

<p><b>COLORADO SUPREME COURT</b>  2 East 14th Avenue,  Denver, Colorado 80203</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Original Proceeding  Colo. Rev. Stat. § 1-40-107(2)  Appeal from the Ballot Title Board</p>	
<p><b>Petitioners:</b> STEVEN WARD and LEVI MENDYK</p> <p>v.</p> <p><b>Respondents/Proponents:</b> ROBERT SCHRAEDER and JOEL ALLEN CATHEY, Proponents,</p> <p>and</p> <p><b>Ballot Title Setting Board:</b> THERESA CONLEY, JULIE PELEGRIN, and DAVID POWELL</p>	<p>Case Number:</p> <p>Div.:                      Crtm.:</p>
<p><b>Attorney for Petitioners:</b>  Suzanne M. Taheri, #23411  MAVEN LAW GROUP  6501 E. Belleview Ave, Suite 375  Englewood, CO 80111  Phone Number: (303) 263-0844  Email: staheri@mavenlawgroup.com</p>	
<p style="text-align: center;"><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #97 (“CONCERNING LIQUOR LICENSES”)</b></p>	

Petitioners Steven Ward and Levi Mendyk, thorough undersigned counsel, hereby petition this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Ballot Title Setting Board (“Title Board”) with respect to jurisdiction to set title for Proposed Initiative 2021-2022 #97.

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative**

Proposed Initiative 2021-2022 #97 was filed with Legislative Council on March 22, 2022. The Title Board conducted an initial hearing on the initiative and set ballot title on April 20, 2022. After the initial hearing, Petitioners filed a Motion for Rehearing challenging the Board’s actions on the grounds that the measure did not constitute a single subject and that the Title Board failed to set a clear title. A rehearing took place on April 28, 2022, and the Petitioners’ Motion for Rehearing was granted only to the extent that the Board made changes to the ballot title.

### **B. Jurisdiction**

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme Court pursuant to § 1-40-107(2), C.R.S. (2021).

As required by § 1-40-107(2), C.R.S. (2021), attached to this Petition for Review are certified copies of (1) the final copy of the Proposed initiative as

submitted to the Title Board; (2) the determinations by the Title Board at its initial hearing on the Proposed Initiative on April 20, 2022; (3) the Fiscal Summary for the Proposed initiative prepared by the Director of Research of the Legislative Council of the General Assembly pursuant to §1-40-105.5(1.5), C.R.S. (2021); (4) the Motion for Rehearing filed Petitioners on April 27, 2022; and (5) the determinations by the Title Board at the rehearing on April 28, 2022.

### **GROUNDS FOR REVIEW**

Petitioners respectfully submit that the Title Board erred as follows:

1. The Title Board incorrectly found that the Initiative is a single subject.

Proposed initiative 2021-2022 #97 contains more than a single subject. First, the initiative increases licenses for retail liquor stores. Secondly, the initiative decreases licenses for liquor-licensed drugstores. Few voters will be in favor of, or opposed to, both disconnected subjects.

2. The Title Board failed to set a ballot title that properly describes the central features of the proposed initiative.

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. For instance, the following elements are missing and should be included in the ballot title:

- A description of a “retail liquor store”

- A description of a “liquor-licensed drugstore”
- A description of the respective increases and decreases
- A description of “person” that “may hold an interest”
- A description of the number of liquor stores allowed on or after January 1, 2022 and before January 1, 2027
- A description of the language deleted from statute that allowed unlimited liquor licensed drugstores on or after January 1, 2037.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 5<sup>th</sup> day of May, 2022

s/Suzanne Taheri  
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*Attorney for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of May, 2022, a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #97 (“CONCERNING LIQUOR LICENSES”)** was served via the Colorado Court’s E-Filing System to the following:

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*/s/ Suzanne Taheri*

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Suzanne Taheri

*Duly signed original on file at Maven Law Group*



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2021-2022 #97 ‘Concerning Liquor Licenses’” .....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 3<sup>rd</sup> day of May, 2022.

*Jena Griswold*

SECRETARY OF STATE



*Be it enacted by the People of the State of Colorado:*

### **SECTION 1. Declaration of Purpose.**

The People of the State of Colorado find and declare that it is in the interest of Colorado to create a more level playing field for the different business types that sell alcohol for off-premises consumption by allowing an equal number of licenses for drugstores, and liquor stores. Creating parity and an orderly expansion for all businesses will foster competition, create jobs, increase selection and consumer choice, and lower costs for Coloradans.

