

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 the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2021-2022 #135

**Petitioners:** Steven Ward and Levi  
Mendyk,

v.

**Respondents:** Omar Malik and  
Christopher Fine,

**and**

**Title Board:** Theresa Conley, Julie  
Pelegrin, David Powell.

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Case No. 2022SA138

**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 1,372 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/ Emily Buckley*

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EMILY BUCKLEY, #43002

Assistant Attorney General

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

(1) Whether the Title Board correctly determined that Proposed Initiative 2021-2022 #135 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 Omar Malik and Christopher Fine seek to circulate #135 to obtain the requisite number of signatures to place a measure on the ballot concerning approval of licensing of alcohol beverages and requiring local authorities hold public hearings to consider specific criteria in connection therewith. Record filed May 5, 2022 (“Record”) at 2. The Board concluded the measure contains a single subject at its April 20, 2022 meeting and set title. *Id.* at 3-4 Petitioners filed a timely motion for rehearing. *Id.* On rehearing on April 28, 2022, the Board made edits to the title, but otherwise denied the motion. *Id.* The ballot title and submission clause set by the board is as follows:

Shall there be 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?

Record at 3.

### **SUMMARY OF ARGUMENT**

The Board's actions in setting #135 should be affirmed because the Board's title accurately reflects the initiative's purpose. 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 & 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, & 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 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 a challenge to the clear title of #135.

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

The Board's title for #135 is not misleading. The Petition argues the Board's title for #135 (1) "does not adequately describe the changes to the local licensing authority public hearing process" and (2) "does not describe the new distance requirements as they apply to the classes of liquor licenses." Petition at 3. Neither argument is persuasive; in fact, the Board considered these very issues at rehearing and edited the text of the title to address Petitioners' concerns. *See* Record at 3; *Hearing Before Title Board on Proposed Initiative 2021-2022 #135* (Apr. 28, 2022), <https://tinyurl.com/6naapu53>.

Petitioners' first objection fails because the title for #135 adequately describes the changes to the local licensing authority public hearing process. Indeed, the ballot title as set by the board describes in detail *when* local authorities would be required to hold public hearings and *what* matters must be considered at such hearings. Record at 3. The Board specifically revised the title to address concerns raised by Petitioners. *See Hearing on #135* (Apr. 28, 2022),

<https://tinyurl.com/6naapu53>. It is unclear from Petitioners’ short filing with this Court what additional objections they have.

With respect to Petitioners’ second objection – i.e., that the title “does not describe the new distance requirements as they apply to the classes of liquor licenses” – again, the Board revised the title on rehearing to address this exact objection. *Hearing on #135* (Apr. 28, 2022), <https://tinyurl.com/6naapu53>. The final title is clear that #135 contains “new minimum distance requirements from schools, daycare centers, churches, and other licensed retail sellers of alcohol beverages[.]” Record at 2. There will be no surprise to voters. Again, the Petition does not provide insight as to the nature of Petitioners’ objection or how Petitioners believe the title should be written.

Petitioners’ cursory objections should be rejected. The title as set by the Board accurately and properly reflects the intent of 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. Further, 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 & 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*, ¶ 23, 369 P.3d at 569). The Board’s title “correctly and fairly express the true intent and meaning” of #135, as required by statute, § 1-40-106(3)(b).

Petitioners may argue that the title fails to explain certain effects of the measure. But as explained above, the title fairly describes #135’s primary features, and “the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme.” *Matter of Title, Ballot Title & Submission Clause for #90*, 2014 CO 63. Here, the title is not deficient for its failure to include more specific details. The Board properly set title for # 135.

## CONCLUSION

The Court should affirm the decisions of the Title Board.

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

PHILIP J. WEISER  
Attorney General

*/s/Emily Buckley*

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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 and/or email, at Denver, Colorado, this 10th day of May, 2022.

*/s/ Carmen Van Pelt*

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Carmen Van Pelt