

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

Original Proceeding Pursuant to  
§ 1-40-107(2), C.R.S. (2021)  
Appeal from the Ballot Title Board

In re Title, Ballot Title, & Submission  
Clause for Proposed Initiative 2021-2022  
#101 (“Concerning Liquor Licenses”)

**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. 2022SA136

**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 2,253 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/ Peter G. Baumann*

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

(1) Whether the Title Board correctly determined that Proposed Initiative 2021-2022 #101 contains a single subject.

(2) Whether the title set by the Board properly advises the voters of the central purpose of the measure.

## **STATEMENT OF THE CASE**

Proponents Robert Schraeder and Joel Allen Cathey seek to circulate proposed initiative 2021-2022 #101 to obtain the requisite number of signatures to place a measure on the ballot that would establish a new off-premises retailer license for the sale of beer and wine. Record filed May 9, 2022 (“Record”) at 2–7.<sup>1</sup>

A majority of the Board concluded that the measure contains a single subject at its April 20, 2021, meeting, and the Board proceeded to set title. *Id.* at 9. Petitioners Steven Ward and Levi Mendyk filed a timely motion for rehearing asserting #101 contains multiple subjects and that the title set by the Board violated the clear title requirement.

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<sup>1</sup> The applicable Record is attached to the Title Board’s May 9, 2022, Notice of Corrected Record.

*Id.* at 10–11. On rehearing on April 28, 2022, the Board denied the motion for rehearing. *Id.* at 8.

## SUMMARY OF ARGUMENT

The Board’s actions in setting #101 should be affirmed. Number 101 establishes a new type of alcohol beverage license: a beer and wine off-premises retailer license. The single subject of the measure is the creation of this license. The number of those licenses an entity can control, the process for obtaining those licenses, and the distancing requirements included in the measure are all implementing provisions directly tied to the creation of this new license.

Further, the Board’s title is not misleading. The title faithfully, accurately, and briefly states the central provisions of #101. The Board should be affirmed.

## ARGUMENT

### **I. Standards governing titles set by the Board.**

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-10 #45* (“*In re #45*”), 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants

great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects the intent of the initiative. *Id.* at 649 n.3; *In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board’s decision only if the title is insufficient, unfair, or misleading. *In re #45*, 234 P.3d at 648.

The Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause for 2009-10 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the Court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

Section 1-40-106(3)(b), C.R.S., establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title, and Submission Clause for 2007-08 #62*, 184 P.3d 52, 58 (Colo. 2008). The statute provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes/for” or “no/against” vote



will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed...within two weeks after the first meeting of the title board. ...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and, shall be in the form of a question which may be answered “yes/for” (to vote in favor of the proposed law or constitutional amendment) or “no/against” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S.

**II. The proposed initiative contains a single subject.**

**A. Standard of review and preservation.**

When this Court reviews the Board’s single subject decision, “[it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions. [It] will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶ 8 (quotation omitted). The Title Board agrees that Petitioners preserved the single subject issue by raising it in their motion for rehearing.

Record at 10.

**B. The single subject requirement is met.**

The single subject of #101 is the creation of a new beer and wine off-premises retailer license. In addition to establishing these licenses, the measure caps how many of them a single entity may control, and sets-out parameters for the program, including the process for obtaining a license. Finally, the measure ensures no beer and wine off-premises retailers will operate within five hundred feet of a retail liquor store.

Petitioners contend that these implementing provisions are second subjects alongside the creation of the license. Pet. at 3. But single-subject analysis Constitution does not require such a narrow focus on individual provisions. “Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado’s constitution.” *Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998).

Here, each of the putative second subjects identified by Petitioners are “dependent upon [and] connected” to #101’s single subject: the creation of a new beer and wine off-premises retailer license. *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45*, 2012 CO 26, ¶ 10. As to Petitioner’s first allegation, the number of licenses an entity can control is “necessarily and properly connected” to their creation. *In re Title, Ballot Title and Submission Clause of 2019-2020 #315*, 2020 CO 61, ¶ 13 (quotations omitted).

As is the process a licensee must follow in order to obtain that license. At the Board’s April 28, 2022, rehearing, Petitioners expressed concern that the licensing process established in #101 was a change from current law, and might impose greater burdens on licensees.<sup>2</sup> Even if that is the case, it is not itself evidence of a second subject.

Proponents presumably included in #101 the licensing process they deem best suited for this new type of license; doing so does not establish

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<sup>2</sup> Audio of the Board’s April 28, 2022, meeting is available at <https://tinyurl.com/3tw3ss54>, and the relevant discussion begins at 10:57:15.

a second subject in the measure, even if it differs from current practice for other types of licenses. *Cf. In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17 (“[T]he effects [a] measure could have on Colorado law if adopted by voters are irrelevant to our review of whether the proposed initiative and its Titles contain a single subject.”)

