

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2021-2022)
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: Robert Schraeder and Joel
Allen Cathey,

and

Title Board: Theresa Conley, Julie
Pelegrin, and David Powell.

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Case No. 2022SA135

THE TITLE BOARD'S OPENING 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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,918 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

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 C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Michael Kotlarczyk

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ISSUES ON REVIEW

Whether the Title Board correctly determined that Proposed Initiative 2021-2022 #100 contains a single subject.

Whether the title set by the Title Board adequately describes the central features of Proposed Initiative 2021-2022 #100.

STATEMENT OF THE CASE

Proponents Robert Schraeder and Joel Allen Cathey seek to circulate 2021-2022 #100 to obtain the requisite number of signatures to place an initiative on the ballot. The proposed initiative would amend the Colorado Revised Statutes by changing the amount of different liquor licenses a single licensee may hold. *See* Record, p 2, filed May 5, 2022.

At its April 20, 2022, meeting, the Board concluded that the measure contained a single subject and proceeded to set a title. *Id.* at 6. Petitioners Steven Ward and Levi Mendyk filed a timely motion for rehearing, arguing, among other things, that #100 contains multiple subjects and that the title failed to adequately describe the measure's

central features. *Id.* at 7. The Board considered the motion at its April 28, 2022 hearing, granting the motion only to the extent that it revised the original draft. *Id.* at 5.

Petitioners now challenge whether #100 contains a single subject and whether its title fairly advises voters of the measure's central features.

SUMMARY OF ARGUMENT

Number 100 contains a single subject of changing the number of retail alcohol beverage licenses a licensee may hold. Colorado has different types of retail alcohol licenses. This measure would increase the number of certain types of retail alcohol licenses and decrease others. Both the increase and the decrease are properly connected to the central purpose of changing the number of retail alcohol licenses a single licensee can hold. The mere fact that the measure would increase some and decrease others does not create a second subject and poses no risk of confusion to the voters.

Additionally, the title set by the Board properly balances length, complexity, and clarity. Petitioners identify seven additional items that they contend should be described in the title. This would make the title unduly long and would be contrary to the Board’s statutory mandate to keep titles “brief.” Additionally, each of the matters identified by Petitioners are summarized in the title, which is all that a title needs to do. The Board properly exercised its broad discretion here to set a title.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). The Title Board only has jurisdiction to set a title for a measure that contains a single subject. *See* Colo. Const. art. V, § 1(5.5). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot*

Title, & Submission Clause for 2013-2014 #76, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8.

The Title Board agrees Petitioners preserved the single subject issue by raising it in a motion for rehearing. *See* Record at 7.

B. The single subject requirement is met.

“The single-subject requirement is intended to prevent voters from being confused or misled” *In re Title, Ballot Title, & Submission Clause for 1997-98 #74*, 962 P.2d 927, 928 (Colo. 1998). In reviewing the Title Board’s single-subject determination, the Court’s role “is limited to determining whether the contested language within the initiative

creates a distinct and separate subject which is not connected to or dependent upon the remaining aspects of the initiative.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. To pass this test, the various parts of the proposed initiative “must be necessarily and properly connected.” *Id.*

Petitioners argue that the measure contains two subjects because it increases licenses for retail liquor stores but decreases licenses for retail sales of fermented malt beverages (mainly beer) and for liquor-licensed drugstores (like grocery stores). Pet. at 3. But the single subject of #100 is neither the expansion nor the contraction of alcohol sales in the state, but rather “the number of retail alcohol beverage licenses in which a person may hold an interest.” Record at 5. To that end, the measure:

- Increases the number of retail liquor store licenses a licensee may hold to 12 licenses;
- Decreases the number of liquor-licensed drugstore licenses a licensee may hold to 12 licenses;

- Creates a cap for the number of fermented malt beverage retailer's licenses a licensee may hold, at 12 licenses.

“[I]n applying our standards for examining an alleged single-subject violation we look to whether the purposes of the amendment are ‘distinct,’ separate,’ or ‘unconnected.’” *In re Title, Ballot Title & Submission Clause for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000) (quotations omitted). These provisions are not distinct, but are all connected to the central purpose of the measure, which is changing the number of retail alcohol licenses an individual licensee may hold.

