

COLORADO SUPREME COURT

2 East 14th Avenue,
Denver, Colorado 80203

Original Proceeding
Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

Petitioner:

Christopher Fine

v.

Respondents/Proponents:

Steven Ward and Levi Mendyk

and

Title Board:

Theresa Conley, David Powell, and Jeremiah Berry

COURT USE ONLY

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Case No.: 2022SA149

Respondents' Answer Brief

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains **791** words (opening brief does not exceed 9,500 words).

The brief complies with the standard of review requirements set forth in Colorado Appellate Rule 28(a)(7)(A).

For each issue raised by Petitioner, 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 Colorado Appellate Rules 28 and 32.

s/ Suzanne Taheri

Suzanne Taheri

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Respondents Steven Ward and Levi Mendyk, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2021-2022 #122 (“Initiative #122”), through counsel respectfully submit their Answer Brief in support of the title, ballot title, and submission clause (the “Title”) set by the Title Board for Initiative #122.

ARGUMENT

I. Significant changes to different sections of the law are permitted within a single subject.

Colorado has traditionally circumscribed the sale of alcohol beverages. For example, in the early twentieth century, Colorado law prohibited places where “intoxicating liquors are [both] sold and consumed.” *Golden v. People*, 74 P.2d 715, 718-19 (Colo. 1937). Now, Coloradans can legally patronize restaurants and bars that sell alcohol for on-site consumption because over the years, legislators and voters have eased restrictions and been increasingly favorable to expanding access to alcohol.

In recent years, the overhaul of outdated laws regarding the retail sale of alcohol has continued, particularly under Senate Bill 16-197 which represented the most significant recent change to Colorado liquor laws. *See* Joey Bunch, *Hickenlooper signs into law biggest change to alcohol sales in Colorado since Prohibition*, THE DENVER POST, June 10, 2016.

The purpose of the Proposed Initiative is to establish a regulatory scheme for third-party delivery of alcohol.

An initiative may encompass “a host of significant changes” and still constitute a single subject. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465-66 (Colo. 2016) (citing *Hayes v. Spalding (In re 2013-2014 #76)*, 333 P.3d 76, 81-83 (Colo. 2014)). In addition, the “fact that the provisions of a measure may affect more than one other statutory provision does not itself mean that the measure contains multiple subjects.” *Herpin v. Head (In re Title, Ballot Title & Submission Clause)*, 4 P.3d 485, 496 (Colo. 2000). Thus, the fact that a proposed initiative’s central features may each substantially affect a regulated industry does not violate single subject requirements.

Petitioner’s argument focuses on the statutory language regarding the regulation of beer at the retail level as “separate and distinct” from regulation of wine and liquor at the retail level, arguing (wrongly) that because the Proposed Initiative impacts delivery of multiple types of alcohol, it therefore contains “separate and distinct” purposes and violates the constitutional requirement that initiatives contain only one subject.

The term “separate and distinct” appears 141 times in various Colorado statutes. The phrase does not operate as a declaration of single subject. Rather, it operates as a legal distinction of rights and obligations, or simply as a description.

For example, the term is used to describe various court fees, each one “separate and distinct” from the others. *See* C.R.S. § 42-4-1701; C.R.S. § 24-4.1-119. To be sure, the legislation designating the fees could be passed as a single subject.

In § 4-4-102, C.R.S., “separate and distinct” appears in the legislative declaration explaining the separate regulatory framework and licensing structure for fermented malt beverages at the retail level. This legislative declaration could serve as an interpretative aid in construing the statute it accompanies if that statute is ambiguous. C.R.S. § 2-4-203(1)(g), and see *Stamp v. Vail Corp.*, 172 P.3d 437, 443 (Colo. 2007). However, in the same declaration, the legislature specifically stated that Article 3 also applies to fermented malt beverage licensees, except as otherwise expressly provided in Article 4. C.R.S. § 44-4-102(2).

Indeed, numerous sections of Article 3 explicitly apply to both fermented malt beverage licenses and other separate and distinct types of licenses at the retail level. *See, e.g.*, C.R.S. §§ 44-3-103 (definitions), 44-3-301 (general licensing requirements), 44-3-304 (state licensing application procedures), 44-3-307

(prohibiting the types of persons that can hold a license), 44-3-601 (disciplinary actions), 44-3-701 (inspection of books), 44-3-801 (civil liability), and 44-3-901 *et seq.* (unlawful acts and enforcement). The declaration of intent in § 4-4-102 does not support the notion that malt beverages and other types of alcohol cannot together constitute a single subject.

Petitioner's argument would require that each type of license exist under its own statutory scheme. Each would have to repeat and apply every statute cited above. This argument goes beyond even the types of alcohol; it would expand the requirement to each type of license within the same category of alcohol. There is no precedent to support this type of sweeping change to the single subject requirement.

CONCLUSION

None of the issues Petitioner identifies are a separate subject. All of these issues are properly connected to the single subject and have been the subject of single bills introduced and passed by the legislature.

For all these reasons and the reasons presented in the Respondents' Opening Brief, Respondents respectfully request that the Court affirm the actions of the Title Board for Initiative #122.

Dated: May 23, 2022

Respectfully submitted,

s/Suzanne Taheri

Suzanne Taheri (#23411)

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, I electronically filed a true and correct copy of this **Respondents' Opening Brief** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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