

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue 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 #135</p> <p>Petitioner: STEVE WARD and LEVI MENDYK</p> <p>v.</p> <p>Respondents/Proponents: OMAR MALIK and CHRISTOPHER FINE</p> <p>and</p> <p>Ballot Title Board: THERESA CONLEY, DAVID POWELL, and JULIE PELEGRIN</p>	<p>▲ COURT USE ONLY ▲</p> <p>Supreme Court Case No. 2022SA138</p>
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<p>PETITIONER'S OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the 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).

Choose one:

It contains **1,341** words.

It does not exceed 30 pages.

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) citation to the precise location in the record, 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.

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Petitioners, Steve Ward and Levi Mendyk, registered electors of the State of Colorado, through undersigned counsel, submit their Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiative 2021-2022 #135 (unofficially captioned as “Local Approval Requirement for Expanded Liquor License”).

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Title Board erred in ruling that the measures contain a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. §1-40-105(4).
2. Whether the Title Board failed to set a ballot title that properly describes the central features of the proposed initiative in violation of C.R.S. § 1-40-106(3)(b).

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board’s decision to deny Petitioner’s Motion for Rehearing and set title for Proposed Initiative 2021-2022 #135.

Omar Malik and Christopher Fine (hereafter “Proponents”) proposed Initiative 2021-2022 #135 (the “Proposed Initiative”). Proponents submitted their

Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to § 1-40-106, C.R.S.

The Title Board held a hearing on April 20, 2022, where it determined that the Proposed Initiative contained a single subject as required by Colo. Const. art. V, §1(5.5) and § 1-40-106.5, C.R.S., and set a title. On April 27, 2022, Petitioners filed a Motion for Rehearing stating that the tiles were misleading and did not accurately describe the measure. Title Board held a rehearing on April 28, 2020, at which time it granted Petitioners' Motion to Rehearing only to the extent the Board made changes to the title.

In the Motions concerning the Proposed Initiative Petitioner argued that the title did not adequately describe the central features of the measure. The Title Board set the final ballot title for Initiative #135 as follows:

An amendment to the Colorado Revised Statutes concerning local licensing requirements for approval of licenses for retail sale of alcohol beverages, and, in connection therewith, requiring a local licensing authority to hold a public hearing to consider a license conversion, modification, or other change that expands the types of alcohol beverages that may be sold at retail or revises the class of retail license and to determine whether the conversion, modification, or other change would meet the needs and desires of the inhabitants of the neighborhood and meet new minimum distance requirements from schools, daycare centers, churches, and other licensed retail sellers of alcohol beverages; and, for renewal of a license for retail sale of alcohol beverages for off-premises consumption, requiring the local licensing authority to hold a public hearing

and find that the renewal will serve the public interest and is warranted by the license holder's operating history.

SUMMARY OF ARGUMENT

The measure Title Board failed to describe the primary purpose of the measure in the Title. The measure sets a new minimum distance of 1,500 feet from schools, churches or other licensed establishments upon any conversion or licensing change. While the measure claims to be related local licensing requirements, it has little to do with local requirements. In fact, it takes away the discretion that currently exists with local authorities and sets unmovable boundary lines. This is not described in the Title.

Therefore, for all the reasons explained further below, the actions of the Title Board must be reversed with instructions to set a new title.

STANDARD OF REVIEW

When reviewing a challenge to the Title Board's decision on clear title this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *In the Matter of Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 2017 CO 57, ¶ 20.

Although the right of initiative is to be liberally construed, "[i]t merits emphasis

that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.” *In re Title, Ballot Title, and Submission Clause for 2007-2008 No. 62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

LEGAL ARGUMENT

I. THE TITLES OF THE PROPOSED INITIATIVE ARE MISLEADING

The constitution requires an initiated measure’s subject to be “clearly expressed in its title.” Colo. Const. art. V, § 1(5.5). “In setting a title, the title board shall consider the public confusion that might be caused by misleading titles.” Colo. Rev. Stat. § 1-40-106(3)(b). The clear title requirement seeks to “prevent voter confusion and ensure that the title adequately expresses the initiative's intended purpose.” *Robinson v. Dierking (In re Title, Ballot Title & Submission Clause for 2015-2016 #156)*, 413 P.3d 151, 153 (Colo. 2016). Voters, “whether or not they are familiar with the subject matter of a particular proposal,” should be able to “determine intelligently whether to support or oppose the proposal.” *Id.*, citing *In re 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016).

A title shall correctly and fairly express the true intent and meaning of the proposed measure and “shall unambiguously state the principle of the provision

sought to be added, amended, or repealed.” Colo. Rev. Stat. § 1-40-106(3)(b), *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 266 (Colo. 1999). The Title Board is tasked with “focusing on the most critical aspects of the proposal, not simply [restating] all of the provisions of the proposed initiative.” *Percy v. Embury (In re Title for 1999-2000 # 235(a))*, 3 P.3d 1219, 1225 (Colo. 2000), citing *In re Petition on Campaign and Political Finance*, 877 P.2d 311, 313 (Colo. 1994).

Current distance requirements from schools for the issuance of a new liquor license is codified in C.R.S § 44-3-313(1)(d)(I). The section requires that the licensee’s building may not be located within five hundred feet of any public or parochial school or the principal campus of any college, university, or seminary. There are a number of exceptions including campus clubs, state or municipal owned land and allowances for local licensing authorities to eliminate or reduce the requirement.

The triggering event for the application of the distance requirements is also changed. Currently, the distance requirements only apply to new licenses. The measure applies this distance requirement to any “license conversion, modification, or other licensing change that revives the class under the existing license. Instead

of applying this distance requirement to the issuance of new licenses, it now applies to a renewal or even a change of premises.”

This new distance requirement will subject any license modification, even an automatic conversion, to the new requirements. This would cause the revocations of thousands of licenses without any flexibility for the local authorities. This is the true purpose of the measure.

However, in the Title this provision is buried and only described as, “meet new minimum distance requirements.” There is no description that would let the voter know these are more restrictive requirements. Despite objector’s position, the new 1,500 foot number was not even inserted even though it would provide the voter with a description at the heart of the measure.

There is further nothing in the Title that signals to voters that their local licensing authorities will lose all flexibility. They will no longer be able to process administrative changes. Local authorities will also not be able to weigh requests for less restrictive distances.

Finally, the voters will not understand that college campuses, municipal and state land will no longer be exempted from the distance requirements. This new

section added by the proposed initiative operates, “Notwithstanding any state law to the contrary.”

The title as drafted does not properly advise voters of the issues central to the measure. Leaving out these key provisions will leave voters uninformed and confused about the purpose of the measure.

CONCLUSION

Petitioner respectfully requests this Court reverse the Title Board’s setting of Title for the Proposed Initiative return the Proposed Initiatives to the Proponents, and hold that the title for the Proposed Initiative is misleading and thus violate the clear title requirement.

Respectfully submitted this 10th day of May, 2022.

MAVEN LAW GROUP

/s/ Suzanne Taheri

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Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on 10th day of May, 2022 a true and correct copy of the **PETITIONER'S OPENING BRIEF** was served via the State of Colorado's e-filing system, properly addressed to the following:

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