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Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2015) Appeal from the Ballot Title Board	**▲COURT USE ONLY▲**
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #61 **Petitioner:** Jeanne M. McEvoy; **v.** **Respondents:** John Blake Harrison and John Grayson Robinson; **and** **Title Board:** Suzanne Staiert, David Blake, and Sharon Eubanks.	Supreme Court Case No.: 2016SA31
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RESPONDENTS' OPENING BRIEF

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 3,915 words.

The 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/ Thomas M. Rogers III
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Attorney for Respondents John Blake Harrison and John Grayson Robinson

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Respondents John Blake Harrison and John Grayson Robinson, by and through the undersigned counsel, hereby submit their Opening Brief:

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The Title Board had jurisdiction to set title for Proposed Ballot Initiative 2015-16 #61 ("Initiative 61" or the "Initiative") concerning the sale of alcoholic beverages in food stores. Initiative 61's single subject is allowing Colorado food stores to sell wine and only full-strength beer (as opposed to fermented malt beverage, commonly referred to as 3.2% beer)[1] for off-premises consumption. The repeal of the off-premise license for selling 3.2% beer is necessarily and properly connected to that purpose.

The title set by the Title Board clearly and concisely expresses the true intent and meaning of the Initiative in compliance with the requirements of C.R.S. § 1-40-106; therefore, it is entitled to deference and must be upheld.

[1] Colorado law contains two definitions for the beverage commonly known as "beer." Under the Colorado Beer Code, beer that contains not more than 3.2% alcohol by weight is referred to as a "fermented malt beverage." *See* C.R.S. § 12-46-103(1). Under the Colorado Liquor Code, beer that contains more than 3.2% alcohol by weight is referred to as "malt liquor." *See* C.R.S. § 12-47-103(19). To distinguish between the two types of beers, this Brief (as well as the title set by the Title Board) uses the term "full-strength beer" to refer to beer that contains more than 3.2% alcohol by weight.

STATEMENT OF THE CASE

Under current law, the majority of Colorado stores where Colorado residents do their food shopping can only be licensed to sell 3.2% beer. Initiative 61 seeks to change that law by replacing the license under which the stores currently sell alcohol—the license to sell 3.2% beer—with a license allowing the sale of wine and full-strength beer.

The Title Board unanimously found that it had jurisdiction to set title for Initiative 61, and that the Initiative does not violate the single subject requirement because the repeal of the license to sell 3.2% beer is necessarily and properly connected to the intent of the Initiative to have only wine and full-strength beer sold in food stores for off-premises consumption. Accordingly, the Title Board set a title for Initiative 61 that reflects its true intent and meaning.

The title ensures that the voters are fairly and succinctly advised of the import of the proposed law and are not confused by the use of the technical terms set forth in the statute. The fact that the words used to describe the true intent of the measure are also being used in the campaign in support of the measure does not turn them into a political "catch-phrase." The language set by the Title Board is entitled to great deference and may be rejected only in a clear case. There is no

basis that clearly warrants reversal here. The Court should affirm the title as set by the Title Board.

STATEMENT OF FACTS

On December 1, 2015, Proponents John Blake Harrison and John Grayson Robinson (the "Proponents") submitted Initiative 61 to the Offices of Legislative Council and Legislative Legal Services for review and comment.[2] Initiative 61 proposes a change to Colorado law regulating the sale of full-strength beer, 3.2% beer, and wine for off-premises consumption. A review and comment hearing was held on December 15, 2015. Based on the Legislative Council's comments, the Proponents revised the text of Initiative 61 and submitted the final version to the Secretary of State's office on December 22, 2015.[3] On January 6, 2016, the Title Board unanimously found that Initiative 61 did not violate the single subject

[2] On the same day, the Proponents filed a second initiative, Initiative 60, which is the subject of a parallel appeal by the Petitioner in Case No. 16SA32. While substantially similar—in fact, the arguments with respect to the title set for both Initiatives are identical on these appeals—Initiative 61 reflects a different policy choice by the Proponents than Initiative 60. Initiative 60 seeks to change Colorado law that currently does not allow most food stores to sell full-strength beer and wine, by creating a new license to permit such sales in addition to the existing license allowing the sale of 3.2% beer. Initiative 61, on the other hand, reflects a different policy choice—it seeks to allow food stores to sell only full-strength beer and wine, not any other type of alcoholic beverages, including 3.2% beer

[3] *See* Proposed Initiative 2015-16 #61, attached as Exhibit A.

requirement of art. V, § 1(5.5) of the Colorado Constitution and proceeded to set title. The Petitioner did not participate in the Title Board's hearing.

