

<p>COLORADO SUPREME COURT 2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>DATE FILED: May 10, 2022 9:27 PM</p>
<p>Original proceeding pursuant to § 1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #97 (“Concerning Liquor Licenses”)</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Petitioners:</b> Steve Ward and Levi Mendyk,</p> <p>v.</p>	<p>Case No.: 2022SA134</p>
<p><b>Respondents:</b> Robert Schraeder and Joel Allen Cathey,</p> <p><b>and</b></p>	
<p><b>Title Board:</b> Theresa Conley, Julie Pelegrin, and David Powell.</p>	
<p><i>Counsel for the Title Board:</i> PHILIP J. WEISER, Attorney General LEEANN MORRILL, First Assistant Attorney General, Reg. No. 38742* 1300 Broadway, 6th Floor Denver, CO 80203 Tel: (720) 508-6159 Email: leeann.morrill@coag.gov <i>*Counsel of Record</i></p>	
<p><b>TITLE BOARD’S OPENING BRIEF</b></p>	

## 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 1,583 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**

1. Whether the Board correctly found that Proposed Initiative 2021-2022 #97 (“#97”) contains a single subject as required by Colo. Const. Art. V, § 1(5.5).
2. Whether the title set by the Board for #97 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 #97 to obtain the requisite number of signatures to place the measure on the ballot. *See #97 Cert. Rec.*, at 2-3. Specifically, #97 is a proposed statutory amendment that seeks to equalize the number of retail alcohol licenses that may be held by different types of businesses

that sell alcohol for off-premises consumption. *See id.* To do so, #97 proposes to amend existing statutory provisions to increase the number of licenses that may be held by retail liquor stores and decreases the number of licenses that may be held by liquor-licensed drugstores. *See id.*

The Board held a public hearing to consider #97 on April 20, 2022, at which it found that the measure contains a single subject and set title. *See #97 Cert. Rec.*, at 5. Objectors Steve Ward and Levi Mendyk timely filed a motion for rehearing. *See id.* at 6-7. On April 28, 2022, the Board denied the motion for rehearing except to the extent that it made changes to the title previously set for #97. *See id.* at 4. The final version of the ballot title and submission clause reads:

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?

*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 #97 should be affirmed because the measure contains a single subject, and the title accurately summarizes its substance and is not misleading.

## **ARGUMENT**

### **I. The Board correctly found that #97 contains a single subject.**

#### **A. Standard of review.**

When this Court reviews "the Title Board's single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board's actions. [It] will only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *In re Title, Ballot Title, & Submission Clause for 2011-2012 #45*, 274 P.3d 576, 579 (Colo. 2012) (quotation omitted).

The Board agrees that Petitioners preserved their single subject challenge by raising it in the motion for rehearing that was decided at the Board's April 28, 2022 public meeting.

**B. Number 97 contains only one subject.**

The Colorado Constitution provides that an initiative may relate to only one subject: “No measure shall be proposed by petition containing more than one subject ....” COLO. CONST., art. V, § 1(5.5). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). In contrast, “to constitute more than one subject, the text of the measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 441 (Colo. 2002) (quotations omitted).

The Board correctly determined that #97 contains only one subject: changing the total number of retail alcohol licenses that may be held by two types of licensees until the same maximum applies to each.



It proposes to accomplish this singular objective by amending C.R.S. §§ 44-3-409 and -410 to increase the maximum number of retail alcohol licenses that may be held by a retail liquor store licensee during specified time periods and decrease the maximum number of retail alcohol licenses that may be held by a liquor-licensed drugstore during specified time periods until the totals for each are the same. *See* #97 Cert. Rec., at 2-3. These proposed amendments are “connected with each other” and therefore do not constitute separate subjects. *In re* #43, 46 P.3d at 441.

And while these implementing provisions work to increase the maximum number of licenses for one type of licensee and lower the maximum number of licenses for another type of licensee—neither constitutes an impermissible second subject because each is tied to #97’s central purpose of changing the total number of retail alcohol licenses that may be held by two types of licensees until the same maximum applies to each. Indeed, it is well-established that “[i]mplementing provisions that are directly tied to an initiative’s central focus are not separate subjects.” *In re Title, Ballot Title &*

*Submission Clause for 2007-2008 #17*, 172 P.3d 871, 874 (Colo. 2007), as modified on denial of reh'g (Dec. 17, 2007) (citing *In re Title, Ballot Title & Submission Clause for 1999-2000 #258(A)*, 4 P.3d 1094, 1097 (Colo. 2000)).

Nor does #97 contain an impermissible “hidden purpose under a broad theme.” *In re #17*, 172 P.3d at 875. Rather, the ballot title and submission clause set by the Board expressly states that the measure will increase the amount of retail alcohol licenses that one type of licensee may hold and decrease the amount of retail alcohol licenses that another type of licensee may hold. *See #97 Cert. Rec.*, at 4 (stating the measure “increas[es] the number of retail liquor store licenses and decreas[es] the number of liquor-licensed drugstore licenses . . . a person may own or hold an interest in”). As a result, #97 carries no risk of “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In re #45*, 274 P.3d at 581 (quotations omitted). The Board’s determination that #97 contains a single subject should therefore be affirmed.

**II. The title the Board set for #97 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 decided at the Board’s April 28, 2022 public meeting.

**B. The title for #97 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 expresses #97’s core purpose of changing the total number of retail alcohol licenses that may be held by two types of licensees until the same maximum applies to each. 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 #97 should have been longer and more exhaustively detailed, *see* #97 Cert. Rec., at 6-7, 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 #97 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 #97.

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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