

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
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 #100 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: (303) 356-4870 E-mail: mtierney@tierneylawrence.com	Case No.: 2022SA135
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 1,064 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

TABLE OF CONTENTS

	Page(s)
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. The Initiative Complies with the Single Subject Requirement.....	2
A. Initiative 2021-2022 #97 Contains a Single Subject.....	2.
II. The Title Board Set a Clear Title That Summarizes the Key Components of the Initiative.....	4
A. The Title Is Not Misleading	4
CONCLUSION.....	5

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>In re Initiative for 2013-2014 #89,</i> 328 P.3d 172 (Colo. 2014).....	3
<i>In re Initiative for 2001-2002 #43,</i> 46 P.3d 438 (Colo. 2002).....	3
<i>In re Initiative for 2013-2014 #90,</i> 328 P.3d 155 (Colo. 2014).....	3, 4
<i>In re Initiative for 2007-2008 #62,</i> 184 P.3d 52 (Colo. 2008).....	4, 5

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 #100 (“Initiative”).

SUMMARY OF ARGUMENT

The Title Board properly exercised its broad discretion drafting the title for Initiative #100. The Initiative contains a single subject by changing the number of retail alcohol licenses in which a person may hold an interest. The remaining provisions, including the specific changes to the number of retail liquor store licenses, liquor-licensed drugstore licenses and fermented malt beverage licenses in which a person may hold an interest, all flow from the measure’s single subject.

The Title fairly and accurately sets forth the major features of the Initiative and is not misleading. The Title Board is only obligated to fairly summarize the central points of a proposed measure and need not refer to every nuance and feature of the proposed measure.

There is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

ARGUMENT

I. The Initiative Complies with the Single Subject Requirement.

A. Initiative 2021-2022 #100 Contains a Single Subject.

The single subject of the Initiative is a change to the number of retail alcohol licenses in which a person may hold an interest. The Initiative increases the number of retail liquor store licenses, while decreasing the number of liquor-licensed drugstore licenses, including licenses for sale of liquor in grocery stores, and the number of licenses for retail sales of fermented malt beverages a single licensee may hold from an unlimited number to a maximum of twelve in which a person may own or hold an interest, and prohibits the renewal of fermented malt beverage licenses beyond the maximum of twelve. The text of Initiative #100 is short, and its provisions are directly tied to the measure's central focus.

Here, Petitioners contend that Initiative #100 violates the single subject requirement because it increases retail liquor store licenses and decreases liquor-licensed drugstore and fermented malt beverage licenses so that all three types of licenses are capped at a maximum of twelve in which a person may own or hold an interest. *Pet. Op. Brief, p. 4.*

Initiative #100 does not present either of the dangers the single-subject requirement seeks to prevent. There is no threat of logrolling here because the

proponents did not combine an array of unconnected subjects into the measure for the purpose of garnering support from groups with different, or even conflicting interests. *In re Initiative for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014). Instead, each subsection of Initiative #100 is tied to the central purpose of the measure: changing the number of retail alcohol licenses a person may hold to create parity amongst retail liquor store licenses, liquor-licensed drugstore licenses, and fermented malt beverage licenses. Initiative #100 will pass or fail on its merits and does not run the risk of garnering support from factions with different or conflicting goals. *See id.* at 178.

Additionally, voters will not be surprised by, or fraudulently led to vote for, any provisions “coiled up in the folds” of Initiative #100. *In re Initiative 2001-2002 #43*, 46 P.3d 438, 442-43 (Colo. 2002). The plain language of the measure unambiguously proposes to increase retail liquor store licenses over time and decrease liquor-licensed drugstore and fermented malt beverage licenses over time, capping all three types of licenses at a maximum of twelve. Just because a proposal may have different effects, it does not necessarily violate the single-subject requirement. *Cordero v. Leahy (In re Initiative for 2013-2014 #90)*, 328 P.3d 155, 160 (Colo. 2014).

The crux of Petitioners' argument appears to be that decreasing the number of liquor-licensed drugstore licenses and fermented malt beverage licenses is a bad policy choice. However, in determining whether a proposed initiative comports with the single subject requirement, the Court does not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate. *In re Title, Ballot Title & Submission Clause for 2007-2008 No. 62*, 184 P.3d 52, 58 (Colo. 2008). “Whether a proposed initiative is a bad idea is not the test of whether it meets the single subject requirement.” *In re Initiative #90*, 328 P.3d at 161.

II. The Title Board Set a Clear Title That Fairly Summarizes the Key Components of the Initiative.

A. The Title Is Not Misleading.

The Title for Initiative #100 thoroughly but succinctly captures the key features of the measure and is not likely to mislead voters as to the Initiative’s purpose or effect. “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 #90*, 328 P.2d at 164. (citations omitted).

Petitioners claim that the title is misleading because it does not fairly, accurately, and completely describe licenses for liquor-licensed drugstores, which

include some grocery stores, and explain to voters that a license for malt beverages includes convenience stores. *Pet. Op. Brief, p. 7.*

These descriptions are not necessary, or they are already included in the title. For example, the title clearly tells voters that the number of retail liquor store licenses in which a person may hold an interest will increase and the number of liquor-licensed drugstore and fermented malt beverage licenses in which a person may hold an interest will decrease. The title also plainly states that the number of licenses for retail sales of fermented malt beverages, such as beer, that a single licensee may hold will change from an unlimited number now, to a maximum of twelve licenses. There is no requirement that the Title explain how convenience stores are impacted. The title is clear and understandable as the Title Board set it.

The Court is not to “consider whether the Title Board set the best possible title; rather, [its] duty is to ensure that the title "fairly reflect[s] 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 Initiative for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008).

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board for Proposed Initiative 2021-2022 #100.

Respectfully submitted this 15th day of May 2022.

TIERNEY LAWRENCE LLC

By: s/Martha M. Tierney

Martha M. Tierney, No. 27521
225 E 16th Ave., Suite 350
Denver, Colorado 80203
Phone Number: (303) 356-4870
E-mail: mtierney@tierneylawrence.com
Attorneys for Respondents

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:

Suzanne Taheri, Esq.
Maven Law Group
1800 Glenarm Place, Suite 950
Denver, CO 80202
staheri@mavenlawgroup.com
Attorneys for Petitioners

Michael Kotlarczyk, Esq.
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Michael.kotlarczyk@coag.gov
Attorneys for Title Board

s/Martha M. Tierney