On January 13, 2016, the Petitioner filed a Motion for Rehearing, contending that Initiative 61 violates the single subject rule and listing a number of objections to the title. The Title Board conducted a rehearing on the Petitioner's Motion on January 20, 2016. The Title Board once again unanimously found that there was no violation of the single-subject rule. In response to the Petitioner's objections to the title language, the Board revised the title to clarify the definition of a food store and rejected the Petitioner's remaining arguments that the terms "full-strength beer and wine" are an impermissible "catch phrase," and that essentially every detail of the Initiative should be reflected in the title.[4] The Title

[4] *See* Ballot Title and Submission Clause for #61, attached as Exhibit B:

> Shall there be a change to the Colorado Revised Statutes concerning the sale of 3.2% beer, full-strength beer, and wine for off-premises consumption, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income, excluding income from fuel products and lottery ticket sales, from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age; and as of January 1, 2019, eliminating licenses to sell 3.2% beer for off-premises consumption?

Board properly concluded that an implementation detail was not a central feature of the Initiative. That implementation detail concerned the power of local authorities to decide whether—having once gone through the character examination and a neighborhood "needs and desires" hearing—certain existing licensees need to do so again before converting to a food store license. Likewise, the Title Board properly rejected the Petitioner's arguments that state and local licensing fees should be included in the title.

SUMMARY OF THE ARGUMENT

The single subject of Initiative 61 is a change to Colorado law regulating the sale of alcoholic beverages in Colorado food stores by replacing the license under which the stores currently sell 3.2% beer with a license allowing the sale of wine and full-strength beer. The Title Board had jurisdiction to set title for Initiative 61.

Titles should enable the voters to determine intelligently whether to support or oppose such a proposal. The title for Initiative 61 does just that—it accurately and succinctly reflects the central features of the Initiative. The title unambiguously describes the true intent of the measure which is to permit the sale of only full-strength (as opposed to 3.2%) beer and wine in stores that sell food. The Title Board properly exercised its discretion in omitting certain

implementation details in compliance with Colorado law. The Title Board's action is entitled to great deference and should be upheld.

STANDARD OF REVIEW

When reviewing a challenge to the Title Board's decision, the Court employs "all legitimate presumptions in favor of the propriety of the Title Board's actions." *Matter of Title, Ballot Title , & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 8, 328 P.3d 172, 176. "As such, [the Court] liberally construe[s] the single subject requirement" and will "only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *Id.*

In reviewing the language of the title set by the Title Board, the Court grants "great deference to the board's broad discretion in the exercise of its drafting authority." *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 # 256*, 12 P.3d 246, 255 (Colo. 2000) (internal quotations omitted). The scope of the Court's review is therefore limited to ensuring that the title and the submission clause fairly reflect the proposed initiative, and "that petition signers will not be misled into support for or against a proposition by reason of the words employed by the Board." *Matter of Title, Ballot Title & Submission Clause, & Summary Adopted November 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 23 (Colo. 1996).

To that end, the Court construes constitutional and statutory provisions governing the initiative process in a manner that facilitates the right of initiative instead of hampering it with technical statutory provisions or constructions. *In re Ballot Title for 1999-00 # 256*, 12 P.3d at 255. All legitimate presumptions must be resolved in favor of the Title Board, and "a board-prepared title should only be invalidated in a clear case." *Matter of Title, Ballot Title, Submission Clause, & Summary, Adopted Aug. 26, 1991, Pertaining to Proposed Initiative on Educ. Tax Refund,* 823 P.2d 1353, 1355 (Colo. 1991). Accordingly, unless clearly misleading, the Court should not interfere with the Title Board's choice of language. *Id.*; *In re Ballot Title for 1999-00 # 256*, 12 P.3d at 255.

