

COLORADO SUPREME COURT 2 East 14th Avenue, Denver, Colorado 80203	
Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
Petitioners: STEVEN WARD and LEVI MENDYK v. Respondents/Proponents: ROBERT SCHRAEDER and JOEL ALLEN CATHEY, Proponents, and Ballot Title Setting Board: THERESA CONLEY, JULIE PELEGRIN, and DAVID POWELL	▲ COURT USE ONLY ▲
Attorneys for Petitioners: Suzanne Taheri (# 23411) MAVEN LAW GROUP 6501 E. Belleview Ave., Suite 375 Englewood, Colorado 80111 Phone: 303.218.7150 Email: staheri@mavenlawgroup.com	Case No.: 2022SA135
Petitioners' Opening Brief	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains **1,624** words (opening brief does not exceed 9,500 words).

The brief complies with the standard of review requirements set forth in Colorado Appellate Rule 28(a)(7)(A).

For each issue raised by Petitioner, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

s/ Suzanne Taheri

Suzanne Taheri

TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT.....	3
I. The Proposed Initiative violates the single subject requirement, and the Title Board does not have jurisdiction to set a Title.....	3
A. Standard of Review.....	3
B. The Proposed Initiative contains two separate and distinct subjects.	4
1. Increasing access to one type of alcohol retail license and decreasing access to another do not advance the same objective or purpose.	4
2. The significant reduction in the availability of fermented malt beverage licenses would cause voter surprise.....	5
II. Even if the Title Board has jurisdiction to set the Title, it erred in setting a Title that does not fairly, clearly, accurately, and completely describe the central features and would mislead voters.	6
A. Standard of Review.....	6
B. The Title does not fairly, accurately, and completely describe the central features of the Proposed Initiative, and is insufficient and misleading. ...	7
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

<i>Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)</i> , 234 P.3d 642 (Colo. 2010)	4
<i>Hayes v. Spalding (In re Title, Ballot Title and Submission Clause for 2015-2016 #73)</i> , 369 P.3d 565 (Colo. 2016)	7
<i>In re Title v. Buckley (In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #29)</i> , 972 P.2d 257 (Colo. 1999)	7
<i>In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.</i> , 877 P.2d 311 (Colo. 1994)	6
<i>In the Matter of the Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73</i> , 135 P.3d 736 (Colo. 2006).....	6, 7
<i>Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)</i> , 374 P.3d 460 (Colo. 2016)	3, 4
<i>Kemper v. Hamilton ((In re Title, Ballot Title, and Submission Clause for 2011-2012 #45)</i> , 274 P.3d 576 (Colo. 2012)	5
<i>Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)</i> , 274 P.3d 562 (Colo. 2012)	4

<i>Kemper v. Leahy (In re Title Ballot Title, & Submission Clause for 2013-2014</i>	
#89), 328 P.3d 172 (Colo. 2014)	5
<i>Title v. Apple (In re Title, Ballot Title and Submission Clause, and Summary</i>	
<i>Adopted April 17, 1996 (1996-17)), 920 P.2d 798 (Colo. 1996)</i>	3
Statutes	
§ 1-40-106.5(1)(e)(I), C.R.S. (2021)	4
§ 1-40-106.5, C.R.S. (2021)	1, 3
§ 1-40-107(2), C.R.S. (2021)	1
Constitutional Provisions	
Colo. Const. art. V, §1(5.5.)	1, 3

Petitioners Steven Ward and Levi Mendyk, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2021-2022 #100 (“Proposed Initiative”), through counsel respectfully submit their Opening Brief opposing the title, ballot title, and submission clause (the “Title”) set by the Title Board for the Proposed Initiative.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in finding that the Proposed Initiative properly contains a single subject in conformance with of Colo. Const. art. V, §1(5.5.) and Colo. Rev. Stat. § 1-40-106.5?

2. Did the Title Board err in setting a clear Title that fully informs voters of the central elements of the Proposed Initiative?

STATEMENT OF THE CASE

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. Respondents filed Proposed Initiative concerning liquor licenses with the Secretary of State on April 8, 2020. The Proposed Initiative would change the numbers of retail alcohol beverage licenses that different types of licensees may hold.

The Title Board conducted its initial public hearing and set the title for the Proposed Initiative on April 20, 2022. Petitioners filed a motion for rehearing on April 27, 2022, alleging that the Proposed Initiative contained multiple subjects

and that the titles set were misleading and incomplete. The Title Board considered the motion at its April 28, 2022, hearing where the Title Board granted the motion only to the extent that it made a change to the title and ballot title and denied the remainder of the motion.

The Title Board set the final ballot title for the Proposed Initiative as:

A change to the Colorado Revised Statutes concerning the number of retail alcohol beverage licenses that a licensee may hold, 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 single licensee may hold to a maximum of 12 licenses for each type of license; changing the number of licenses for retail sales of fermented malt beverages, such as beer, a single licensee may hold from an unlimited number to a maximum of 12 licenses; and prohibiting the renewal of the fermented malt beverage retail licenses that exceed the limit.

Petitioners raised the issues herein in their Motion for Rehearing, and during the hearing on his Motion, and, therefore, preserved the issues for review.

Petitioners seek review of the Title Board's action based on single subject and clear title issues.

SUMMARY OF THE ARGUMENT

The Title Board was incorrect in its determination that the Proposed Initiative contains a single subject. Therefore, this Court should vacate the titles and remand to the Title Board with instructions to dismiss for lack of jurisdiction.

