

<p>COLORADO SUPREME COURT 2 East 14th Avenue, Denver, Colorado 80203</p>	
<p>Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>Petitioners: STEVEN WARD and LEVI MENDYK</p> <p>v.</p> <p>Respondents/Proponents: ROBERT SCHRAEDER and JOEL ALLEN CATHEY, Proponents,</p> <p>and</p> <p>Ballot Title Setting Board: THERESA CONLEY, JULIE PELEGRIN, and DAVID POWELL</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioners: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com</p>	<p>Case Number:</p> <p>Div.: Crtm.:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #100 (“CONCERNING LIQUOR LICENSES”)</p>	

Petitioners Steven Ward and Levi Mendyk, thorough undersigned counsel, hereby petition this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Ballot Title Setting Board (“Title Board”) with respect to jurisdiction to set title for Proposed Initiative 2021-2022 #100.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative

Proposed Initiative 2021-2022 #100 was filed with Legislative Council on March 22, 2022. The Title Board conducted an initial hearing on the initiative and set ballot title on April 20, 2022. After the initial hearing, Petitioners filed a Motion for Rehearing challenging the Board’s actions on the grounds that the measure did not constitute a single subject and the Board failed to set a clear title. A rehearing took place on April 28, 2022, and the Petitioners’ Motion for Rehearing was granted only to the extent that the Board made changes to the title.

B. Jurisdiction

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme Court pursuant to § 1-40-107(2), C.R.S. (2021).

As required by § 1-40-107(2), C.R.S. (2021), attached to this Petition for Review are certified copies of (1) the final copy of the Proposed initiative as submitted to the Title Board; (2) the determinations by the Title Board at its initial

hearing on the Proposed Initiative on April 20, 2022; (3) the Fiscal Summary for the Proposed initiative prepared by the Director of Research of the Legislative Council of the General Assembly pursuant to §1-40-105.5(1.5), C.R.S. (2021); (4) the Motion for Rehearing filed Petitioners on April 27, 2022; and (5) the determinations by the Title Board at the rehearing on April 28, 2022.

GROUND FOR REVIEW

Petitioners respectfully submit that the Title Board erred as follows:

1. The Title Board erred in its finding that Proposed Initiative 2021-2022 #100 constitutes a single subject.

Proposed Initiative 2021-2022 #100 has at least two separate and distinct purposes. First, the initiative increases statewide licenses for retail liquor stores. Secondly, it drastically decreases statewide licenses for retail sales of fermented malt beverages (beer) and for liquor-licensed drugstores. These classifications of license are entirely distinct.

The measure would require the non-renewal of over one thousand fermented malt beverage licenses, denying consumers access to beer at the very convenience and grocery stores where they purchase it now. The initiative further pushes grocers out of the alcohol sales industry by decreasing the number of liquor-licensed drugstores an operator may have. The license caps on fermented malt

beverage licenses and liquor-licensed drugstore licenses are surreptitious provisions that will surprise voters and is not connected to the purpose of the measure.

2. The Title Board failed to set a ballot title that properly describes the central features of the proposed initiative.

The ballot title as set by the board omits a number of elements which would be useful to voters in evaluating what the initiative does. The following elements are missing and should be included in the ballot title:

- A description of a “retail liquor store”
- A description of a “liquor-licensed drugstore”
- A description of the respective increases and decreases, including the elimination of existing fermented malt beverage licenses
- A description of “person” that “may hold an interest”
- A description of the language deleted from statute that allowed unlimited liquor licensed drugstores on or after January 1, 2037.
- A description of the language deleted from statute that allowed unlimited malt beverage licenses.

- A description of “nonrenewal” that specifically states that fermented malt beverage licensees that are nonrenewed would no longer be eligible to sell beer.

