

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</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 OPENING 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 1,331 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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TABLE OF CONTENTS

	PAGE
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
A. Standard of review and preservation.	3
B. Standards governing titles set by the Board.....	5
CONCLUSION.....	8

TABLE OF AUTHORITIES

	PAGE
CASES	
<i>In re Proposed Initiative on Sch. Pilot Program</i> , 874 P.2d 1066 (Colo. 1994).....	7
<i>In re Proposed Initiative on Trespass-Streams with Flowing Water</i> , 910 P.2d 21 (Colo. 1996).....	4
<i>In re Title, Ballot Title and Submission Clause, and Summary for 2007-2008 #62</i> , 184 P.3d 52 (Colo. 2008).....	5
<i>In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45</i> , 234 P.3d 642 (Colo. 2010).....	3, 4
<i>In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #91</i> , 235 P.3d 1071 (Colo. 2010).....	4
<i>In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Casino Gambling Initiative</i> , 649 P.2d 303 (Colo. 1982)	4
STATUTES	
§ 1-40-106(3)(b), C.R.S. (Colo. 2015)	3, 5
§ 1-40-107(2), C.R.S. (Colo. 2015)	1
§1-40-105(1), C.R.S. (Colo. 2015)	1
§ 12-46-103(1), C.R.S. (Colo. 2015).....	2
§ 12-47-103(19), C.R.S. (Colo. 2015).....	2

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

STATEMENT OF THE ISSUE

Whether the title set by the Title Board correctly and fairly expresses the true intent and meaning of Proposed Initiative 2015-2016 #115.

STATEMENT OF THE CASE

This brief addresses the propriety of ballot titles set by the Title Board pursuant to § 1-40-107(2), C.R.S. (2015).

On March 25, 2016, proponents Jeff Julin and Charlie Brown filed Proposed Initiative 2015-2016 #115 with the Colorado Secretary of State. #115 proposes statutory changes to Colorado’s beer and liquor codes that would permit those licensed to sell 3.2% beer to also sell more potent malt beverages.

The required legislative review and comment hearing was held on April 6, 2016. §1-40-105(1), C.R.S.. The Title Board set a title for #115 on April 6, 2016. On April 13, 2016, Petitioners filed a motion for

rehearing, which the Title Board denied on April 20, 2016. *See Attachments to Petition for Review.* This appeal followed.

STATEMENT OF THE FACTS

The title for #115 states as follows:

A change to the Colorado Revised Statutes to repeal the alcohol content limitation in the definition of fermented malt beverage, commonly known as 3.2% beer, to allow businesses licensed under Colorado law to manufacture, distribute, or sell malt beverages that contain more than 3.2% alcohol by weight or 4% alcohol by volume, including products commonly known as full-strength beer.

Colorado law currently defines “beer” in one of two ways: (1) beer that contains not more than 3.2% alcohol by weight is referred to as a “fermented malt beverage”; and (2) beer that contains more than 3.2% alcohol by weight is referred to as “malt liquor.” *See* C.R.S. §§ 12-46-103(1) and 12-47-103(19). #115 would amend Article 47 of Title 12, C.R.S. (“Liquor Code”) to eliminate this distinction, and include all beer products within the definition of “fermented malt beverages.” *See Attachments to Petition for Review.*

SUMMARY OF THE ARGUMENT

Petitioners assert that the title for #115 fails to satisfy the clear title requirement of § 1-40-106(3)(b). The Title Board disagrees. The title for #115 clearly informs voters of the core of the proposed initiative: eliminating the statutory distinction between “fermented malt beverages” and “malt liquor,” and thereby allowing the manufacture, distribution, and sale of all types of beer by any appropriately licensed business.

ARGUMENT

The title for #115 correctly and fairly expresses the true intent and meaning of the proposed ballot initiative.

Because the title for #115 satisfies the clear title requirements of § 1-40-106(3)(b), it should be affirmed.

A. Standard of review and preservation.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants

great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects the intent of the initiative. *Id.* at 649 n.3; *In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board’s decision only if the titles are insufficient, unfair, or misleading. *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d at 648.

The Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the Court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

Petitioners preserved the arguments that they have raised in this Court by asserting them in their petition for rehearing.

B. Standards governing titles set by the Board.

Section 1-40-106(3)(b), C.R.S. establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title and Submission Clause, and Summary for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). The statute provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes/for” or “no/against” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed ... within two weeks after the first meeting of the title board. ... Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and, shall be in the form of a question which may be answered “yes/for” (to vote in favor of the proposed law or constitutional amendment) or “no/against” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S.

Petitioners challenge the clarity of the title for #115 in several different ways. *First*, they assert that the title “[i]s so general in that it fails to recognize or alert voters that there are currently multiple license governing the sale of alcoholic beverages, many of which will be affected by the Proposed Initiative,” and in a closely related argument, that the title “[f]ails to accurately reflect ... the regulatory shift from a two-tier licensing system; altering current licensing procedures and fees surrounding the sale of alcoholic beverages; and altering the type of businesses that will be eligible to sell what is currently known as full-strength beer.” *Petition for Review* at 4. At the threshold, the Title Board disagrees that the title fails to inform potential signers of the initiative that it proposes to change the regulatory structure. The title makes clear that manufacturers, distributors, and retailers who were not previously allowed to sell beer more potent than 3.2% will now be permitted to do so. While the title does not spell out any accompanying changes in the licensing structure, it is obvious that the existing licensing and permitting scheme would be altered. Just as important, however, is “the Board need not describe every feature of a proposed

measure.” *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994). The minutiae of licensing are a byproduct of the core of the proposed initiative, which is the elimination of the distinction between 3.2% and full-strength beer. The title set for #115 makes that core abundantly clear.

Second, Petitioners argue that the title “[f]ails to adequately explain the definition changes between fermented malt beverages and malt liquors.” *Petition for Review* at 4. But the language in the title makes clear that there are currently two categories of beer under Colorado law—one that includes beer of less than 3.2% alcohol, and one that includes beer with more than 3.2% alcohol—and that if the initiative passes, these two categories will be collapsed into a single definition that applies to all beer. In short, the title accurately describes what the underlying initiative proposes to do.

Finally, Petitioners claim that the title “[i]s unable to accurately quantify the import of the Proposed Initiative as the provisions of the Proposed Initiative alter existing beer and liquor codes in such a complex manner as to make description of the Proposed Initiative’s true

intent and meaning inexplicable.” *Petition for Review* at 4. This seems to suggest that the underlying initiative is so complex that it is impossible to set a clear title for it. That conclusion is belied by the title itself which, as already discussed, makes the purpose and effect of the proposed initiative abundantly clear.

CONCLUSION

Based on the foregoing reasoning and authorities, this Court should affirm the title set for #115.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **TITLE**
BOARD'S OPENING BRIEF upon all parties herein electronically via
ICCES or overnight delivery, at Denver, Colorado, this 11th day of May,
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