

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

---

Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

---

**MOTION FOR REHEARING ON INITIATIVE 2021-2022 #129**

---

Christopher Fine, registered elector of the County of Larimer and the State of Colorado, through his undersigned counsel, objects to the Title Board’s (the “Board”) title and ballot title and submission clause set for Initiative 2021-2022 #129.

The Board set a title for Initiative 2021-2022 #129 on April 20, 2022.<sup>1</sup> The Board designated and erroneously fixed titles for this measure.

**I. This measure violates the constitutional single subject requirement.**

The single-subject requirement in Article V, sec. 1(5.5) is summarized as a direct test of the underpinnings of an initiative.

An initiative violates the single subject requirement when it has at least two **distinct and separate** purposes which are not dependent upon or connected with each other.... Where two provisions advance **separate and distinct** purposes, the fact that they both relate to a broad concept or subject is insufficient to satisfy the single subject requirement.

*In re Title, Ballot Title & Submission Clause, and Summary for 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).*

**B. The initiative’s multiple purposes**

Where multiple subjects are part of one measure, this Board’s job would be easier if existing law just stated that certain matters are separate and distinct to resolve any dispute between proponents and objectors. But how often does that happen?

It happened here. Existing statute makes clear that the regulated combination of wine and beer for food store sales violate the principles underlying the single subject requirement. Under

---

<sup>1</sup>

*An amendment to the Colorado constitution authorizing a person licensed to sell beer at retail to also sell wine at retail at a premise licensed to sell beer.*

current law, unaffected by this measure, the regulatory treatment of retail beer sales and retail wine sales reflects “separate and distinct” purposes.

The general assembly further recognizes that **fermented malt beverages and malt liquors are *separate and distinct* from, and have a unique regulatory history in relation to, vinous and spirituous liquors**; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages under this article 4 is no longer necessary **except at the retail level**. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article 4.

C.R.S. 44-4-102(2) (emphasis added).

Thus, in existing law, there is an identification of “separate and distinct” interests (the regulation of beer and wine) that nonetheless leaves them “separate and distinct... at the retail level.” By not repealing existing law drawing this clear line, the measure leaves intact the “separate and distinct” natures of regulatory treatment of retail sales of wine and beer, which separation is still deemed by #129 to be “necessary.”

Put differently, so long as the retail level regulation of wine and beer is legally categorized as “separate and distinct,” a measure that treats them in the same way and authorizes the sale of both types of alcohol from the same or adjacent shelves necessarily violates the single subject requirement. A measure cannot have a single subject if it involves two items that the law mandates are “separate and distinct.” The legislature’s recognition and the proponents’ knowing embrace of the “separate and distinct” character of these two products in the retail setting for this type of license (by deliberately not repealing the statute cited above) must be acknowledged by the Board. And that acknowledgement is a roadblock to finding this combination to be a single subject.

## **II. The Board lacks jurisdiction due to proponents’ failure to file an accurate amended version of Initiative #129**

The amended version filed with the Board fails to show the original language that was stricken in order to come up with the final draft. C.R.S. 1-40-105(4) requires proponents to file “a copy of the amended draft with changes highlighted or otherwise indicated, if any amendments were made following the last review and comment meeting conducted.” The legislative offices make this change known by reference to their directions to initiative proponents. “Proponents must submit... the proposal as revised with any revisions highlighted or otherwise indicated, if applicable.”<sup>2</sup>

The proponents’ version omits almost half the words from the original draft, not to mention redlining to show how what was deleted in order to provide context for the measure’s

---

<sup>2</sup> <http://leg.colorado.gov/content/how-file-initiatives#Step%204:%20%20Filing%20with%20Secretary%20of%20State>

new wording. The Board lacks jurisdiction to consider this measure. *See In re Title Ballot Title & Submission Clause and Summary for 1997-98 #109*, 962 P.2d 252, 253 (Colo. 1998) (proponents' failure to adhere to filing requirements by submitting multiple, changed versions of their initiative prevented Board from accepting jurisdiction for title setting).

**III. This measure violates the clear title requirement for initiative titles.**

The titles misstate or omit critical language as follows:

- A. The titles state “at” a licensed facility for beer sales rather than “from” such a facility.
- B. The titles references at “a premise” rather than at “premises,” making the titles confusing.
- C. The titles fail to that the facility at issue must be licensed to sell beer “at retail” and thus are misleading.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2022.

RECHT KORNFELD, P.C.

*s/ Mark G. Grueskin*  
Mark G. Grueskin  
1600 Stout Street, Suite 1400  
Denver, CO 80202  
Phone: 303-573-1900  
Email: [mark@rklawpc.com](mailto:mark@rklawpc.com)

Objector's Address:

912 Butte Pass Drive  
Fort Collins, CO 80526

**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #129** was sent this day, April 27, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri  
Maven Law Group  
[STaheri@mavenlawgroup.com](mailto:STaheri@mavenlawgroup.com)

*s/ Erin Holweger* \_\_\_\_\_