The title as set by the Board fails to capture the effect the measure would have on the sale of alcohol in Colorado. Beer, in particular, would become less available under the measure. Over one thousand grocery and convenience stores that currently sell beer would not be permitted to do so if Proposed Initiative #100 passes. The title as set by the board does not include this critical consequence of the proposed initiative.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed, and direct the Title Board to correct the title to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 5th day of May, 2022

s/Suzanne Taheri
Suzanne M. Taheri, #23411
MAVEN LAW GROUP
6501 E. Belleview Ave, Suite 375
Englewood, CO 80111
Phone Number: (303) 263-0844
Email: staheri@mavenlawgroup.com
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2022, a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #100 (“CONCERNING LIQUOR LICENSES”)** was served via the Colorado Court’s E-Filing System to the following:

Martha M. Tierney, No. 27521
Tierney Lawrence LLC
225 E.16 TH AVE, SUITE 350
Denver, CO 80203
Phone: (720) 242-7577
E-mail: mtierney@tierneylawrence.com
Attorney for Proponents

Michael Kotlarczyk, Esq.
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Michael.kotlarczyk@coag.gov
Attorney for Title Board

/s/ Suzanne Taheri

Suzanne Taheri

Duly signed original on file at Maven Law Group

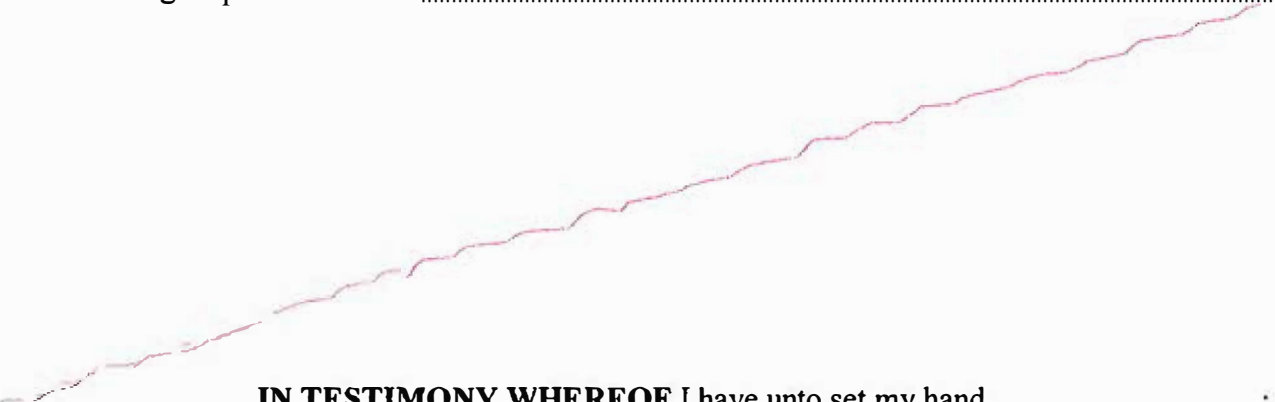


STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2021-2022 #100 ‘Concerning Liquor Licenses’”



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 3rd day of May, 2022.

Jena Griswold

SECRETARY OF STATE



Be it enacted by the People of the State of Colorado:

SECTION 1. Declaration of Purpose.

The People of the State of Colorado find and declare that it is in the interest of Colorado to create a more level playing field for the different business types that sell alcohol for off-premises consumption by allowing an equal number of licenses for drugstores, grocery stores and liquor stores. Creating parity and an orderly expansion for all businesses will foster competition, create jobs, increase selection and consumer choice, and lower costs for Coloradans.

SECTION 2. In Colorado Revised Statutes, 44-3-409, **amend** (4)(b)(III) as follows:

44-3-409. Retail liquor store license – rules. (4)(b) An owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store may have an interest in:

(III) For a retail liquor store licensed on or before January 1, 2016, and whose license holder is a Colorado resident, additional retail liquor store licenses as follows, but only if the premises for which a license is sought satisfies the distance requirements specified in subsection (1)(a)(II) of this section:

(A) On or after January 1, 2017, and before January 1, 2022, one additional retail liquor store license, for a maximum of up to two total retail liquor store licenses; AND

(B) On or after January 1, 2022, ~~and before January 1, 2027~~, up to ~~two~~ ELEVEN additional retail liquor store licenses, for a maximum of ~~three~~ TWELVE total retail liquor store licenses; OR.