Nor does the initiative contain any hidden purposes. *See In re 2021-2022 #16*, 2021 CO 55, ¶ 21 (“We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.”). The initiative is short and makes clear that it is increasing the amount of some liquor licenses a licensee may hold and decreasing the amount of other liquor licenses a licensee may hold. The title expressly calls out that the measure does both things. *See Record at 5* (stating the measure “increas[es] the number of

retail liquor store licenses and decreas[es] the number of liquor-licensed drugstore licenses . . . a single licensee may hold”). There is thus no reasonable 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 Title, Ballot Title, & Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶ 12 (quotations omitted). The Board therefore correctly determined this measure contains a single subject.

II. The title set by the Board adequately describes the central features of the measure.

A. Standard of review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17.

“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*, 2014 CO 63, ¶ 24. 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.*

The Board agrees that Petitioners preserved a challenge to the clear title of #100. *See* Record at 8.

B. The title satisfies the clear title standard.

“It is well-established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly.” *In re Title, Ballot Title, & Submission Clause for 1997-1998 # 74*, 962 P.2d 927, 930 (Colo. 1998). To the contrary, ballot titles must “be brief.” § 1-40-106(3)(b); *see also In re Title, Ballot Title, & Submission Claus Pertaining to Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1357 (Colo. 1991) (same). The purpose of a title is to summarize the central features of a proposed initiative to offer voters more clarity than they might receive from the text of the initiative itself. *See, e.g., In re Title, Ballot Title & Submission Clause for 2013–2014 #45*, 234 P.3d 642, 648 (Colo. 2010) (“[T]he purpose of reviewing an initiative title for clarity parallels that of the single subject requirement: voter protection through reasonably ascertainable expression of the initiative’s purpose.”).

The sheer number of changes Petitioners request demonstrates that the titles set by the Board are well within its discretion to balance length, complexity, and clarity. Adding the seven additional descriptions requested by Petitioners would violate the statutory mandate that titles must “be brief.” § 1-40-106(3)(b). This is particularly true because #100 is a relatively short measure. *See* Record, pp 2-4; *see also* *Cook v. Baker*, 121 Colo. 187, 193, 214 P.2d 787, 790 (1950) (title was not “brief” when it contained 369 words to describe a 505-word measure).

The additional detail Petitioners request is better suited for the ballot information booklet (or Blue Book) than the title. The role of the title is “to summarize the central features” of a measure. *In re 2013-2014 #90*, 2014 CO 63, ¶ 24. The 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*, 2020 CO 61, ¶ 26.

Further each of the subjects identified by Petitioners is already at least summarized in the title.

Petitioners' objection	Location in the title
A description of “retail liquor store”	“Retail liquor store” is mentioned on line 3
A description of “liquor-licensed drugstore”	“Liquor-licensed drugstore” is mentioned on line 3, and is defined as including grocery stores
A description of the respective increases and decreases	Lines 2 and 3 of the title state that the measure increases retail liquor licenses and decreases drugstore licenses, and the rest of the title details the actual numbers
A description of “person” that “may hold an interest”	The title refers to “licensees” three times
A description of the deleted language that would allow unlimited liquor-licensed drugstores after 2037	The title says the measure “decreas[es] the number of liquor-licensed drugstore licenses . . . to a maximum of 12 licenses for each type”
A description of the deleted language that would allow unlimited malt beverage licenses	The title says the measure “chang[es] the number of licenses for retail sales of fermented malt beverages . . . from an unlimited number to a maximum of 12”
A description of “nonrenewal” for fermented malt beverage licenses”	The title states that it “prohibit[s] the renewal of the fermented malt beverage retail licenses that exceed the limit” of 12

In other words, the current title already mentions each of the matters identified by Petitioners. Petitioners think the title should include more

detail, but it doesn't need to. *See In re 1997-1998 #74*, 962 P.2d at 930 (“[T]he titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly.”). The title sufficiently summarizes the central features of the measure without reciting every detail or the potential effects of the measure on the statutory scheme and should be affirmed.

CONCLUSION

The Title Board correctly determined that #100 contains a single subject and set an appropriate title that adequately summarizes the central features of the measure. The Court should therefore affirm the title set by the Title Board on 2021-2022 #100.

Respectfully submitted on this 10th day of May, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 10th day of May, 2022, addressed as follows:

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