

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: May 15, 2022 7:00 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 Petitioners: STEVEN WARD and LEVI MENDYK v. Respondents/Proponents: ROBERT SCHRAEDER and JOEL ALLEN CATHEY and Title Board: THERESA CONLEY; DAVID POWELL; and JULIE PELEGRIN	▲ COURT USE ONLY ▲
<i>Attorneys for Respondents</i> Martha M. Tierney, No. 27521 Tierney Lawrence LLC 225 E.16 th Ave, Suite 350 Denver, CO 80203 Phone: (720) 242-7577 E-mail: mtierney@tierneylawrence.com	Case No.: 2022SA133
RESPONDENTS' ANSWER 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 656 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 Answer Brief in support of the title, ballot title and submission clause that the Title Board set for Proposed Initiative 2021-2022 #96 (“Initiative”).

SUMMARY OF ARGUMENT

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

The text of the measure is short and in plain language. The Title fairly and accurately sets forth the major features of the Initiative and is not misleading.

The Initiative increases the number of retail liquor store licenses a person may hold, and phases in the increase over time. The title need not include definitions of terms such as “retail liquor store” which are afforded their plain meaning and of which the average voter has an understanding.

Titles must be fair, clear, accurate and complete, but are 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. The Title Is Not Misleading.

The Title as set by the Title Board correctly and fairly expresses the true intent and meaning of the proposed measure. “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 155, 164 (Colo. 2014). (citations omitted). Here, the Title captures the key features of the measure and is not likely to mislead voters as to the Initiative’s purpose or effect.

Petitioners claim that the title “omits a number of elements which would be useful to voters in evaluating what the initiative does.” *Pet. Op. Brf.*, p. 4. In particular, Petitioners contend that the title should contain a definition of retail liquor store and should tell voters that this definition does not include grocery stores, big box stores and convenience stores. *Id.* What Petitioners appear to want is for the title to spell out the effects of the measure on existing law.

The Title Board's duty in setting a title is to summarize the central features of a proposed initiative. *In re 2013-2014 #90*, 328 P.3d at 162. In doing so, the Title Board need not explain the meaning or potential effects of the proposed initiative on the current statutory scheme. *Id.* Nor must the Board include a

description of every feature of a proposed measure. *Bruce v. Hedges (In re Title, Ballot Title & Submission Clause for 2019-2020 #3 "State Fiscal Policy")*, 454 P.3d 1056, 1060 (Colo. 2019) (citations omitted).

Here, the title does tell voters how the Initiative increases the number of retail liquor store licenses a person may hold, and how the increase in licenses phases in over time, including to an unlimited number after January 2037. 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).

In deciding whether a title complies with the clear title requirement, the Court does “not consider whether the Title Board set the best possible title.” *Haynes v. Vondruska (In re Title, Ballot Title & Submission Clause for 2019–2020 #315)*, 500 P.3d 363, 369 (Colo. 2020) (citations omitted). Instead, the Court need only “ensure that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board.” *Id.*

The title is clear and understandable as the Title Board set it.

CONCLUSION

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

Respectfully submitted this 15th day of May 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2022 a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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