**SECTION 2.** In Colorado Revised Statutes, 44-3-409, **amend** (4)(b)(III) as follows:

**44-3-409. Retail liquor store license – rules.** (4)(b) An owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store may have an interest in:

(III) For a retail liquor store licensed on or before January 1, 2016, and whose license holder is a Colorado resident, additional retail liquor store licenses as follows, but only if the premises for which a license is sought satisfies the distance requirements specified in subsection (1)(a)(II) of this section:

(A) On or after January 1, 2017, and before January 1, 2022, one additional retail liquor store license, for a maximum of up to two total retail liquor store licenses;

(B) On or after January 1, 2022, and before January 1, 2027, up to ~~two~~ SEVEN additional retail liquor store licenses, for a maximum of ~~three~~ EIGHT total retail liquor store licenses; ~~and~~

(C) On or after January 1, 2027, up to ~~three~~ ELEVEN additional retail liquor store licenses, for a maximum of ~~four~~ TWELVE total retail liquor store licenses; or

**SECTION 3.** In Colorado Revised Statutes, 44-3-410, **amend** (4)(b)(IV) and (4)(b)(V) as follows:

**44-3-410. Liquor-licensed drugstore license – multiple licenses permitted – requirements – rules.** (4)(b) An owner, part owner, shareholder, or person interested directly or indirectly in a liquor-licensed drugstore may have an interest in:

(IV) For a liquor-licensed drugstore licensed on or before January 1, 2016, or a liquor-licensed drugstore licensee that was licensed as a liquor-licensed drugstore on February 21, 2016, that converted its license to a retail liquor store license after February 21, 2016, and that applied on or before May 1, 2017, to convert its retail liquor store license back to a liquor-licensed drugstore license, additional liquor-licensed drugstore licenses as follows, but only if obtained in accordance with subsection (1)(b) of this section:

(A) On or after January 1, 2017, and before January 1, 2022, four additional liquor-licensed drugstore licenses, for a maximum of five total liquor-licensed drugstore licenses;

(B) On or after January 1, 2022, and before January 1, 2027, up to seven additional liquor-licensed drugstore licenses, for a maximum of eight total liquor-licensed drugstore licenses; AND

(C) On or after January 1, 2027, ~~and before January 1, 2032,~~ up to ~~twelve~~ ELEVEN additional liquor-licensed drugstore licenses, for a maximum of ~~thirteen~~ TWELVE total liquor-licensed drugstore licenses.

~~(D) On or after January 1, 2032, and before January 1, 2037, up to nineteen additional liquor-licensed drugstore licenses, for a maximum of twenty total liquor-licensed drugstore licenses; and~~

~~———(E) On or after January 1, 2037, an unlimited number of additional liquor-licensed drugstore licenses.~~

(V) For a liquor-licensed drugstore that submitted an application for a new liquor-licensed drugstore license before October 1, 2016, additional liquor-licensed drugstore licenses as follows, but only if obtained in accordance with subsection (1)(b) of this section:

(A) On or after January 1, 2019, and before January 1, 2022, four additional liquor-licensed drugstore licenses, for a maximum of five total liquor-licensed drugstore licenses;

(B) On or after January 1, 2022, and before January 1, 2027, up to seven additional liquor-licensed drugstore licenses, for a maximum of eight total liquor-licensed drugstore licenses; AND

(C) On or after January 1, 2027, ~~and before January 1, 2032,~~ up to ~~twelve~~ ELEVEN additional liquor-licensed drugstore licenses, for a maximum of ~~thirteen~~ TWELVE total liquor-licensed drugstore licenses.

~~(D) On or after January 1, 2032, and before January 1, 2037, up to nineteen additional liquor-licensed drugstore licenses, for a maximum of twenty total liquor-licensed drugstore licenses; and~~

~~———(E) On or after January 1, 2037, an unlimited number of additional liquor-licensed drugstore licenses.~~

**SECTION 4. Effective date.** This measure shall go into effect upon the proclamation of the governor of the state of Colorado.



## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #97<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning the number of retail liquor licenses in which a person may hold an interest, and, in connection therewith, increasing the number of retail liquor store licenses and decreasing the number of liquor-licensed drugstore licenses, including licenses for sale of liquor in grocery stores, a person may own or hold an interest in, on and after January 1, 2027, to a maximum of 12 licenses for each type of retail establishment.

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 number of retail liquor licenses in which a person may hold an interest, and, in connection therewith, increasing the number of retail liquor store licenses and decreasing the number of liquor-licensed drugstore licenses, including licenses for sale of liquor in grocery stores, a person may own or hold an interest in, on and after January 1, 2027, to a maximum of 12 licenses for each type of retail establishment?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

*Hearing adjourned 3:46 P.M.*

*Rehearing April 28, 2022:*

*Motion for Rehearing granted only to the extent that the Board made changes to the titles.*

*Board members: Theresa Conley, Julie Pelegrin, David Powell*

*Hearing adjourned: 9:14 P.M.*

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<sup>1</sup> Unofficially captioned “**Concerning Liquor Licenses**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #97<sup>1</sup>**

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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 number of retail liquor licenses in which a person may hold an interest, and, in connection therewith, increasing the number of retail liquor store licenses and decreasing the number of liquor-licensed drugstore licenses a person may own or hold an interest in to a maximum of 12 licenses for each type of retail establishment?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

*Hearing adjourned 3:46 P.M.*

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<sup>1</sup> Unofficially captioned “**Concerning Liquor Licenses**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2021-2022 #97

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**MOTION FOR REHEARING**

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On behalf of Steve Ward and Levi Mendyk, registered electors in the State of Colorado, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board's April 2, 2022, decision.

1. Proposed initiative #97 contains more than a single subject.

The initiative increases licenses for retail liquor stores *and* decreases licenses for liquor-licensed drugstores. Few voters will be in favor of, or opposed to, both disconnected subjects. To satisfy the single subject requirement in Colo. Const. art. V, § 1(5.5), the subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous. A proposed initiative presents only one subject if it tends to effect or carry out one general objective or purpose; minor provisions necessary to effectuate the single objective or purpose of the initiative may be properly included. Conversely, an initiative violates the single subject requirement where it relates to more than one subject and has at least two distinct and separate purposes. If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.

*Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 1, 374 P.3d 460, 462

2. The measure violates the clear title requirement.

Opponents assert that the titles as set violate clear title as they do not describe the central features of the measure including:

- A description of a “retail liquor store”
- A description of a “liquor-licensed drugstore”
- A description of the respective increases and decreases
- A description of “person” that “may hold an interest”
- A description of the number of liquor stores allowed on or after January 1, 2022 and before January 1, 2027
- A description of the language deleted from statute that allowed unlimited liquor licensed drugstores on or after January 1, 2037.

Respectfully submitted this 27<sup>th</sup> day of April, 2022.

s/Suzanne Taheri  
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Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Initiative 97

## Fiscal Summary

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**Date:** April 18, 2022

**Fiscal Analyst:** Anna Gerstle (303-866-4375)

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### LCS TITLE: CONCERNING LIQUOR LICENSES

#### Fiscal Summary of Initiative 97

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at [www.colorado.gov/bluebook](http://www.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State revenue.** By allowing additional retail liquor store locations and fewer grocery store locations that sell beer, wine and spirits, Initiative 97 may minimally impact fee revenue paid to the Department Revenue associated with these various license types. Applicants for new liquor licenses must pay initial application and licensing fees, as well as annual renewal fees.

**State expenditures.** By allowing additional retail liquor store locations and fewer grocery store locations that sell beer, wine and spirits, Initiative 97 may minimally impact the workload for the Department Revenue to process additional liquor store licenses and fewer grocery store licenses, and to conduct enforcement.

**Local government impact.** Similar to the state impact, Initiative 97 may impact local liquor licensing authorities' workload to process more liquor license applications and fewer grocery store licenses, as well as impact the corresponding fee revenue from these application and licensing fees. The impact will depend on the change in licensed establishments in any individual jurisdiction.

**Economic impacts.** While Initiative 97 may change the number and type of liquor licensed locations, the overall volume of alcohol sales is not expected to change significantly. The measure may also shift income and employment opportunities across different retailers.