

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: May 15, 2022 7:00 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 ▲
<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.: 2022SA136
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 939 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 Answer Brief in support of the title, ballot title and submission clause that the Title Board set for Proposed Initiative 2021-2022 #101 (“Initiative”).

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 any changes to the licensing process and any distancing requirements included in the measure. 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. 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.

Petitioners claim that the Initiative has more than one distinct purpose because 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 licensees. *Pet. Op. Brief, p. 4.*

Each of these alleged second subjects, however, are dependent upon and connected to the single subject of Initiative #101. *In re Initiative for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012). Indeed, Respondents deny that Initiative #101 creates a new licensing process – the current licensing process requires an application to be submitted to the local licensing authority and the state licensing authority. Initiative #101 also requires applications to both the local and state licensing authority. There is nothing new about the licensing application process. But even if there were changes to the licensing application process for the new beer and wine off-premises retailer license, such a provision would effectuate the

purpose of the Initiative. An initiative does not violate the single-subject requirement simply because it contains provisions necessary to effectuate its purpose. *See In re Initiative for 2013-2014 #90*, 328 P.3d at 159. Rather, so long as they are interrelated, such provisions "are properly included within [the initiative's] text." *Id.*

Similarly, the requirement that an alcohol licensee operate outside a certain distance from other alcohol licensees already exists in law. *See, e.g.* §44-3-301(9)(a)(I)(B)-(C). The Initiative merely adopts a five-hundred-foot standard for the new licenses, which standard is plainly and properly connected to the establishment of a new retail alcohol license. *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.

The plain language of Initiative #101 unambiguously proposes to create a new beer and wine off-premises retailer license; its language is clear, and 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. The Title Is Not Misleading.

The Title is clear and does not mislead the voters. When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *Bruce v. Hedges (In re Initiative for 2019-2020 #3)*, 454 P.3d 1056, 1060 (Colo. 2019). Rather, the Court only “ensure[s] 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 that the Title Board employed.” *Id.* Here, the Title 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.

Petitioners claim that the title is misleading because it does not describe the change in the licensing process. *Pet. Op. Brief, p. 7*. Any change in the licensing process, however minor, is not a central feature of Initiative #101, and thus, is not required to be included in the title. *In re Initiative for 2013-2014 #90*, 328 P.3d at 159. The Title Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title[.]” *Id.*, at 162.

The title for Initiative #101 satisfies the clear title requirement because it is not misleading, and it fairly reflects the central purpose of the measure.

CONCLUSION

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

Respectfully submitted this 15th day of May 2022.

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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:

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