ARGUMENT

I. Initiative 61 does not violate the single subject requirement.

Under article V, section 1(5.5) of Colorado Constitution and C.R.S. § 1–40–106.5(1)(a), "every constitutional amendment or law proposed by initiative [must] be limited to a single subject." Colo. Const. art V, § 1(5.5); *In re #89*, 2014 CO 66, at ¶ 12. "[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law." *Id.* In other words, an initiative that encompasses related matters such that they are necessarily and properly connected does not violate the single subject requirement. *Id.* "[M]inor provisions necessary

to effectuate the purpose of the measure are properly included within its text." *In re #256*, 12 P.3d at 253 . On the other hand, a proposed initiative that has "two distinct and separate purposes not dependent upon or connected with each other" violates the single subject rule. *In re #89*, 2014 CO 66, at ¶ 12.

Here, Initiative 61 has one subject—the sale of alcoholic beverages in Colorado food stores. In connection with that subject, the Initiative seeks to replace the sale of 3.2% beer in these stores with full-strength beer and wine. Both the creation of the new license and the repeal of the license to sell 3.2% beer for off-premises consumption are necessarily and properly connected to the central goal of the Initiative. The two subjects are not distinct and separate. Instead, they are dependent upon and connected with each other. They are related matters which together, if the Initiative passes, will regulate what alcoholic beverages may be sold in Colorado food stores. The Title Board unanimously concluded that Initiative 61 encompasses only a single subject. The Title Board's actions are entitled to all legitimate presumptions and should be affirmed.

II. The title of Initiative 61, as set by the Title Board, accurately and succinctly expresses the true intent and meaning of the measure and should be upheld.

A. The title properly reflects the true intent and meaning of the Initiative.

Titles and submission clauses 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). The title must "correctly and fairly express the true intent and meaning" of the initiative. *Id.*

The Petitioner argues that the Title Board erred in using the words "full-strength beer and wine" in the title, as opposed to using the technical terms for these beverages set forth in the Colorado Liquor Code—malt and vinous liquors. In effect, the Petitioner argues that the Title Board was required to use the terms stated in the Initiative. No such requirement exists. This Court has repeatedly held that where repeating the initiative language would be confusing to the voters, the title need not and should not include that language. *See Matter of Title, Ballot Title, Submission Clause, & Summary by Title Bd. Pertaining to a Proposed Initiative on Obscenity*, 877 P.2d 848, 850 (Colo. 1994):

> The pertinent question is whether the "general understanding of the effect of a 'yes' or 'no' vote will be unclear" from reading the title. § 1-40-106(3)(b). There may be situations, therefore, where the title and submission clause likely would create public confusion or ambiguity about the effect of an Initiative **even though they merely repeat the language contained in the Initiative itself**.

(emphasis added); *see also In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 104*, 987 P.2d 249, 259-60 (Colo. 1999) ("mere repetition of language from the initiative to the titles and summary does not necessarily ensure that the voters will be apprised of the true intent and purpose of the initiative").

Here, the Initiative seeks to amend the Colorado Liquor Code and uses the terms "malt and vinous liquors"—the technical terms for full-strength (as opposed 3.2%) beer and wine set forth in the Code. There is no dispute that "malt liquor" means beer with over 3.2% of alcohol by weight. *See* C.R.S. § 12-47-103(19). There is also no dispute that "vinous liquor" means wine. *See* C.R.S. § 12-47-103(39). It is reasonable to assume, as the Title Board did, that average voters are not familiar with the terms "malt liquor" or "vinous liquor."

As this Court held in *In re Proposed Initiative on Obscenity*, the pertinent question is whether the use of the terms of the initiative would lead to public confusion. If so, the title will not stand even if it repeats the words of the initiative verbatim. 877 P.2d at 850. Here, the Title Board considered the Petitioner's

argument that the words "full-strength beer and wine" do not appear in the Initiative. But faced with the alternative of using only the technical terms that are set forth in the Initiative—due to the Respondents' effort to use the existing statutory terms[5]—the Title Board correctly concluded that the title would lead to public confusion.

First, ordinary voters would not understand what exactly the measure is proposing that the food stores be able to sell, as most are not familiar with the terms "malt and vinous liquors." Second, using only the terms including the word "liquor" would likely lead the public to mistakenly believe that the measure seeks to allow the sale of spirituous liquor, such as whiskey, gin, vodka, etc., as that is the common understanding of the word "liquor." *See Matter of Title, Ballot Title & Submission Clause, & Summary Pertaining to Sale of Table Wine in Grocery Stores Initiative Adopted on Mar. 24, 1982*, 646 P.2d 916, 923 (Colo. 1982) (affirming, without analysis, the title board's conclusion that the use of the term "liquor" in the initiative seeking to allow only the sale of wine would be unfairly

[5] The Petitioner's argument that the Title Board must use the language of the measure when setting title creates the perverse incentive for proponents to use language in the measure that may be helpful to the campaign, even if the language is inconsistent with the rest of the statutory scheme or creates multiple definitions for the same term. Proponents who draft a change in law that conforms with the existing statute should not be penalized by a title that uses the technical terms of the statute when those terms would be incomprehensible to the average voter.

prejudicial and might lead voters to believe that the initiative dealt with something other than table wine).