~~and~~
(C) ~~On or after January 1, 2027, up to three additional retail liquor store licenses, for a maximum of four total retail liquor store licenses; or~~

SECTION 3. In Colorado Revised Statutes, 44-3-410, **amend** (4)(b)(IV) and (4)(V) as follows:

44-3-410. Liquor-licensed drugstore license – multiple licenses permitted – requirements – rules. (4)(b)(IV) For a liquor-licensed drugstore licensed on or before January 1, 2016, or a liquor-licensed drugstore licensee that was licensed as a liquor-licensed drugstore on February 21, 2016, that converted its license to a retail liquor store license after February 21, 2016, and that applied on or before May 1, 2017, to convert its retail liquor store license back to a liquor-licensed drugstore license, additional liquor-licensed drugstore licenses as follows, but only if obtained in accordance with subsection (1)(b) of this section:

(A) On or after January 1, 2017, and before January 1, 2022, four additional liquor-licensed drugstore licenses, for a maximum of five total liquor-licensed drugstore licenses; AND

(B) On or after January 1, 2022, ~~and before January 1, 2027~~, up to ~~seven~~ ELEVEN additional liquor-licensed drugstore licenses, for a maximum of ~~eight~~ TWELVE total liquor-licensed drugstore licenses.

~~(C) On or after January 1, 2027, and before January 1, 2032, up to twelve additional liquor licensed drugstore licenses, for a maximum of thirteen total liquor licensed drugstore licenses;~~

~~(D) On or after January 1, 2032, and before January 1, 2037, up to nineteen additional liquor licensed drugstore licenses, for a maximum of twenty total liquor licensed drugstore licenses; and~~

~~——(E) On or after January 1, 2037, an unlimited number of additional liquor licensed drugstore licenses.~~

(V) For a liquor-licensed drugstore that submitted an application for a new liquor-licensed drugstore license before October 1, 2016, additional liquor-licensed drugstore licenses as follows, but only if obtained in accordance with subsection (1)(b) of this section:

(A) On or after January 1, 2019, and before January 1, 2022, four additional liquor-licensed drugstore licenses, for a maximum of five total liquor-licensed drugstore licenses; AND

(B) On or after January 1, 2022, ~~and before January 1, 2027, up to seven~~ ELEVEN additional liquor-licensed drugstore licenses, for a maximum of ~~eight~~ TWELVE total liquor-licensed drugstore licenses.

~~(C) On or after January 1, 2027, and before January 1, 2032, up to twelve additional liquor licensed drugstore licenses, for a maximum of thirteen total liquor licensed drugstore licenses;~~

~~——(D) On or after January 1, 2032, and before January 1, 2037, up to nineteen additional liquor licensed drugstore licenses, for a maximum of twenty total liquor licensed drugstore licenses; and~~

~~——(E) On or after January 1, 2037, an unlimited number of additional liquor licensed drugstore licenses.~~

SECTION 4. In Colorado Revised Statutes, 44-4-104, **amend** (1)(c)(I)(A), (1)(c)(II)(B) and (1)(c)(III)(A) and **add** (1)(c)(VI) as follows:

44-4-104. Licenses – state license fees – requirements- definition.

(1)(c)(I)(A) A MAXIMUM OF TWELVE retailer’s ~~license~~-LICENSES shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44-3-307 to sell at retail fermented malt beverages either for consumption off the licensed premises or for consumption on the licensed premises or, subject to subsection (1)(c)(III) of this section, for consumption on and off the licensed premises, UPON COMPLIANCE WITH THE LOCAL LICENSING AUTHORITY PROCEDURES IN SECTION 44-4-107, AND upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(1)(c)(II)(B) Any licensee holding a fermented malt beverage license authorizing the sale of fermented malt beverages for consumption on and off the licensed premises that was issued by the state licensing authority under this subsection (1)(c) before June 4, 2018, that applies to renew the license on or after June 4, 2018, and whose licensed premises is located in a county with a population of thirty-five thousand or more and not in an underserved area must simultaneously apply to convert A MAXIMUM OF TWELVE ~~the license~~ LICENSES either to a license for the sale of fermented malt beverages at retail for consumption off the licensed premises or to

a license for the sale of fermented malt beverages at retail for consumption on the licensed premises.

