

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	
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	▲ COURT USE ONLY ▲ Case No.: 2022SA136
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 **1,444** 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

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Petitioners Steven Ward and Levi Mendyk, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2021-2022 #101 (“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 create a new beer and wine retail license, with a maximum of 12 licenses per retailer, and allow fermented malt beverage retailer licensees to transfer to up to twelve beer and wine retail licenses.

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 denied the motion.

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

A change to the Colorado Revised Statutes concerning the creation of a new beer and wine off-premises retailer license, and, in connection therewith, allowing a person that holds a license to sell fermented malt beverages for off-premises consumption to apply for up to 12 new licenses for retail sale of beer and wine for off-premises consumption or apply to convert up to 12 of its existing fermented malt beverage retailer licenses to beer and wine off-premises retailer licenses; and to allow a beer and wine off-premises retailer to offer tastings if authorized by the local licensing authority.

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 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 through the creation of a new type of alcohol retail license and changing the licensing process.

The Proposed Initiative has more than one distinct purpose, it 1) creates a new fermented malt beverage and wine license of a limited number, 2) adds new distancing requirements, and 3) changes the current licensing process for these licensees.

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.

The Proposed Initiative creates a new category of license for beer and wine off-premises retailers and limits each retailer to a maximum of twelve licenses. It allows current fermented malt beverage retail licensees to obtain or convert licenses to the new category. It also requires a licensing process that differs from the current process for fermented malt beverage licensees, which is that “after the

local licensing authority approves an application” for a license, the licenses shall “apply to the state licensing authority for approval.” *See* Proposed Initiative, Section 2, C.R.S. § 44-3-410.5(4).

These provisions are disconnected and incongruous subjects, in particular because a change to the licensing process is not necessarily or properly related to the creation of a new license. The first provision has the goal of expanding certain alcohol licenses, and the second alters and impedes the licensing process for these licensees.

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 describes 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 the change in the licensing process. Local licensing authorities have long had the authority to delegate administrative approvals for licensing and routinely used it in the automatic conversion of a license. This was the case when 3.2 percent liquor licenses transferred to full strength beer in the beer code. Now proponents

wish to take away that authority and require a new hearing with a needs and desires criteria. This new burden to the licensee shows up nowhere in the title.

The new process also adds delays in that it only allows the state license application to be made after receiving local approval. *See Proposed Initiative Section 44-3-410.5(4)*. These new processes are central to the measure.

The title is therefore insufficient and misleads voters who would not understand from the title that it will require a change to the current licensing process.

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

Suzanne Taheri (#23411)

MAVEN LAW GROUP, LLP

Attorney for Petitioners

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:

Martha M. Tierney, No. 27521
Tierney Lawrence LLC
225 E.16 TH AVE, SUITE 350
Denver, CO 80203
Phone: (720) 242-7577
E-mail: mtierney@tierneylawrence.com
Attorney for Proponents

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

s/ Suzanne Taheri
Suzanne Taheri