Alternatively, because the Title does not properly set forth the central features of the Proposed Initiative as required by statute. the Court should direct the Board to correct the titles to fairly, accurately, and completely describe central features of the measure.

ARGUMENT

I. The Proposed Initiative violates the single subject requirement, and the Title Board does not have jurisdiction to set a Title.

A. Standard of Review.

Colo. Const. art. V, § 1(5.5) requires that “[n]o measure shall be proposed by petition containing more than one subject.” *See also* section 1-40-106.5, C.R.S., (statutory single-subject requirement). A proposal has a single subject when the initiative’s provisions are “necessarily and properly” related to the general single subject, rather than “disconnected or incongruous” with that subject. *Title v. Apple (In re Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 (1996-17))*, 920 P.2d 798, 802 (Colo. 1996).

While the Court does "employ all legitimate presumptions in favor of the propriety of the Board's actions," it will overturn the Title Board's single subject determination in a clear case. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 464 (Colo. 2016), citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012*

#3), 274 P.3d 562, 565 (Colo. 2012) (quoting *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010)).

B. The Proposed Initiative contains two separate and distinct subjects.

The Proposed Initiative has two distinct purposes, 1) it increases statewide licenses for retail liquor stores and 2) it drastically decreases statewide licenses for retail sales of fermented malt beverages. Retail liquor store licenses allow for the sale of beer and other fermented malt beverages, wine, and spirits. Fermented malt beverage licenses (primarily held by grocery and convenience stores) only allow for the sale of beer to customers.

1. Increasing access to one type of alcohol retail license and decreasing access to another do not advance the same objective or purpose.

An initiative may not address incongruous subjects in the same measure; provisions must have a necessary or proper connection. C.R.S. § 1-40-106.5(1)(e)(I). 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*, 374 P.3d at 462.

Under the Proposed Initiative, access to liquor store licenses for the sale of a full range of alcohol beverage products including beer would be expanded while

licenses for existing grocery or convenience store locations that only sell beer but exceed the new and much lower limits would be eliminated. These provisions to both expand and reduce access to alcoholic beverage retail licenses do not “point in the same direction,” but have “different or conflicting goals.” See *Kemper v. Leahy (In re Title Ballot Title, & Submission Clause for 2013-2014 #89)*, 328 P.3d 172, 178 (Colo. 2014).

These are two distinct and disconnected subjects that do not share a common objective. The first has the goal of expanding certain alcohol licenses, including fermented malt beverage, but the second significantly reduces access to fermented malt beverage licenses.

2. The significant reduction in the availability of fermented malt beverage licenses would cause voter surprise.

The single-subject requirement is intended to protect against “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Kemper v. Hamilton ((In re Title, Ballot Title, and Submission Clause for 2011-2012 #45)*, 274 P.3d 576, 582 (Colo. 2012).

In order to accomplish the elimination of existing fermented malt beverage licenses, the Proposed Initiative includes creation of a new regulatory process, requiring the state licensing authority to devise a new process for the non-renewal

of otherwise valid and lawful licenses. As a result, the initiative will prohibit the renewal of lawfully held licenses from approximately 1,800 statewide licensed fermented malt liquor establishments such as neighborhood grocery and convenience stores, and restrict the currently unlimited number of licenses to twelve. It is not clear that the Proposed Initiative, will overall reduce consumer access to fermented malt beverages. Voters will be surprised that voting yes on the question will reduce their access to retail fermented malt beverage retailers this significantly.

II. Even if the Title Board has jurisdiction to set the Title, it erred in setting a Title that does not fairly, clearly, accurately, and completely describe the central features and would mislead voters.

A. Standard of Review

An initiative title must “fairly summarize the central points” of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be “fair, clear, accurate, and complete” but are not required to “set out every detail of the initiative.” *In the Matter of the Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006). The Court reviews the Board’s work “to 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.” *Hayes v. Spalding (In re Title, Ballot Title and Submission Clause for 2015-2016 #73)*, 369 P.3d 565, 569 (Colo. 2016).

This Court will review titles set by the Board “with great deference” but will reverse the Board where “the titles are insufficient, unfair, or misleading.” *In the Matter of 2005-2006 # 73*, 135 P.3d at 740. Title language must “fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board.” *In re Title v. Buckley (In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #29)*, 972 P.2d 257, 266 (Colo. 1999).

B. The Title does not fairly, accurately, and completely describe the central features of the Proposed Initiative, and is insufficient and misleading.

The Title fails to provide voters information to understand the central features of the initiative because it fails to fairly, accurately, and completely describe that licenses for liquor-licensed drugstores, which include some grocery stores, will be reduced from an unlimited number (as permitted in 2037) to twelve.

In addition, the title clarifies that “liquor-licensed drug stores” include licenses for drugstores, and it is incomplete for failing to also explain that “license for malt beverages” include convenience stores.

The title is therefore insufficient and misleads voters who would not understand from the title that it overall reduces licenses and therefore consumer access to stores that sell alcoholic beverages, and that it affects convenience stores as well as grocery stores.

CONCLUSION

For all these reasons, Petitioners respectfully request that the Court should vacate the titles and remand with instructions to return the Initiative to proponents for lack of jurisdiction or, in the alternative with instructions to correct the deficient titles.

Dated: May 10, 2022

Respectfully submitted,

s/Suzanne Taheri

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2022, I electronically filed a true and correct copy of this **Petitioners' Opening Brief** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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