(1)(c)(III)(A) The state licensing authority may issue a new or renew a fermented malt beverage retailer's license, UP TO A MAXIMUM OF TWELVE LICENSES PER RETAILER, for the sale of fermented malt beverages for consumption on and off the licensed premises if the licensed premises is located in a county with a population of less than thirty-five thousand or in an underserved area.

(1)(c)(VI) THE STATE LICENSING AUTHORITY SHALL PROMULGATE RULES AS NECESSARY TO DETERMINE HOW PREVIOUSLY ISSUED LICENSES EXCEEDING THE MAXIMUM OF TWELVE RETAILER'S LICENSES ALLOWED BY ANY PERSON, PARTNERSHIP, ASSOCIATION, ORGANIZATION OR CORPORATION WILL NOT BE RENEWABLE AFTER THE EXISTING LICENSES EXPIRE.

SECTION 5. Effective date. This measure shall go into effect on March 1, 2023.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #100¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the number of retail alcohol beverage licenses that a licensee may hold, and, in connection therewith, increasing the number of retail liquor store licenses and decreasing the number of liquor-licensed drugstore licenses, including licenses for sale of liquor in grocery stores, a single licensee may hold to a maximum of 12 licenses for each type of license; changing the number of licenses for retail sales of fermented malt beverages, such as beer, a single licensee may hold from an unlimited number to a maximum of 12 licenses; and prohibiting the renewal of the fermented malt beverage retail licenses that exceed the limit.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the number of retail alcohol beverage licenses that a licensee may hold, and, in connection therewith, increasing the number of retail liquor store licenses and decreasing the number of liquor-licensed drugstore licenses, including licenses for sale of liquor in grocery stores, a single licensee may hold to a maximum of 12 licenses for each type of license; changing the number of licenses for retail sales of fermented malt beverages, such as beer, a single licensee may hold from an unlimited number to a maximum of 12 licenses; and prohibiting the renewal of the fermented malt beverage retail licenses that exceed the limit?

Hearing April 20, 2022:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Julie Pelegrin, Eric Meyer

Hearing adjourned 4:15 P.M.

Rehearing April 28, 2022:

Motion for Rehearing granted only to the extent that the Board made changes to the titles.

Board members: Theresa Conley, Julie Pelegrin, David Powell

Hearing adjourned: 9:56 P.M.

¹ Unofficially captioned “**Concerning Liquor Licenses**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #100¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the number of retail alcohol beverage licenses in which a person may hold an interest, and, in connection therewith, increasing the number of retail liquor store licenses, decreasing the number of liquor-licensed drugstore licenses, and restricting the number of licenses for retail sales of fermented malt beverages, such as beer, a person may hold an interest in to a maximum of 12 licenses for each type of license; and directing the state licensing authority to adopt rules for the nonrenewal of fermented malt beverage retail licenses that exceed the limit.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the number of retail alcohol beverage licenses in which a person may hold an interest, and, in connection therewith, increasing the number of retail liquor store licenses, decreasing the number of liquor-licensed drugstore licenses, and restricting the number of licenses for retail sales of fermented malt beverages, such as beer, a person may hold an interest in to a maximum of 12 licenses for each type of license; and directing the state licensing authority to adopt rules for the nonrenewal of fermented malt beverage retail licenses that exceed the limit?

Hearing April 20, 2022:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Julie Pelegrin, Eric Meyer

Hearing adjourned 4:15 P.M.

¹ Unofficially captioned “**Concerning Liquor Licenses**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2021-2022 #100

MOTION FOR REHEARING

On behalf of Steve Ward and Levi Mendyk, registered electors in the State of Colorado, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board's April 20, 2022, decision.

1. The Board lacked jurisdiction to consider the initiative because Proponents were required to resubmit the Initiative for review and comment.

After review and comment proponents changed Section 4. 44-1-104(1)(c)(VI) to allow the state licensing authority to adopt rules for how previously issued licenses exceeding the maximum of twelve "will not be renewable after the existing licenses expire." Previously the language was "shall be surrendered or allowed to expire." This is a substantive change to the measure tucked into a provision on rule-making authority. Before the change, the statute could operate to surrender the license. Now the statute operates to not renew the license. This is central, substantive feature of the measure that was changed without relation to review and comment.

