 Eubanks; and Frederick R. Yarger.</p>	
<p>Attorneys for Respondents:</p> <p>Shayne M. Madsen, No. 8750 Peter S. Almaas, No. 48760 JACKSON KELLY, PLLC 1099 18th Street, Suite 2150 Denver, Colorado 80203 Telephone: (303) 390-0003 Facsimile: (303) 390-0177 E-mail: smadsen@jacksonkelly.com palmaas@jacksonkelly.com</p>	<p>Case No.: 2016SA135</p>
<p>ANSWER BRIEF OF RESPONDENTS</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:

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

It contains 1879 words.

This brief complies with C.A.R. 28(a)(7)(A).

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.

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/ Shayne Madsen
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s/ Peter S. Almaas
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Respondents Jeff Julin and Charlie Brown (the “Proponents” or “Respondents”), registered electors in the State of Colorado, through their undersigned counsel, respectfully submit this Answer Brief in support of the title, ballot title, and submission clause (the “title”) that the Title Board set for Proposed Initiative 2015-2016 #115 (“Initiative #115” or “Initiative”) repealing the limit on the alcohol content of fermented malt beverages in the Colorado Beer Code, Title 12, Article 46, C.R.S.

SUMMARY OF ARGUMENT

In reviewing the language set by the Title Board, the Court grants “great deference to the board’s broad discretion in the exercise of its drafting authority.” *Matter of Title, Ballot Title & Submission Clause, & Summary for 1999-2000 # 256*, 12 P.3d 246, 255 (Colo. 2000). The Court should only reverse the Title Board’s decision in setting title only if the title is insufficient, unfair, or misleading. *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159 (Colo. 2014).

Petitioners John Grayson Robinson and John Blake Harrison (collectively the “Petitioners”) have failed to provide any evidence that the title set by the Title Board fails to satisfy the clear title requirement established in COLO.REV.STAT. §

1-40-106(b)(3). For this reason, the Court should uphold the decision of the Title Board and affirm the title as set.

ARGUMENT

I. The Initiative’s Title, Ballot Title, and Submission Clause Correctly and Fairly Express the True Intent and Meaning of the Initiative.

The Title Board “is only obligated to fairly summarize the central points of a proposed measure, and need not refer to every effect that the measure may have on the current statutory scheme.” *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 164 (Colo. 2014) (citations omitted). “The Title Board is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* at 144. “A title is not unclear or misleading simply because it does not refer to the initiative’s possible interplay with existing state and federal laws.” *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #85*, 328 P.3d 136, 145 (Colo. 2014). “[T]here is no requirement that the title, ballot title and submission clause or the summary state the effect an initiative may have on other constitutional and statutory provisions.” *Matter of Title, Ballot Title and Submission Clause and Summary for the Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873 P.2d 718, 720 (Colo. 1994).

The Petitioners claim “the Initiative is so complex in its modification of the existing beer and liquor codes that it is incapable of accurate description by the Title Board via title.” *See* R. Petitioner’s Opening Brief, p. 16. Petitioners go on to state “... the text of the Initiative makes it clear that the Initiative will have farther reaching effects than the title conveys, and such far reaching effects that *any title* is likely incapable of accurately describing the Initiative’s impact.” *See* R. Petitioner’s Opening Brief, p. 16-17 (emphasis added).

Petitioners assert that the title is misleading because the title fails to “make any mention that there are businesses licensed under Colorado law capable of selling ‘full-strength beer.’” *See* R. Petitioner’s Opening Brief, p. 8. Petitioners also state “a voter unfamiliar with the alcoholic beverage licensing system may very well be unaware of such facts.” *Id.* This argument is not supported by case law. It is well established that voters, like legislators, are considered to understand the statutes that they are amending. “The electorate, as well as the legislature, must be presumed to know the existing law at the time they amend or clarify that law.” *Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo. 2000).

