

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021- 2022 #102 (“Concerning Liquor Licenses”)</p> <p>PETITIONERS: STEVEN WARD and LEVI MENDYK,</p> <p>v.</p> <p>RESPONDENTS: ROBERT SCHRAEDER and JOEL ALLEN CATHEY,</p> <p>and</p> <p>TITLE BOARD: THERESA CONLEY, JULIE PELEGRIN, and DAVID POWELL.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General GRANT T. SULLIVAN, Assistant Solicitor General* 1300 Broadway, 6th Floor Denver, Colorado 80203 Phone: (720) 508-6349 Fax: (720) 508-6041 Email: grant.sullivan@coag.gov Registration Number: 40151 *Counsel of Record <i>Attorney for the Title Board</i></p>	<p>Case No.: 2022SA137</p>
<p>THE TITLE BOARD’S ANSWER BRIEF</p>	

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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,558 words.

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/ Grant T. Sullivan

GRANT T. SULLIVAN, 40151*
Assistant Solicitor General

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STATEMENT OF THE ISSUES

1. Whether Objectors adequately preserved their argument that #102's title fails to describe the measure's central features when their motion for rehearing stated only, as relevant here, that the title does not describe "any operational changes that also apply to fermented malt beverage licenses."

2. If Objectors preserved their argument, whether the Title Board's title for #102 satisfies the clear title requirement.

SUMMARY OF THE ARGUMENT

I. The two clear title arguments raised in Objectors' opening brief were not raised before the Title Board. Instead, Objectors' motion for rehearing stated merely that unspecified "operational changes" for existing licensees should be called out in the title. Objectors' motion therefore did not comply with § 1-40-107(1)(b)'s particularity requirement, and their arguments are not preserved for appeal.

II. Even if preserved, Objectors' clear title arguments both fail because the Board's title is fair, clear, accurate, and complete. The provisions of #102 that Objectors assert were improperly omitted from

the title do not constitute central features of the measure. Rather, they amount to mere details that need not be included because their omission will not mislead or confuse voters or otherwise alter a voter's support or opposition for the measure. The Board therefore appropriately exercised its drafting discretion by crafting a brief title that accurately informs the electorate of #102's central features.

ARGUMENT

I. Objectors did not raise their clear title objections before the Title Board.

Objectors' opening brief argues that the Board's title for #102 violates the clear title rule for two reasons: (1) the title does not explain that #102 would allow fermented malt beverage licensees to serve both fermented malt beverages *and wine* at tastings; and (2) the title does not explain that fermented malt beverage licensees will no longer be permitted to have an open alcohol beverage product on the premises that the licensee discovers is damaged or defective. Objector OB at 4.

Objectors did not advance these arguments before the Title Board, either in their written motion, at the rehearing for #102, or at the rehearings on any of the related measures. Instead, Objectors' motion

for rehearing stated only that the title fails to include “[a] description of any operational changes that also apply to fermented malt beverage licenses.” Record at 12. This overly generalized statement does not comport with § 1-40-107(1)(b)’s particularity requirement. It does not alert the Title Board, for example, that Objectors believe the specific *types* of alcohol that can be served at a tasting (*beer and wine*) constitute central features.

Reasonable minds may disagree whether the two provisions raised in Objectors’ opening brief amount to central features that must be included in the title. But at minimum, an objector must specify in their motion for rehearing what provisions they believe constitute central features that should have been included in the title but were not. Otherwise, the Board is left to guess and has no meaningful opportunity to evaluate the objector’s argument, correct the title where necessary, and obviate the need for Supreme Court review.

Accordingly, because Objectors did not raise in their motion for rehearing the arguments they now assert in this Court, Objectors did not satisfy § 1-40-107(1)(b)’s particularity requirement and their

arguments are not preserved for appeal. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 265*, 3 P.3d 1210, 1215-16 (Colo. 2000) (“Because [objectors] did not raise the issue before the Board they cannot now urge this contention as a grounds for reversing the Board.”).

II. The Board’s title for #102 satisfies the clear title rule.

Even if Objectors’ arguments were preserved, the Court should still affirm because the Board’s title complies with the clear title requirement.

Section 1-40-106(3)(b), C.R.S. (2021) establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title and Submission Clause, and Summary for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). Among other requirements, the title must “be brief,” it must be in the form of a question which may be answered “yes/for” or “no/against,” and it must “unambiguously state the principle of the provision sought to be added, amended, or repealed.” § 1-40-106(3)(b).