2. Proposed initiative #100 contains more than a single subject.

The initiative *increases* statewide licenses for retail liquor stores *and* drastically *decreases* statewide licenses for retail sales of fermented malt beverages. Retail liquor store licenses allow for the sale of beer, wine, and spirits to customers. Fermented malt beverage licenses (primarily held by grocery and convenience stores) only allow for the sale of beer to customers. The two license types are entirely distinct. Under the proposed initiative, access to liquor stores that sell the full range of alcohol beverage products including beer would be expanded, while existing grocery or convenience store locations that only sell beer would be eliminated. Finally, to accomplish the elimination of existing fermented malt beverage licenses, the initiative creates a new regulatory process from whole cloth, requiring the state licensing authority to devise an undetermined process for the non-renewal of otherwise valid and lawful licenses.

Few voters will be in favor of, or opposed to, these disconnected subjects. To satisfy the single subject requirement in Colo. Const. art. V, § 1(5.5), the subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous. A proposed initiative presents only one subject if it tends to effect or carry out one general objective or purpose; minor provisions necessary to effectuate the single objective or purpose of the initiative may be properly included. Conversely, an initiative violates the single subject requirement where

it relates to more than one subject and has at least two distinct and separate purposes. If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 1, 374 P.3d 460, 462.

The initiative further operates to strip existing, lawfully held licenses from 1,800 statewide licensed fermented malt liquor establishments such as neighborhood grocery and convenience stores. This surreptitious provision will be a surprise to voters and is not connected to the purpose of the measure.

3. The measure violates the clear title requirement.

Opponents assert that the titles as set violate clear title as they do not describe the central features of the measure including:

- A description of a “retail liquor store”
- A description of a “liquor-licensed drugstore”
- A description of the respective increases and decreases, including the elimination of existing fermented malt beverage licenses
- A description of “person” that “may hold an interest”
- A description of the language deleted from statute that allowed unlimited liquor licensed drugstores on or after January 1, 2037.
- A description of the language deleted from statute that allowed unlimited malt beverage licenses.
- In parity to opponents’ own measures, the board should not include effective dates in one measure while omitting them from other measures. (*see* Section 2. 43-3-410.5)

Respectfully submitted this 27th day of April, 2022.

s/Suzanne Taheri
Suzanne Taheri
MAVEN LAW GROUP
1600 Broadway, Suite 1600
Denver, CO 80202
Phone: (303) 218-7150



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 100

Fiscal Summary

Date:	April 19, 2022	Fiscal Analyst:	Anna Gerstle (303-866-4375)
--------------	----------------	------------------------	-----------------------------

LCS TITLE: CONCERNING LIQUOR LICENSES

Fiscal Summary of Initiative 100

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State revenue. By allowing additional retail liquor store locations, reducing the number of grocery store locations that sell beer, wine and spirits, and limiting grocery stores to 12 locations that may sell beer, Initiative 100 will result in a net decrease in fee revenue paid to the Department of Revenue. Applicants for liquor licenses must pay initial application and licensing fees, as well as annual renewal fees. A reduction in the number of licensed locations will reduce fee revenue collected.

State expenditures. Initiative 100 will impact the workload for the Department of Revenue in two ways. First, it will decrease the workload to process fewer applications for new liquor licenses and conduct enforcement. In addition, the department will have additional workload to develop and implement rules for limiting the number of grocery stores that can sell beer to 12 per retailer. The net change is expected to be minimal.

Local government impact. Similar to the state impact, Initiative 100 will decrease local liquor licensing authorities' workload to process liquor license applications, increase the workload to ensure retailers comply with the limit on licensed locations, and decrease fee revenue from application and licensing fees. The impact will depend on the change in liquor licensed locations in any individual jurisdiction.

Economic impacts. While Initiative 100 may change the number and type of liquor licensed locations, the overall volume of alcohol sales is not expected to change significantly. The measure may also shift income and employment opportunities across different retailers.