

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original proceeding pursuant to § 1-40-107(2), C.R.S. (2021-2022)

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #96 (“Concerning Liquor Licenses”)

Petitioners: Steve Ward and Levi Mendyk,

v.

Respondents: Robert Schraeder and Joel Allen Cathey,

and

Title Board: Theresa Conley, Julie Pelegrin, and David Powell.

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Case No.: 2022SA133

TITLE BOARD’S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I 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, I certify that:

A. The brief complies with C.A.R. 28(g) because it contains 872 words.

B. The brief complies with C.A.R. 28(a)(7)(A) because each 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, and not to an entire document, where the issue was raised and ruled on.

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Respondents Theresa Conley, Julie Pelegrin, and David Powell, in their official capacities as Ballot Title Board members (collectively, the “Board”), by and through undersigned counsel, hereby submit their opening brief in this appeal:

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the title set by the Board for Proposed Initiative 2021-2022 #96 (“#96”) reflects the central features of the measure to accurately convey its true intent and meaning.

STATEMENT OF THE CASE

Proponents Robert Schraeder and Joel Allen Cathey seek to circulate #96 to obtain the requisite number of signatures to place the measure on the ballot. *See* #96 Cert. Rec., at 2. Specifically, #96 is a proposed statutory amendment that seeks to equalize the number of retail liquor store licenses that may be held by different types of businesses that sell alcohol for off-premises consumption. *See id.* To do so, #96 proposes to amend existing statutory provisions to change the

number of retail liquor store licenses in which a person may hold an interest through increases that are phased-in over time. *See id.*

The Board held a public hearing to consider #96 on April 20, 2022, at which it found that the measure contains a single subject and set title. *See #96 Cert. Rec.*, at 4. Objectors Steve Ward and Levi Mendyk timely filed a motion for rehearing. *See id.* at 5. On April 28, 2022, the Board denied the motion. *See id.* at 3. The final version of the ballot title and submission clause 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?

Id.

The Petitioners here, Mr. Ward and Mr. Mendyk, timely appealed the Board's final decision to this Court.

SUMMARY OF THE ARGUMENT

The Board's actions in setting title for #96 should be affirmed because the title accurately summarizes its substance and is not misleading.

ARGUMENT

I. The title the Board set for #96 was proper.

A. Standard of review.

This Court does not demand that the Board “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010). Rather, it “give[s] great deference to the Title Board in the exercise of its drafting authority and will reverse its decision only if the titles are insufficient, unfair, or misleading.” *Id.* (citation omitted).

The Board agrees that Petitioners preserved their challenges to the substance of the title by raising them in the motion for rehearing that was denied at the Board's April 28, 2022 public meeting.

B. The title for #96 is fair, clear, accurate, and not misleading.

The Colorado Constitution requires that the subject of a proposed initiative “shall be clearly expressed in its title[.]” COLO. CONST. art. V, § 1(5.5); *see also* § 1-40-106(3)(b), C.R.S. (2021) (establishing statutory standards for setting clear titles). “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 328 P.3d 155, 162 (Colo. 2014). In carrying out that duty, the Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* And it is well-settled that a ballot title “need not explain the meaning or potential effects of the proposed initiative on the current statutory scheme,” nor must it “recite every detail of the proposed measure.” *In re Title Ballot Title & Submission Clause for 2019-2020 #315*, 500 P.3d 363, 369 (Colo. 2020) (quotation and citations omitted).

Here, the Board’s title plainly details that #96’s implementing provisions will change the number of retail liquor store licenses in

which a person may hold an interest through increases that are phased-in over time. In doing so, it “enable[s] 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 #24*, 218 P.3d 350, 356 (Colo. 2009) (quotation omitted). That is all that is required because the Board “need *not* include every detail” of the measure. *In re Title, Ballot Title, & Submission Clause for 2001-2002 #22 & #23*, 44 P.3d 213, 222 (Colo. 2002) (emphasis in original). To the contrary, ballot titles must “be brief.” § 1-40-106(3)(b). Petitioners’ complaint that the Board’s title for #96 should have been longer and more exhaustively detailed, *see #96 Cert. Rec.*, at 5, therefore lacks merit and should be rejected. The title set by the Board should be affirmed because it adequately “summarize[d] the central features” of #96 and was well-within the substantial discretion this Court gives the Board. *See In re #90*, 328 P.3d at 162.

CONCLUSION

For the above reasons, the Board respectfully requests that this Court affirm its actions in setting title for #96.

Respectfully submitted on this 10th day of May, 2022.

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CERTIFICATE OF SERVICE

This is to certify that on May 10, 2022, I electronically served the foregoing **TITLE BOARD'S OPENING BRIEF** upon all counsel of record for the parties to this appeal via the Colorado Courts E-filing System:

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