Accordingly, the Title Board properly used the words "full-strength beer and wine" to adequately apprise the voters of the intent of the measure. *See In re Proposed Initiative on Obscenity*, 877 P.2d at 850 (revising the title to include a description of the measure even though the description was not in the text of the initiative). The Title Board's action should be affirmed.

B. The words "full-strength beer and wine" are not an impermissible "catch-phrase."

Petitioner argues that the words "full-strength beer and wine" in the title constitute a "catch-phrase" because those terms have been used by the proponents of the measure in their campaign in support of a change to current law. However, this Court has repeatedly held that the fact that the words of the title also appear in the political campaign is not sufficient for the statements to constitute an impermissible "catch phrase."

"Catch phrases are words that work in favor of a proposal **without contributing to voter understanding**." *In re No. 45*, 234 P.3d at 649 (emphasis added). "Phrases that merely describe the proposal are not impermissible catch phrases, while phrases that provoke emotion **such that they distract from the merits of the proposal** are catch phrases." *Id.* (emphasis added).

Here, as discussed above, the sale of full-strength (as opposed 3.2%) beer and wine by food stores is the essence of Initiative 61. Using these words does not distract from the merits of the proposal; exactly the opposite, using these words, instead of the technical terms "malt and vinous liquors," contributes to voter understanding, ensuring that the voters know exactly what they are voting for or against—the sale of full-strength beer and wine in stores selling food.

"The fact that a political disagreement exists, or certain words poll better than others does not turn those words into an impermissible catch phrase or a slogan." *Id.* Just because the terms "full-strength beer and wine" have been used in the political campaign in support of the measure does not make their use in the title so impermissible so as to warrant a reversal of the Title Board's action. *See In re No. 45*, 234 P.3d at 650 ("The purpose of the catch-phrase prohibition is to prevent prejudice and voter confusion, not to forbid the use of language that proponents of the initiative might also use in their campaigns.").

The Petitioner must prove that, rather than describing the Initiative, the phrase provokes emotion which impermissibly distracts voters from consideration of the Initiative's merits. *Id.* That the Petitioner cannot do. If the chosen words accurately convey the meaning of the initiative, their inclusion in the title is proper. *See id.* (the use of the phrase "right of health care choice" was proper as it was "a

descriptive term that straight-forwardly present[ed] the issue to voters"); *In re Title, Ballot Title & Submission Clause, & Summary For 1999-2000 No. 227 & No. 228*, 3 P.3d 1, 7 (Colo. 2000) (finding the use of the phrase "to preserve ... the social institution of marriage" proper where it accurately reflected the intent of the initiative).

Here, the words "full-strength beer and wine" merely convey to the voters what products are the subject of the measure. They do not invoke emotions to impermissibly distract the voters. These words **are** the true intent and meaning of the measure. The Petitioner cannot seriously argue that had the words "malt and vinous liquors" been used, the voters would better understand the measure so as to make a more informed decision about it.

Accordingly, the use of the words "full-strength beer and wine" instead of the technical definitions found in the statute does not render those words an impermissible catch phrase or the title set by the Title Board clearly misleading. The title set by the Title Board should be affirmed.

C. <u>The title need not reflect every detail and nuance of the measure.</u>

Petitioner argues that the Title Board erred in omitting the details of the measure dealing with those food stores that hold a valid fermented malt beverage license (license to sell 3.2% beer). Under the measure, those with a valid fermented

malt beverage license may apply to convert to a food store license and, at the local licensing authority's option, may not be required to go through character evaluation and a "needs and desires" hearing again, having already done so in connection with their existing license.

