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| <p>SUPREME COURT OF COLORADO 2 East 14th Avenue 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 2021- 2022 #96</p> <p>Petitioner: STEVE WARD and LEVI MENDYK</p> <p>v.</p> <p>Respondents/Proponents:</p> <p>ROBERT SCHRAEDER and JOEL ALLEN CATHEY And</p> <p>Ballot Title Board: THERESA CONLEY, DAVID POWELL, and JULIE PELEGRIN</p> | <p>▲ COURT USE ONLY ▲</p> <p>Supreme Court Case No. 2022SA133</p> |
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| <p>PETITIONER'S OPENING BRIEF</p> | |

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the 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).

Choose one:

It contains **1,050** words.

It does not exceed 30 pages.

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) citation to the precise location in the record, 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.

/s/ Suzanne Taheri
Suzanne Taheri
Attorney for the Petitioner

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Petitioners, Steve Ward and Levi Mendyk, registered electors of the State of Colorado, through undersigned counsel, submits his Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiative 2021-2022 #96 (unofficially captioned as “Concerning Liquor Licenses”).

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Title Board erred in ruling that the measures contain a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. §1-40-105(4).
2. Whether the Title Board failed to set a ballot title that properly describes the central features of the proposed initiative in violation of C.R.S. § 1-40-106(3)(b).

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board’s decision to deny Petitioner’s Motion for Rehearing and set title for Proposed Initiative 2021-2022 #139.

Robert Schrader and Joel Allen Cathey (hereafter “Proponents”) proposed Initiative 2021-2022 #96 (the “Proposed Initiative”). Proponents submitted their Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to § 1-40-106, C.R.S.

The Title Board held a hearing on April 20, 2022, where it determined that the Proposed Initiative contained a single subject as required by Colo. Const. art. V, §1(5.5) and § 1-40-106.5, C.R.S., and set a title. On April 27, 2022, Petitioners filed a Motion for Rehearing stating that the titles were misleading and did not accurately describe the measure. Title Board held a rehearing on April 28, 2020, at which time it granted Petitioners' Motion to Rehearing only to the extent the Board made changes to the title.

In the Motions concerning the Proposed Initiative Petitioner argued that the title did not adequately describe the central features of the measure. The Title Board set the final ballot title for Initiative #96 as follows:

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.

SUMMARY OF ARGUMENT

The Title Board failed to describe the type of license affected by the measure.

Therefore, for the reasons stated above and explained further below, the actions of the Title Board must be reversed with instructions to set a new title.

STANDARD OF REVIEW

When reviewing a challenge to the Title Board’s decision on clear title this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *In the Matter of Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 2017 CO 57, ¶ 20.

Although the right of initiative is to be liberally construed, “[i]t merits emphasis that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.” *In re Title, Ballot Title, and Submission Clause for 2007-2008 No. 62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

LEGAL ARGUMENT

I. THE TITLE OF THE PROPOSED INITIATIVE IS MISLEADING

The constitution requires an initiated measure’s subject to be “clearly expressed in its title.” Colo. Const. art. V, § 1(5.5). “In setting a title, the title board shall consider the public confusion that might be caused by misleading titles.” Colo. Rev. Stat. § 1-40-106(3)(b). The clear title requirement seeks to “prevent voter confusion and ensure that the title adequately expresses the initiative’s intended purpose.” *Robinson v. Dierking (In re Title, Ballot Title & Submission*

Clause for 2015-2016 #156), 413 P.3d 151, 153 (Colo. 2016). Voters, "whether or not they are familiar with the subject matter of a particular proposal," should be able to "determine intelligently whether to support or oppose the proposal." *Id.*, citing *In re 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016).

A title shall correctly and fairly express the true intent and meaning of the proposed measure and "shall unambiguously state the principle of the provision sought to be added, amended, or repealed." Colo. Rev. Stat. § 1-40-106(3)(b), *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 266 (Colo. 1999). The Title Board is tasked with "focusing on the most critical aspects of the proposal, not simply [restating] all of the provisions of the proposed initiative." *Percy v. Embury (In re Title for 1999-2000 # 235(a))*, 3 P.3d 1219, 1225 (Colo. 2000), citing *In re Petition on Campaign and Political Finance*, 877 P.2d 311, 313 (Colo. 1994).

The ballot title as set by the board omits a number of elements which would be useful to voters in evaluating what the initiative does. The measure fails to provide voters a description of a retail liquor store. A retail liquor store is defined as, "an establishment engaged only in the sale of malt, vinous, and spirituous liquors in sealed containers for consumption off the premises and nonalcohol products, but only if the annual gross revenues from the sale of nonalcohol

products do not exceed twenty percent of the retail liquor store establishment's total annual gross sales revenues, as determined in accordance with section 44-3-409 (1)(b). C.R.S. § 44-3-103(48).”

Few voters will know that a retail liquor store is one that only sells liquor. They will more likely believe this allows for more convenience when shopping only to then discover that a retail liquor store excludes grocery stores, big box stores and convenience stores.

The title also does not advise voters of the limits that are being changed. Under current law retail liquor stores are capped at 4 in a phase in that is complete in 2027. The proposed initiative allows more than triple that, with a cap of 13 in 2027. This eventually leads to an unlimited number by 2037. This is major shift in long established law in Colorado.

Without a basic understanding of these concepts, voters cannot understand the central features of the measure.

CONCLUSION

Petitioner respectfully requests this Court hold that the title for the Proposed Initiative is misleading and thus violates the clear title requirement.

Respectfully submitted this 10th day of May, 2022.

MAVEN LAW GROUP

/s/ Suzanne Taheri
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Attorney for the Petitioner

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 10th day of May, 2022 a true and correct copy of the **PETITIONER'S OPENING BRIEF** was served via the State of Colorado's e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

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