

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #135 (“Local Approval Requirement for Expanded Liquor License”)</p> <p>Petitioners: Steven Ward and Levi Mendyk</p> <p>v.</p> <p>Respondents: Omar Malik and Christopher Fine</p> <p>and</p> <p>Title Board: Theresa Conley, Julie Pelegrin, and David Powell</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Respondents:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number: 2022SA138</p>
<p>RESPONDENTS’ ANSWER BRIEF ON PROPOSED INITIATIVE 2021-2022 #135 (“LOCAL APPROVAL REQUIREMENT FOR EXPANDED LIQUOR LICENSE”)</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 C.A.R. 28(g).

Choose one:

It contains 970 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

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.

s/ Mark G. Grueskin _____

Mark G. Grueskin

Attorney for Respondents

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LEGAL ARGUMENT

In stating the issues to be addressed, Petitioners raised the single subject of Initiative #135.¹ But that issue was not noticed in their Petition for Review of Final Action or substantively addressed in their Opening Brief. As such, it is not addressed in this Answer Brief or need not be considered by the Court.²

Petitioners raise two “clear title” questions: (1) whether the titles should specifically refer to a required 1,500 foot distance between liquor license holders and certain other buildings; and (2) whether the titles should describe the measure’s public hearing mandate as a departure from the way in which licensing decisions can now be administratively granted. These issues are addressed below.

I. **The titles correctly alerted voters to “new minimum distance requirements” without incorporating one-half of a two-part test for establishing such distances.**

The titles correctly referred to the Initiative’s “new minimum distance requirements.” As indicated in Respondents’ Opening Brief, #135 uses a two-part test so the required distance is *either* 1,500 feet from certain structures (schools,

¹ The first issue Petitioners list is “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).” Petitioners’ Op.Br. at 1.

² Based on C.A.R. 28(a)(7)(B), if an appellant “offers no supporting argument or authority” for claims raised, the Court will “decline to assume the mantle.” *Vallagio at Inverness Residential Condo. Ass’n v. Metro. Homes, Inc.*, 2017 CO 69, 40

churches, daycare centers, and other licensees) *or* the distances that were required to be maintained when the license was issued, *whichever is greater*. Resp. Op.Br. at 8.

Petitioners wanted the titles to address this requirement simply as 1,500 feet. Pet. Op.Br. at 5-6. Their solution would reflect 50% of the actual provision (omitting the original licensee's distances if they were greater) and thus mislead voters. The Board properly rejected this request to misstate what the initiative does.

A ballot title should provide voters with fair notice of the initiative's key provisions. Here, the Board did that by using "requiring new minimum distances" and specifying affected buildings to meet the statute's requirement for brevity. C.R.S. § 1-40-106(3)(b) (titles "shall be brief").

As a comparison, an initiative proposed to limit "oil and gas development," and its titles used that phrase instead of specifying "hydraulic fracturing" (a defined form of oil and gas development). An objector complained that the titles should have referred to "hydraulic fracturing," but the Court disagreed. "The title is not misleading simply because it omits hydraulic fracturing or other methods as examples of the types of oil and gas development that can be regulated under the initiative. The reference in the title to 'oil and gas development' is sufficient to describe the scope of the initiative." *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶36, 328 P.3d 155, 164 (citations omitted).

Similarly, in titling an initiative that repealed statutory fiscal limitations, the Board did not mention one aspect of a statute to be repealed, 5% of personal income cap. This Court held the titles were sufficient, having disclosed the proposed repeal of the statutory “limit on increases in state general fund appropriations.” *In re Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 212 (Colo. 1994).

Here, the ballot title tells voters minimum distances will change. This notice does not have to repeat the measure’s two-part test or use a misleading reference to 1,500 feet. As set, the Board’s titles will not mislead or confuse voters.

II. The titles correctly informed voters of the public hearings that are required by this initiative rather than current discretionary practices that can be exercised by local licensing officials.

Petitioners state that local licensing officials now may, but are not required to, make certain license-related decisions by administrative action. Pet. Op.Br. at 6. In other words, they can act on licensing matters in their offices with the door closed when no member of the public is even aware this decision-making is happening. Petitioners insist that voters will want to know that liquor licenses in their neighborhoods could no longer be changed or renewed in private.

If that is a concern, the titles give voters adequate information to know this. Initiative #135’s title states its provisions would result in: (1) “**requiring** a local

licensing authority to hold **a public hearing** to consider” certain license changes that expand alcohol beverage service; and (2) “for renewal of a license..., **requiring** the local licensing authority to hold **a public hearing**....”

The plain and ordinary meaning of “require” leaves no room for voters to wonder if private, unseen approvals will displace public proceedings under Initiative #135. “Require” means “to demand as necessary or essential.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, Unabridged 1929 (1981). The use of “requiring” here was appropriate as it informs voters of a clear mandate in this initiative. *See In re Title, Ballot Title & Submission Clause Approved Sept. 4, 1991*, 826 P.2d 1241, 1244-45 (Colo. 1992) (Title Board properly refused to state in titles that initiative would “require” limited gaming in the cities of Manitou Springs and Fairplay where measure legalized, but did not force cities to set up, casinos; summary was accurate that initiative “required” cities to adopt implementing ordinances).

Voters will understand the public hearing process is mandatory due to the Title Board’s use of “requiring.” The Board thus satisfied its duty to inform them that public proceedings are the sole forum for decision-making under Initiative #135, and its decision should be affirmed.

CONCLUSION

Initiative #135's titles are clear and accurate. Petition signers will understand the key elements of the proposal they're endorsing, and voters will know the same about the law they're asked to adopt. The Court should approve these titles.

Respectfully submitted this 15th day of May, 2022.

s/ Mark G. Grueskin

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **RESPONDENTS' ANSWER BRIEF ON PROPOSED INITIATIVE 2021-2022 #135 (“LOCAL APPROVAL REQUIREMENT FOR EXPANDED LIQUOR LICENSE”)** was sent electronically to the Title Board and to the Petitioners via CCEF this day, May 15, 2022, to the following:

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