

**SUPREME COURT, STATE OF COLORADO**  
**2 East 14<sup>th</sup> Avenue**  
**Denver, Colorado 80203**

DATE FILED: May 10, 2022 4:30 PM

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 #101

**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 ▲

*Attorneys for Respondents*  
Martha M. Tierney, No. 27521  
Tierney Lawrence LLC  
225 E.16<sup>th</sup> Ave, Suite 350  
Denver, CO 80203  
Phone: (303) 356-4870  
E-mail: mtierney@tierneylawrence.com

Case No.: 2022SA136

**RESPONDENTS' 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, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 2,229 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

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Robert Schraeder and Joel Allen Cathey (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause that the Title Board set for Proposed Initiative 2021-2022 #101 (“Initiative”).

### **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, §1(5.5) of the Colorado Constitution and C.R.S. §1-40-106.5?
2. Whether the Title set by the Title Board for the measure is misleading?

### **STATEMENT OF THE CASE**

This is an appeal from the Title Board’s setting of the Title for Initiative #101. On March 22, 2022, Proponents filed the Initiative with the directors of the Legislative Council and the Office of Legislative Legal Services. Pursuant to C.R.S. §1-40-105(1), the Offices of Legislative Council and Legislative Legal Services conducted a review and comment hearing on the Initiative on April 5, 2022.

Proponents filed the Initiative with the Secretary of State’s office on April 8, 2022. At the Title Board hearing on April 20, 2022, the Title Board found that the

Initiative contained a single subject, as required pursuant to article V, section 1(5.5) of the Colorado Constitution, and C.R.S. §1-40-106.5. The Title Board set the Title for the Initiative.

On April 27, 2022, Petitioners Steven Ward and Levi Mendyk filed a Motion for Rehearing. On April 28, 2022, the Title Board granted the Motion for Rehearing only to the extent that it made some changes to the title. Petitioners filed a Petition for Review, pursuant to C.R.S. §1-40-107(2) on May 5, 2022.

### **STATEMENT OF FACTS**

Initiative #101 amends the Colorado Revised Statutes to change the number of retail liquor store licenses and liquor-licensed drugstore licenses a person may hold, and caps both types of licenses at a maximum of twelve. The language of the measure is short and the changes to existing statute are few.

The Title set for the Initiative by the Title Board correctly and fairly expresses the true intent and meaning of the Initiative and will not mislead the public.

The Title set for Initiative #101 at the hearing on April 20, 2022, reads:

Shall there be 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?<sup>1</sup>

## **SUMMARY OF ARGUMENT**

The Title Board properly exercised its broad discretion drafting the title for Initiative #101. The Initiative contains a single subject by creating a new beer and wine off-premises retail licenses. The remaining provisions flow from the measure's single subject and are implementation features, including allowing a person that holds a license to sell fermented malt beverages for off-premises consumption to apply for up to twelve new licenses for retail sale of beer and wine for off-premises consumption or apply to convert up to twelve 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.

Initiative #101 does not present either of the dangers attending omnibus measures - the proponents did not combine an array of disconnected subjects into

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<sup>1</sup> Proponents filed a total of six measures that were challenged by the same Petitioners. Proposed Initiatives 2021-2022 #96 (Case No. 2022SA133), #97 (Case No. 2022SA134), #100 (Case No. 2022SA135), #101 (Case No. 2022SA136), #102 (Case No. 2022SA137), and #139 (Case No. 2022SA129). Some of the same legal issues overlap amongst the six cases, and, thus, there are similarities in the briefs.

the measure for the purpose of garnering support from various factions; and voters will not be surprised by, or fraudulently led to vote for, any surreptitious provisions coiled up in the folds of a complex initiative. The text of the measure is plain and sets forth its provisions clearly. 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. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

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. Standard of Review.**

Article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5(1)(a), C.R.S., provide that a proposed initiative must be limited to “a single subject which shall be clearly expressed in its title.” “A proposed initiative violates this rule if its text relates to more than one subject and has at least two distinct and separate purposes not dependent upon or connected with each other.”

*In re Initiative for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012). When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *Cordero v. Leahy (In re Initiative for 2013-2014 #90)*, 328 P.3d 155, 158 (Colo. 2014). The Court will “only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *Id.* Respondents agree that Petitioners preserved this issue for appeal.

**B. Initiative 2021-2022 #101 Contains a Single Subject.**

The Initiative contains a single subject by creating a new beer and wine off-premises retail licenses. The remaining provisions flow from the measure’s single subject and are implementation features, including allowing a person that holds a license to sell fermented malt beverages for off-premises consumption to apply for up to twelve new licenses for retail sale of beer and wine for off-premises consumption or apply to convert up to twelve 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.

The text of Initiative #101 is plain, and its provisions are directly tied to the measure’s central focus.