The Title Board is not required to set out every detail of the measure in the title. *In re Title, Ballot Title, and Submission Clause for Proposed Initiatives 2001-02 #21& #22*, 44 P.3d 213, 222 (Colo. 2002). Rather, the Board must summarize only the “central features” of the proposal. *In re Proposed Initiated Petitions*, 907 P.2d 586, 591 (Colo. 1995). In doing so, the Board must balance the need for brevity in the title against the need for completeness. *See In re Proposed Initiative Concerning Automobile Insurance Coverage*, 877 P.2d 853, 857 (Colo. 1994) (stating Title Board “must navigate the straits between brevity and unambiguously stating the central features”).

Here, Objectors first argue that #102’s title should explain that existing fermented malt beverage licensees may serve both fermented malt beverages *and wine* at tastings. Objector OB at 4. This is not a central feature. The measure’s core central feature is the creation of a new fermented malt beverage and wine retail license, not the types of alcohol that an existing licensee can offer at a tasting. But even if tastings were a central feature of #102, the Board’s title explains in the final clause that existing and new licensees are permitted to offer

tastings when authorized by local licensing authorities. Record at 9. Itemizing the specific *types* of alcohol that can be served at such tastings is far too much detail for a title that is meant to be brief so voters may quickly familiarize themselves with the measure's primary proposal. See *In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999) (“The aim is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice[.]”).

Objectors do not explain why omitting such granular detail would mislead voters or alter their support or opposition for #102. Indeed, it is hard to imagine how the type of alcohol offered at a tasting could affect a voter's decision on #102. See *In re Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 930 (Colo. 1998) (rejecting argument that title required more detail and stating “we find it highly unlikely that support for Initiative No. 74 would turn on whether it includes renovated apartments or condominiums”). This Court has consistently rejected requests for more detail in the title so long as its omission would not mislead or confuse

voters. *See, e.g., Blake v. King*, 185 P.3d 142, 147 (Colo. 2008) (“[T]he failure to include in the titles each and every element of the affirmative defense provision is not confusing or misleading”); *see also In re Matter of Title, Ballot Title and Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶32 (“[W]e disagree that the Board was required to itemize in the title some or all of the programs that would face funding cuts.”).

Objectors second argument is that #102’s title does not explain that existing fermented malt beverage licensees will no longer be permitted to have an open alcohol beverage product on the premises that the licensee discovers is damaged or defective. Objector OB at 4 (citing proposed § 44-3-901(6)(k)(V)). Again, this is a granular detail that need not be included in the title. Objectors fail to explain why the required procedure (or lack thereof) for a licensee’s handling of a damaged or defective alcohol product constitutes a central feature. Such occurrences involving damaged or defective products are presumably rare events and a voter’s support for the measure is unlikely to turn on such unimportant details. *See In re 1997-1998 No. 74*, 962 P.2d at 930.

Including such details in the title would add considerable length, violating the statutory mandate that titles “be brief.” § 1-40-106(3)(b).

In making this argument, Objectors also ask this Court to speculate regarding the legal effects of this provision in #102. The implication of Objectors’ argument is that an existing fermented malt beverage licensee will be subject to discipline or prosecution if they have an open alcohol beverage product on the premises that is damaged or defective. But this Court has cautioned that the Title Board may not speculate as to the measure’s efficacy, or its practical or legal effects. *In re Title, Ballot Title, Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). It may be that the procedures for existing licensees to handle damaged or defective alcohol products will be addressed through rulemaking rather than statute. *Cf.* 1 C.C.R. 203-2, § 47-322(G)(3)(a) & (b) (2021) (discussing procedures for retailers to return “[d]efective products” and “[b]roken containers”).

Whatever the case may be, the Title Board did not err by either (1) declining to speculate on the effects of #102 on existing fermented malt beverage licensees who discover a damaged or defective product on their

premises, or (2) refraining from including such speculation in the title. Voters wishing to receive more detail about #102's precise impacts on existing fermented malt beverage licensees of course remain free to consult the Blue Book's summary that accompanies the ballot or the language of the measure itself.

CONCLUSION

This Court should affirm the Title Board's actions in setting the title for #102.

Respectfully submitted this 16th day of May, 2022.

PHILIP J. WEISER
Attorney General

/s/ Grant T. Sullivan

GRANT T. SULLIVAN, 40151*

Assistant Solicitor General
State Services Section
Public Officials Unit
Attorney for the Title Board
* Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via CCE at Denver, Colorado this 16th day of May, 2022, addressed as follows:

Martha M. Tierney
Tierney Lawrence LLC
225 E. 16th Ave., Suite 350
Denver, CO 80203
mtierney@tierneylawrence.com
Attorney for Respondents

Suzanne M. Taheri
Maven Law Group
6501 E. Belleview Ave., Suite 375
Englewood, CO 80111
staheri@mavenlawgroup.com
Attorneys for Petitioners

/s/ Xan Serocki

Xan Serocki