

<b>SUPREME COURT, STATE OF COLORADO</b> <b>2 East 14<sup>th</sup> Avenue</b> <b>Denver, Colorado 80203</b>	DATE FILED: May 10, 2022 4:30 PM
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021- 2022 #96  <b>Petitioners:</b> STEVEN WARD and LEVI MENDYK  v.  <b>Respondents/Proponents:</b> ROBERT SCHRAEDER and JOEL ALLEN CATHEY  and  <b>Title Board:</b> THERESA CONLEY; DAVID POWELL; and JULIE PELEGRIN	▲ COURT USE ONLY ▲
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<b>RESPONDENTS' OPENING BRIEF</b>	

## 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 1,243 words.

Further, the undersigned certifies that 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 issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such 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.

By: s/Martha M. Tierney

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Robert Schraeder and Joel Allen Cathey (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause that the Title Board set for Proposed Initiative 2021-2022 #96 (“Initiative”).

### **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

Whether the Title set by the Title Board for the measure is misleading?

### **STATEMENT OF THE CASE**

This is an appeal from the Title Board’s setting of the Title for Initiative #96. On March 22, 2022, Proponents filed the Initiative with the directors of the Legislative Council and the Office of Legislative Legal Services. Pursuant to C.R.S. §1-40-105(1), the Offices of Legislative Council and Legislative Legal Services conducted a review and comment hearing on the Initiative on April 5, 2022.

Proponents filed the Initiative with the Secretary of State’s office on April 8, 2022. At the Title Board hearing on April 20, 2022, the Title Board found that the Initiative contained a single subject, as required pursuant to article V, section 1(5.5) of the Colorado Constitution, and C.R.S. §1-40-106.5. The Title Board set the Title for the Initiative.

On April 27, 2022, Petitioners Steven Ward and Levi Mendyk filed a Motion for Rehearing. On April 28, 2022, the Title Board denied the Motion for Rehearing in its entirety. Petitioners filed a Petition for Review, pursuant to C.R.S. §1-40-107(2) on May 5, 2022.

### **STATEMENT OF FACTS**

Initiative #96 amends the Colorado Revised Statutes to phase in an increase in the number of retail liquor store licenses a person may hold. The language of the measure is short and the changes to existing statute are few.

The Title set for the Initiative by the Title Board correctly and fairly expresses the true intent and meaning of the Initiative and will not mislead the public.

The Title set for Initiative #96 at the hearing on April 20, 2022, reads:

Shall there be a change to the Colorado Revised Statutes concerning increasing the number of retail liquor store licenses in which a person may hold an interest, and, in connection therewith, phasing in the increase by allowing up to 8 licenses by December 31, 2026, up to 13 licenses by December 31, 2031, up to 20 licenses by December 31, 2036, and an unlimited number of licenses on or after January 1, 2037?<sup>1</sup>

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<sup>1</sup> Proponents filed a total of six measures that were challenged by the same Petitioners. Proposed Initiatives 2021-2022 #96 (Case No. 2022SA133), #97 (Case No. 2022SA134), #100 (Case No. 2022SA135), #101 (Case No. 2022SA136), #102 (Case No. 2022SA137), and #139 (Case No. 2022SA129). The legal issues in all six cases are similar, and, thus, the briefs are similar.

## **SUMMARY OF ARGUMENT**

The Title Board properly exercised its broad discretion drafting the title for Initiative #96.

The Initiative increases the number of retail liquor store licenses a person may hold, phasing in the increase over time by allowing up to 8 licenses by December 31, 2026, up to 13 licenses by December 31, 2031, up to 20 licenses by December 31, 2036, and an unlimited number of licenses on or after January 1, 2037.

The text of the measure is short and less than one page in length. The Title fairly and accurately sets forth the major features of the Initiative and is not misleading.

The Title Board is only obligated to fairly summarize the central points of a proposed measure, and, need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

There is no basis to set aside the Title, and the decision of the Title Board should be affirmed.



## ARGUMENT

### **I. The Title Board Set a Clear Title That Fairly Summarizes the Key Components of the Initiative.**

#### **A. Standard of Review.**

When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *Cordero v. Leahy (In re Initiative for 2013-2014 #90)*, 328 P.3d 155, 158 (Colo. 2014). The Court “will reverse the Title Board's decision only if a title is insufficient, unfair, or misleading.” *Earnest v. Gorman (In re Initiative for 2009-2010 #45)*, 234 P.3d 642, 648 (Colo. 2010); see also *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999) (observing that this court will reverse a title only if it contains a "material omission, misstatement, or misrepresentation"). Respondents agree that Petitioners preserved this issue for appeal.

#### **B. The Title Is Not Misleading.**

The Title is clear and does not mislead the voters. “While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative.” *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted). Here, the Title thoroughly but succinctly captures the key features of the

measure, is not likely to mislead voters as to the Initiative's purpose or effect, nor does the Title conceal some hidden intent.

Petitioners claim that the title is misleading because it does not provide a description of a retail liquor store, a description of the increase, a description of a "person" that "may hold an interest," or descriptions of the "number of stores allowed" on or after January 1, 2022, and before January 1, 2027, and on or after January 1, 2032, and before January 1, 2037. These descriptions are not necessary, or they are already included in the title. For example, the title does tell voters how the Initiative increases the number of retail liquor store licenses a person may hold, phasing in the increase over time by allowing up to 8 licenses by December 31, 2026, up to 13 licenses by December 31, 2031, up to 20 licenses by December 31, 2036, and an unlimited number of licenses on or after January 1, 2037. The title is clear and understandable as the Title Board set it.

The Court is not to "consider whether the Title Board set the best possible title; rather, [its] duty is to ensure that the title "fairly reflect[s] the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board." *In re Initiative for 2007-2008* #62, 184 P.3d 52, 58 (Colo. 2008). The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the

central features of the proposed measure." *In re Initiative on "Trespass-Streams with Flowing Water,"* 910 P.2d 21, 24 (Colo. 1996). 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 Initiative for 2009-2010 # 24,* 218 P.3d 350, 356 (Colo. 2009) (quoting *In re Initiative on Parental Notification of Abortions for Minors,* 794 P.2d 238, 242 (Colo. 1990)).

Only in a clear case should a title prepared by the Title Board be held invalid. *In re Title, Ballot Title & Submission Clause Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982,* 649 P.2d 303, 306 (Colo. 1982). This is not such a case.

## CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board for Proposed Initiative 2021-2022 #96.

Respectfully submitted this 10<sup>th</sup> day of May 2022.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of May 2022 a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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