

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	▲ COURT USE ONLY ▲
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	Case No.: 2022SA137
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 **871** 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 #102 (“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

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 ballot title for the Proposed Initiative as:

A change to the Colorado Revised Statutes concerning the expansion of alcohol beverage retail licenses, and, in connection therewith, creating a new fermented malt beverage and wine retail license that authorizes the sale of fermented malt beverages, such as beer, and wine for consumption off the licensed premises; making the new license subject to the same requirements concerning location, delivery, and sales that apply to fermented malt beverage retail licensees; allowing a person to obtain up to 12 fermented malt beverage and wine retail licenses; and authorizing fermented malt beverage retailers and fermented malt beverage and wine retailers 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 clear title issues.

SUMMARY OF THE ARGUMENT

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 Title Board erred in setting a Title that does not fairly, clearly, accurately, and completely describe 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 operational changes that apply to fermented malt beverage licenses.

First, the Title does not explain that the Proposed Initiative would allow fermented malt beverage retailer licensees to serve both fermented malt beverages *and wine* at tastings. *See* Proposed Initiative, Section 5, amending C.R.S. § 44-3-901(6)(k)(II)(B). Second, it does not explain that fermented malt beverage retailer licensees will no longer permitted to have an open container of an alcohol beverage product that the licensee discovers to be damaged or defective. *See* Proposed Initiative, Section 5, amending C.R.S. § 44-3-901(6)(k)(V) (changing “fermented malt beverage retailer’s license” to “fermented malt beverage and wine retailer’s license”).

The Title is therefore insufficient and misleads voters who would not understand these changes from the Title.

CONCLUSION

For all these reasons, Petitioners respectfully request that The Court should vacate the titles and remand 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