Finally, the requirement that holders of this new license operate outside a certain distance from other alcohol licensees is a common feature of many alcohol licenses. *See, e.g.*, § 44-3-301(9)(a)(1)(I)(B) (prohibiting a fermented malt beverage retailer from moving its permanent location to within “one thousand five hundred feet of a retail liquor store”); § 44-3-409(1)(a)(I)(A) (prohibiting retail liquor stores from operating “within one thousand five hundred feet of another retail liquor store”); § 44-3-410(1)(a)(I)(A) (prohibiting liquor-licensed drugstores from operating within “one thousand five hundred feet of a retail liquor store”). Petitioners may disagree with the provision, but it is plainly and properly connected to the establishment of a new type of retail alcohol license.

Number 101 creates a new beer and wine off-premises retailer license, and includes implementing provisions necessary to carry out Proponents’ vision for the establishment of that license. The Board correctly determined that each of those provisions is necessarily and properly connected to the initiative’s single subject, and its determination should be affirmed.

**III. The title set by the Board is not misleading.**

**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. 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.* The Board agrees that Petitioners preserved challenges to clear title by timely filing for rehearing. Record at 13; 15–16.

**B. The title accurately describes the measure.**

The Board's title for #101 is not misleading. Number 101 creates a new beer and wine off-premises retailer license, and includes provisions necessary to establish and implement that license. The Title set by the Board is as follows:

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?

Record at 8.

Petitioners argue that the title fails to describe the central features of #101. Pet. at 3–4. Specifically, they assert that the following elements “would be useful to voters in evaluating what the initiative does[:]” “A description of the new licensing process,” and “A description of the total maximum number of licenses allowed.” *Id.* Neither issue raised by Petitioners warrants intervention from this Court.

As to the former, the mechanics of the process required to obtain a beer and wine off-premises retail license is not a “central feature” of #101. See *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 36 (“In setting a title, the Title Board is only obligated to fairly summarize the central points of a proposed measure[.]”) (quotations omitted). The title informs voters that entities will have to apply for the new licenses or to convert other licenses into the new licenses. Voters who are interested in the mechanics of that application process can glean its particulars from the measure itself.

*In re Title, Ballot Title and Submission Clause, and Summary for No. 1999-2000 #246e*, 8 P.3d 1194, 1197 (Colo. 2000), is instructive. There, objectors claimed that the title for a measure amending the state judicial discipline commission lacked sufficient detail about the new disciplinary process, and the qualifications necessary for members of the commission. *Id.* The Court rejected those arguments, explaining that even if the titles “could benefit” from greater descriptions of these processes, the Board’s decision to omit those details did not render the titles “inaccurate or misleading.” *Id.*

So too here. In crafting title, the Board “is given discretion in resolving interrelated problems of length, complexity, and clarity[.]” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, ¶ 24. Its decision to omit the particularities of the licensing process in #101 falls well within the bounds of that discretion.

As to the total number of licenses allowed, the title already includes sufficient information as to the limits on new beer and wine off-premises retailer licenses. It informs voters that fermented malt beverage license-holders may “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 [their] existing fermented malt beverage retailer licenses to beer and wine off-premises retailer licenses.” Record at 8. The Board was not required to explain in more detail how these limitations might affect certain license-holders. *See In re Title, Ballot Title and Submission Clause for 2013-2014 #85*, 2014 CO 62, ¶ 19 (“[T]he Title Board is not required to explain the meaning or potential effects of [a] proposed initiative on the current statutory scheme.”).



The title as set by the Board accurately and properly reflects the initiative, and Petitioners do not demonstrate how the title could be considered insufficient, unfair, or misleading. *See In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d at 26; *In re #45*, 234 P.3d at 648. Petitioners may quibble with the Board’s decisions to omit certain granular details, but the Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause.” *Matter of Title, Ballot Title and Submission Clause for 2019-2020 #315*, 500 P.3d 363, 369 (Colo. 2020) (quoting *Matter of Title, Ballot Title & Submission Clause for 2015–2016 #73*, 2016 CO 24, ¶ 23). The Board’s title “correctly and fairly express the true intent and meaning” of #101, as required by statute. *See* § 1-40-106(3)(b).

The Board properly set title for #101, and that title should be affirmed.

## CONCLUSION

The Court should affirm the decisions of the Title Board.

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

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*/s/Peter G. Baumann*

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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 all counsel of record electronically via CCEF, at Denver, Colorado, this 10th day of May, 2022.

*s/ Leslie Bostwick*

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Leslie Bostwick