Under Colorado law, the title does not need to reflect all of the details or "every nuance and feature of proposed measure." *Matter of Educ. Tax Refund*, 823 P.2d at 1355. C.R.S. § 1-40-106 requires that ballot titles be brief, even when the initiative concerns several complicated issues. *Id.* If each detail, inclusion or exclusion of the proposed measure were listed in the title, the goal of brevity in titles would be defeated:

> The Board need not and often cannot describe every feature of a proposed initiative in a title . . . and simultaneously heed the mandate that such document[] be concise. To require such would be to transform what the General Assembly intended—a relatively brief and plain statement by the Board setting forth the central features of the Initiative for the voters—into an item-by-item paraphrase of the proposed constitutional amendment or statutory provision.

Matter of Title, Ballot Title and Submission Clause and Summary for 1997-98 No. 62, 961 P.2d 1077, 1083 (Colo. 1998) (internal citations omitted); *see also Blake v. King*, 185 P.3d 142, 146 (Colo. 2008) ("The titles are intended to be a 'relatively brief and plain statement by the Board setting forth the central features of the

initiative for the voters,' rather than 'an item-by-item paraphrase of the [measure].'").

Here, the central feature of Initiative 61 is clear: it seeks to allow the sale of only full-strength beer and wine by stores that sell food. It defines food store (which is reflected in the title) and permits ownership of multiple food store licenses, including by those who are currently prohibited from owning more than one license under Article 47 (which is also reflected in the title). Finally, it clearly states that the license to sell 3.2% beer for off-premises consumption is being repealed.

Additional implementation details, such as licensing fees, treatment of licensees who have already gone through the state's and local authorities' licensing requirements but wish to convert to the new license created under the measure, and other details of the measure are just that – details that need not be included in the title. Such nuances may be brought to the voters' attention through the public debate. *See Matter of Branch Banking Initiative Adopted on March 19, 1980, & Amended on April 8, 1980*, 612 P.2d 96, 99 (Colo. 1980) (details and effects of proposed measures can and should be brought to the attention of the voters through public debate). Because the absence of these details does not make the title clearly

confusing or misleading, the Title Board's action is entitled to great deference and should be affirmed.

CONCLUSION

For the reasons stated, Respondents respectfully request that the Court affirm the Title Board's action and approve the title set for Initiative 61.

Respectfully submitted: February 16, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

s/ Thomas M. Rogers III
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CERTIFICATE OF SERVICE

I hereby certify that on February 16th, 2016, I filed a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** using the ICCES electronic filing system and served electronic copies to the following:

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Proposed Initiative 2015-16 #61 (final)

Change to Colorado Revised Statutes Permitting Sale of Beer and Wine by Food Stores

Text of Measure:

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 12-47-425 as follows:

12-47-425. FOOD STORE LICENSE. (1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE, A FOOD STORE LICENSE MAY BE ISSUED TO FOOD STORES SELLING ONLY MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY FOOD STORE LICENSED UNDER THIS SECTION TO SELL MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE.

(3) NOTWITHSTANDING ANY PROVISIONS OF THIS ARTICLE TO THE CONTRARY, NO OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS ARTICLE, SHALL BE PROHIBITED FROM CONDUCTING, OWNING EITHER IN WHOLE OR IN PART, OR FROM BEING DIRECTLY OR INDIRECTLY INTERESTED IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS SECTION.

(4) A LICENSEE UNDER SECTION 12-46-104(1)(c) WITH A VALID FERMENTED MALT BEVERAGE LICENSE IN EFFECT ON JULY 1, 2017, MAY APPLY TO A LOCAL LICENSING AUTHORITY FOR A FOOD STORE LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4) FOR A FOOD STORE LICENSE, THE LOCAL LICENSING AUTHORITY MAY CONSIDER AS PROVEN THE SATISFACTORY NATURE OF THE CHARACTER, RECORD, OR REPUTATION OF THE APPLICANT IF, AT THE TIME OF THE FILING OF THE APPLICATION, THE APPLICANT MAINTAINS A VALID UNEXPIRED FERMENTED MALT BEVERAGE RETAILER LICENSE, AND NO ADMINISTRATIVE OR CRIMINAL PROSECUTION IS PENDING AGAINST THE APPLICANT. IN CONSIDERING ANY APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD AND THE DESIRES OF ITS ADULT INHABITANTS PURSUANT TO SECTION 12-47-312 IN MAKING A DETERMINATION ON THE ISSUANCE OF A FOOD STORE LICENSE.