Petitioners continually mischaracterize the Initiative as a measure that will alter retail licenses under Title 12, Article 47, C.R.S.¹ This is not accurate. The Initiative is simple and straightforward. The proposal repeals the alcohol content limit of fermented malt beverages by modifying the definition of fermented malt beverage in C.R.S. § 12-46-103 in Section 2 of the Initiative. The language of Section 2 is as follows:

“SECTION 2. In Colorado Revised Statutes, 12-46-103, amend (1) as follows:

12-46-103. Definitions. Definitions applicable to this article also appear in article 47 of this title. As used in this article, unless the context otherwise requires:

- (1) "Fermented malt beverage" means BEER, MALT LIQUORS AND any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume ~~and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume~~; except that "fermented malt beverage" ~~shall~~ DOES not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1) (i) (II), C.R.S.”

The reference to “malt liquors,” which is the definition in Colorado law for all beer products with an alcohol content in excess of 3.2% by weight or 4.0% by volume was included to ensure that all beer products were included in the measure

¹ Petitioners’ misapprehension of the Initiative is further typified by Petitioners’ conflation of alcohol by volume and alcohol by weight. *See* Petitioner’s Opening Brief, p. 3.

without a limitation as to the upper level of alcohol content. C.R.S. § 12-47-103(19).²

The Petitioners' claims that the Initiative fails to satisfy the clear title requirement rest almost entirely on this false characterization. The fact that the Initiative does not alter licenses under Title 12, Article 47, C.R.S. is fatal to the arguments raised by the Petitioners in their Petition for Review and Opening Brief.

Petitioners state "the Title, while accurately describing the general nature of the Initiative of repealing the alcohol content limitation of fermented malt beverages, fails to give enough description to provide adequate information for voters..." *See* R. Petitioner's Opening Brief, p. 15. The Petitioners argue that the title fails to give sufficient information to appraise voters on the basis, amongst others, that the title does not mention that multiple classes of license will be affected by the Initiative under Title 12, Article 47, C.R.S. *See* R. Petitioner's Opening Brief, p. 15-16. This argument is completely unavailing due to the fact that it rests on the mischaracterization advanced by the Petitioners.

² C.R.S. § 12-47-103(19) defines malt liquors as:

"12-47-103. Definitions. As used in this article and article 46 of this title, unless the context otherwise requires:

(19) "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent of alcohol by weight or four percent alcohol by volume."

“The legal interpretation or potential effect of proposed initiatives are beyond the Supreme Court’s scope of review when reviewing the Title Board’s compliance with the clear title requirement. *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #85*, 328 P.3d 136, 144-145 (Colo. 2014). “At this stage, we do not address the merits of a proposed measure, interpret it, or construe its future legal effects.” *Blake v. King*, 185 P.3d 142, 145 (Colo. 2008).

In support of the allegation that the title is misleading and fails to satisfy the clear title requirement, the Petitioners discuss what they interpret to be an effect of the Initiative, namely stating that entities licensed under Title 12, Article 47, C.R.S. to sell beer, wine, and liquors will not have the benefits afforded to an entity licensed under Title 12, Article 46, C.R.S. *See* R. Petitioner’s Opening Brief, p. 11. This argument is particularly ironic given that the Initiative simply grants Article 46 licensees authority to manufacture, distribute and sell full-strength beer, while Article 47 licenses include beer, wine, and liquors. Even if true, this is certainly a “potential effect of [a] proposed initiative,” placing it outside the Supreme Court’s scope of review. This is just one example of the many instances where the Petitioners seek for the Court to analyze the future effects of the Initiative in the guise of determining compliance with the clear title requirement.

The measure is simple and straightforward. Only Title 12, Article 46, C.R.S. licenses are implicated by the measure. Complexity for Article 47 licenses and market impact to the retail alcohol industry, specifically the grocery stores that Petitioners are allied with, are irrelevant to this Court's review.

CONCLUSION

For the reasons stated herein, the Proponents respectfully request that the Court uphold the title, ballot title, and submission clause as set by the Title Board for Initiative #115.

Respectfully submitted this 25th day of May, 2016.

s/ Shayne Madsen

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s/ Peter S. Almaas

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2016, I electronically filed a true and correct copy of the foregoing ANSWER BRIEF OF RESPONDENTS via the Colorado ICCES system which will send notification of such filing and service upon the following:

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