

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p>	<p>DATE FILED: May 25, 2016 2:23 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the 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, and</p> <p>TITLE BOARD: SUZANNE STAIERT; SHARON EUBANKS; and FREDERICK R. YARGER.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>TITLE BOARD’S 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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 871 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

Under a separate heading placed before the discussion of each issue, the brief contains statements of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

/s/ Matthew D. Grove

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Suzanne Staiert, Sharon Eubanks, and Frederick Yarger, as members of the Ballot Title Setting Board (“Title Board”), submit the following Answer Brief.¹

SUMMARY OF THE ARGUMENT

The Title Board’s title for #115 should be affirmed. It strikes an appropriate balance between length, clarity, and detail, and properly informs voters and potential signers of the central feature of the initiative.

ARGUMENT

I. Standard of review and preservation.

The applicable standard of review is stated in the Title Board’s Opening Brief at pp. 3-4. Although Petitioners frame some of the arguments in the Opening Brief differently than they did in their motion for rehearing, the Title Board agrees that Petitioners challenged the clarity of the title set for #115 below.

¹ The Title Board’s Opening Brief, submitted on May 11, 2016, was inadvertently captioned “Title Board’s Answer Brief.” Undersigned counsel apologizes for any confusion caused by that oversight.

II. The title for #115 satisfies clear title requirements.

The Title Board largely stands on the arguments contained in its Opening Brief. Notwithstanding Petitioners' arguments to the contrary, #115 is a simple and straightforward measure. As the Opening Brief details, #115 would eliminate the current statutory distinction between "malt liquor" (3.2 beer) and "fermented malt beverages" (beer that is stronger than 3.2% alcohol by volume). If #115 were passed, all beer products would be "fermented malt beverages." The title set by the Title Board fully notifies potential signers and voters of this change.

This Court's recent opinion in *In re Title, Ballot Title and Submission Clause for 2015-2016 No. 73*, --P.3d--, 2016 CO 24 (Colo. 2016), is consistent with the Title Board's position. *2015-2016 No. 73* vacated a title for an initiative that would have altered Colorado's recall election process because it was "so general that it d[id] not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative." *Id.* ¶ 34. As already discussed, the title for #115 does not suffer from the same infirmity. It includes the initiative's core provision—the elimination of the

distinction between “malt liquor” and “fermented malt beverages”—and in this particular case that is all that potential signers and voters would need to understand the effect of a yes/no vote. “[S]tanding alone,” the title is “capable of being read and understood, and capable of informing the voter of the major import of the proposal.” *Garcia v. Montero (In re Ballot Titles 2001-2002 # 21 & #22)*, 44 P.3d 213, 222 (Colo. 2002).

Petitioners’ arguments about the effect of the initiative on liquor licensees do not counsel differently. Petitioners suggest, for example, that the title should have stated that the initiative might affect the market share of “singularly owned liquor stores which currently make up a majority of the full strength beer retailers in Colorado,” *Pet. Open. Br.* at 11. They also complain that eliminating the distinction between “malt liquor” and “fermented malt beverages” will have many unanticipated impacts on the Article 46 and Article 47 licensing mechanisms. But as this Court made clear in *2015-2016 #73*, “[t]he Board ... need not explain the meaning or potential effects of the proposed initiative on the current statutory scheme.” 2016 CO 24, ¶ 23. Yet that is precisely what Petitioners contend that the title set for #115 fails to do.

The same can be said for Petitioners' claim that #115 "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." *Pet. Open. Br.* at 16. It is well-settled that neither this Court nor the Title Board should evaluate "an initiative's efficacy, construction, or future application" as part of the title setting or review process. *In re Title, Ballot Title and Submission Clause 2007-2008 No. 17*, 172 P.3d 871, 874 (Colo. 2007). "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative; in so doing, the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme." *In re Title, Ballot Title and Submission Clause 2013-2014 #90*, 328 P.3d 155, 162 (Colo. 2014).

Petitioners nonetheless argue that the Title Board must ensure that the title and summary "convey[s] to voters the initiative's likely impact," *Pet. Open. Br.* at 16, quoting *In re Title, Ballot Title & Submission Clause & Summary 1999-2000 No. 37*, 977 P.2d 845, 846 (Colo.1999), and that the title for #115 should have accounted for the array of impacts that Petitioners contend the initiative would have on

licensure under Articles 46 and 47. Although Petitioners quote *1999-2000 No. 37* accurately, subsequent analyses from this Court—cited above—demonstrate that it is of limited precedential value. Considered in context, it is clear that this Court’s concern about the clarity of the title in *1999-2000 No. 37* stemmed from the fact that “the original text of the proposed initiative [was] difficult to comprehend.” *Id.* at 845. As already discussed at length, the underlying text of #115 suffers from no such infirmities. Accordingly, this Court should reject Petitioners’ claim that the title fails to convey the “likely impact” of the initiative.

CONCLUSION

The title set for #115 should be affirmed.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **TITLE**
BOARD'S ANSWER BRIEF upon all parties herein electronically via
ICCES or overnight delivery, at Denver, Colorado, this 25th day of May,
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