(5) THE STATE LICENSING AUTHORITY SHALL MAKE GENERAL RULES AND REGULATIONS AND SPECIAL RULINGS AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 12-47-103, **add** (8.5) as follows:

(8.5) "FOOD STORE" MEANS AN ESTABLISHMENT, OTHER THAN A RESTAURANT AS DEFINED IN SUBSECTION (30) OF THIS SECTION, THAT OFFERS FOR SALE FOOD ITEMS AT A RETAIL PREMISES, PROVIDED THAT A MINIMUM OF 25% OF THE GROSS ANNUAL INCOME FROM ITS TOTAL SALES, EXCLUDING FUEL PRODUCTS AS DEFINED AT SECTION 8-20-201(2) AND LOTTERY TICKET SALES

EXHIBIT A

FROM SUCH TOTAL, IS DERIVED FROM THE SALE OF FOOD ITEMS. "FOOD ITEMS", AS USED IN THIS SUBSECTION (8.5), MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE AND BEVERAGE, OTHER THAN ANY BEVERAGE CONTAINING ALCOHOL, INTENDED FOR USE OR FOR SALE IN WHOLE OR IN PART FOR HUMAN CONSUMPTION.

SECTION 3. In Colorado Revised Statutes, 12-47-309, **add** (1) (n) as follows:

12-47-309. Local licensing authority--applications--optional premises licenses. (1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

(n) FOOD STORE LICENSE.

SECTION 4. In Colorado Revised Statutes, 12-47-401, **add** (1) (w) as follows:

12-47-401. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license or permit from any of the following classes, subject to the provisions and restrictions provided by this article:

(w) FOOD STORE LICENSE.

SECTION 5. In Colorado Revised Statutes, 12-47-501, **add** (1) (f.5) as follows:

12-47-501. State fees. (1) The following license and permit fees shall be paid to the department of revenue annually in advance:

(f.5) FOR EACH FOOD STORE LICENSE, ONE HUNDRED DOLLARS.

SECTION 6. In Colorado Revised Statutes, 12-47-505, **add** (1) (b.5) as follows:

12-47-505. Local license fees. The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(b.5)(I) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

SECTION 7. In Colorado Revised Statutes, 12-47-901, **amend** (1) (f) and (5) (a) (I) as follows:

12-47-901. Unlawful acts – exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

(f) To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, OR TO SELL MALT AND VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A FOOD STORE LICENSE, except as permitted by section 12-47-301(6)(b) or any other provision of this article:

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a)(I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103(20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age. AN EMPLOYEE OF A FOOD STORE LICENSED PURSUANT TO SECTION 12-47-425 SHALL NOT SELL MALT OR VINOUS LIQUORS UNLESS THE EMPLOYEE IS AT LEAST TWENTY-ONE YEARS OF AGE.

SECTION 8. In Colorado Revised Statutes, 12-46-107, **amend** (1) (a) and (1) (c) as follows:

12-46-107. Local licensing authority – application – fees. (1) The local licensing authority shall issue only the following classes of fermented malt beverage licenses:

(a)(I) Sales for consumption off the premises of the licensee;

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2019.

(c)(I) Sales for consumption both on and off the premises of the licensee. A person licensed pursuant to this paragraph (c) may deliver at retail fermented malt beverages in factory-sealed containers in conjunction with the delivery of food products if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority. The state licensing authority shall promulgate rules as are necessary for the proper delivery of fermented malt beverages pursuant to this paragraph (c) and shall have the authority to issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages under this paragraph (c).

(II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JANUARY 1, 2019.

SECTION 9. Effective date. July 1, 2017.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #61[1] DATE FILED: February 16, 2016 4:36 PM

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the sale of 3.2% beer, full-strength beer, and wine for off-premises consumption, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income, excluding income from fuel products and lottery ticket sales, from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age; and as of January 1, 2019, eliminating licenses to sell 3.2% beer for off-premises consumption.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the sale of 3.2% beer, full-strength beer, and wine for off-premises consumption, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income, excluding income from fuel products and lottery ticket sales, from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age; and as of January 1, 2019, eliminating licenses to sell 3.2% beer for off-premises consumption?

Hearing January 6, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 2:20 p.m.

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[1] Unofficially captioned **"Food Store License"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

EXHIBIT B

Rehearing January 20, 2016:
Motion for rehearing denied except to the extent that the Board made changes to the titles.
Hearing adjourned 10:05 a.m.