The single-subject requirement functions to prevent two dangers: (1) "logrolling," or the practice of "combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—[in order to] lead to the enactment of measures that would fail on their own merits"; and (2) voter surprise and fraud caused by the "passage of a surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Initiative for 2011-2012* #3, 274 P.3d at 566. Accordingly, the subject matter of a proposed initiative "must be necessarily and properly connected rather than disconnected or incongruous." *In re Initiative for 2013-2014* #90, 328 P.3d at 159 (quoting *In re Initiative for 2011-2012* #3, 274 P.3d at 565). But where a proposed initiative "tends to effect or to carry out one general objective or purpose," it presents only one subject. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00* #256, 12 P.3d 246, 253 (Colo. 2000); accord *In re Initiative for 2013-2014* #90, 328 P.3d at 159.

Here, Petitioners contend that Initiative #101 violates the single subject requirement because it caps the number of new beer and wine licenses a person may hold at twelve, it changes the hearing process for local license authorities, and creates new distancing requirements. These arguments are misplaced.

Initiative #101 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). Rather, each subsection of Initiative #101 is tied to the central purpose of the measure: creating a new beer and wine off-premises retailer license. The measure does not create a new local licensing process, nor does it create new distancing requirements – instead the measure adopts existing retail liquor store distancing requirements for the new licensees. Initiative #101 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.

Initiative #101 also fails to trigger the second danger of omnibus measures because voters will not be surprised by, or fraudulently led to vote for, any provisions “coiled up in the folds” of Initiative #101. *In re Initiative 2001-2002 #43*, 46 P.3d 438, 442-43 (Colo. 2002). No such surprise would occur should voters approve Initiative #101, because the plain language of the measure unambiguously proposes to create a new beer and wine off-premises retailer license, increases retail liquor store licenses over time and decreases liquor-

licensed drugstore and fermented malt beverage licenses over time, capping all three types of licenses at a maximum of twelve in which a person may hold an interest. Initiative #101 is clear, and its plain language is not confusing. *See In re Initiative for 2011-2012 #3*, 274 P.3d at 567. Initiative #101 complies with the single subject rule.

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

### **A. Standard of Review.**

When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *Cordero v. Leahy (In re Initiative for 2013-2014 #90)*, 328 P.3d 155, 158 (Colo. 2014). The Court “will reverse the Title Board's decision only if a title is insufficient, unfair, or misleading.” *Earnest v. Gorman (In re Initiative for 2009-2010 #45)*, 234 P.3d 642, 648 (Colo. 2010); see also *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999) (observing that this court will reverse a title only if it contains a "material omission, misstatement, or misrepresentation"). Respondents agree that Petitioners preserved this issue for appeal.

**B. The Title Is Not Misleading.**

The Title is clear and does not mislead the voters. “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 for 2013-2014 #90*, 328 P.2d at 164. (citations omitted). Here, the Title thoroughly but succinctly captures the key features of the measure, is not likely to mislead voters as to the Initiative’s purpose or effect, nor does the Title conceal some hidden intent.

Petitioners claim that the title is misleading because it does not provide a description of a new licensing process, and because it does not include a description of the total number of licenses allowed. These suggested additions are not necessary, or they are already included in the title.

For example, the title clearly tells voters that the measure creates a new beer and wine off-premises retailer license and, that persons holding an existing license to sell fermented malt beverages can apply for up to twelve of the new licenses or apply to convert up to twelve existing fermented malt beverage retailer licenses to the new beer and wine off-premises license. The measure does not create a new licensing process and, thus, any such language is not appropriate for the title. 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). The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the central features of the proposed measure." *In re Initiative on "Trespass-Streams with Flowing Water,"* 910 P.2d 21, 24 (Colo. 1996). Titles and submission clauses should “enable 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 Initiative for 2009-2010 # 24*, 218 P.3d 350, 356 (Colo. 2009) (*quoting In re Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)).

Only in a clear case should a title prepared by the Title Board be held invalid. *In re Title, Ballot Title & Submission Clause Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo. 1982). This is not such a case.

## **CONCLUSION**

The Proponents respectfully request the Court to affirm the actions of the Title Board for Proposed Initiative 2021-2022 #101 .

Respectfully submitted this 10<sup>th</sup> day of May 2022.

### **TIERNEY LAWRENCE LLC**

By: s/Martha M. Tierney

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of May 2022 a true and correct copy of the foregoing **RESPONDENTS' OPENING 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](mailto:staheri@mavenlawgroup.com)  
*Attorneys for Petitioners*

Michael Kotlarczyk, Esq.  
Peter G. Baumann, Esq.  
Assistant Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6<sup>th</sup> Floor  
Denver, Colorado 80203  
[Michael.kotlarczyk@coag.gov](mailto:Michael.kotlarczyk@coag.gov)  
[Peter.baumann@coag.gov](mailto:Peter.baumann@coag.gov)  
*Attorneys for Title Board*

*s/Martha M. Tierney* \_\_\_\_\_