

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

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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 #102

**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 ▲

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Case No.: 2022SA137

**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 1,405 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 #102 (“Initiative”).

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

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 #102. 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 #102 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 #102 at the hearing on April 20, 2022, reads:

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

## **SUMMARY OF ARGUMENT**

The Title Board properly exercised its broad discretion drafting the title for Initiative #102. The Initiative contains a single subject by expanding alcohol beverage retail licenses. The remaining provisions flow from the measure's single subject and are implementation features, including the creation of 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 twelve 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.

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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 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. Petitioners’ concerns about the effects that Initiative #102 could have on other laws, including the Beer code, or its application if enacted are not appropriate for review at this stage.

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.

There is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

## **ARGUMENT**

### **I. 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 set forth a description of how the measure changes the beer code. To the contrary, the title for Initiative #102 clearly states what the measure does and how it does it.

For example, the title clearly tells voters that the measure expands alcohol beverage retail licenses by 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 twelve 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. 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 #102 .  
Respectfully submitted this 10<sup>th</sup> day of May 2022.

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## 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:

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