

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: May 6, 2022 4:46 PM</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 #129 (“Sales of Alcohol Beverages”)</p> <p><b>Petitioners:</b> Christopher Fine</p> <p>v.</p> <p><b>Respondents:</b> Steven Ward and Levi Mendyk</p> <p><b>and</b></p> <p><b>Title Board:</b> Teresa Conley, David Powell, and Jeremiah Barry</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Petitioner:</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) <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a></p>	<p>Case Number:</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #129 (“SALES OF ALCOHOL BEVERAGES”)</b></p>	

Christopher Fine (“Petitioner”), registered elector of the County of Larimer and the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2021-2022 #129 (“Sales of Alcohol Beverages”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2021-2022 #129.**

Steven Ward and Levi Mendyk (hereafter “Proponents”) proposed Initiative 2021-2022 #129 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 20, 2022, at which time titles were set for 2021-2022 #129. On April 27, 2022, Petitioner Christopher Fine filed a Motion for Rehearing, alleging that Initiative #129 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), the Board lacks jurisdiction due to Proponents’ failure to file an accurate amended version of Initiative #129, and that the Title Board set titles which are misleading and incomplete as they do not fairly

communicate the true intent and meaning of the measure and will mislead voters. The rehearing was held on April 29, 2022, at which time the Title Board granted the Motion for Rehearing only to the extent that the Board made changes to the titles.

### **B. Jurisdiction**

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

### **GROUND FOR APPEAL**

The titles set by the Title Board violate the legal requirements imposed on the Board because the Initiative contains multiple subjects, in violation of Colo. Const. art. V, sec. 1(5.5), and the title set by the Board violate the “clear ballot title” requirement by omitting critical elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioner’s brief:

1. Whether the Title Board lacked jurisdiction over Initiative #129 because, under existing Colorado statute, the regulation of beer at the retail level is “separate and distinct” from regulation of wine at the retail level, meaning this measure contains “separate and distinct” purposes and therefore violates the constitutional requirement that initiatives be comprised of only one subject.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 6th day of May, 2022.

*s/ Mark G. Grueskin*

Mark G. Grueskin, #14621  
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**ATTORNEY FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #129 (“SALES OF ALCOHOL BEVERAGES”)** was sent electronically via Colorado Courts E-Filing this day, May 6, 2022, to the following:

Counsel for the Title Board:  
Michael Kotlarczyk  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

Counsel for Proponents:  
Suzanne Taheri  
Maven Law Group  
1800 Glenarm Place, Suite 950  
Denver, CO 80202

*/s Erin Holweger*  
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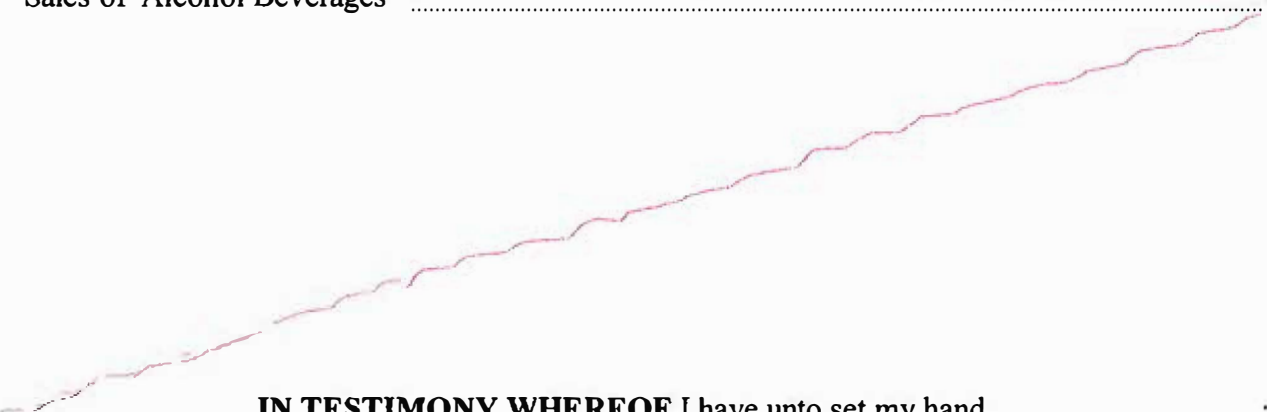
# STATE OF COLORADO

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 #129 ‘Sales of Alcohol Beverages’”



..... **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 3<sup>rd</sup> day of May, 2022.

*Jena Griswold*

SECRETARY OF STATE



*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, **recreate and reenact, with amendments,** article XXII as follows:

**Article XXII Intoxicating Liquors**

**Section 1. Wine and Beer.**

A PERSON LICENSED TO SELL BEER AT RETAIL MAY SELL WINE AT RETAIL FROM A PREMISES THAT IS LICENSED TO SELL BEER AT RETAIL.



## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #129<sup>1</sup>**

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

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

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

Shall there be an amendment to the Colorado constitution authorizing a person licensed to sell beer at retail to also sell wine at retail?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; title set.*

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.*

*Hearing adjourned: 1:09 P.M.*

*Rehearing April 29, 2022:*

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

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.*

*Board members: Theresa Conley, Jeramiah Barry, David Powell*

*Hearing adjourned: 1:19 P.M.*

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<sup>1</sup> Unofficially captioned “**Sales of Alcohol Beverages**” 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 #129<sup>1</sup>**

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

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.

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

Shall there be 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?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; title set.*

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution; a 55% vote is required to pass.*

*Hearing adjourned: 1:09 P.M.*

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<sup>1</sup> Unofficially captioned “**Sales of Alcohol Beverages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

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

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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

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<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

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<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*

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Objector's Address:

912 Butte Pass Drive  
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**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* \_\_\_\_\_



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Initiative 129

## Fiscal Summary

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<b>Date:</b>	April 19, 2022	<b>Fiscal Analyst:</b>	Erin Reynolds (303-866-4146)
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### LCS TITLE: SALES OF ALCOHOL BEVERAGES

#### Fiscal Summary of Initiative 129

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](http://www.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State revenue.** The bill allows fermented malt beverage (beer) licensees to also sell wine. As such, it is anticipated that any increase in fee revenue to the Department Revenue will be minimal.

**State expenditures.** The measure's modifications to state laws regarding alcohol sales will increase workload in the Department of Revenue to update information and conduct enforcement.

**Local government impact.** Similar to the state impact, local liquor licensing authorities will have an increase in workload to updated information and conduct enforcement.

**Economic impacts.** While Initiative 129 may shift the location of some alcohol sales and the type of products purchased, the overall volume of alcohol sales is not expected to change significantly. The measure may shift income and employment opportunities across different retailers, and could lead to some business income from larger retailers leaving the state.