

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #123

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 #123, and states:

The Board set a title for Initiative 2021-2022 #123 on April 20, 2022. The Board designated and fixed the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning authorization for the third-party delivery of alcohol beverages, and, in connection therewith, allowing retail establishments licensed to sell alcohol beverages to deliver all types of alcohol beverages to a person twenty-one years of age or older through a third-party delivery service that obtains a delivery service permit; prohibiting the delivery of alcohol beverages to a person who is under 21 years of age, is intoxicated, or fails to provide proof of identification; and removing the limit on the percentage of gross sales revenues a licensee may receive from alcohol beverage deliveries?

I. Initiative #123 violates the constitutional single subject requirement.

Recognizing their single-subject vulnerability on measures that combine delivery and sales, Proponents purport to make Initiative #123 about only one aspect: delivery. But this Initiative is *not* limited to delivery. Hidden in its folds, Proponents have buried their other subject: alcohol sales. Delivery and sales are separate subjects and, by combining them here, they have violated the single subject rule. Further, by including sales in this Initiative, Proponents have interjected another fatal single subject problem into their Initiative by bundling together beer and wine sales which are, under the law, “separate and distinct” regulatory subjects.

Proponents slip sales into this Initiative through proposed C.R.S. § 44-3-911.5(4)(d), which provides that:

A delivery service permittee:

...

(d) may facilitate orders by telephone, internet, or by other electronic means for the sale **and** delivery of alcohol beverages under this section. The full amount of each order shall be handled in a manner that gives the licensee control over the ultimate receipt of the payment from the consumer

C.R.S. § 44-3-911.5(4)(d) (emphasis added). This authorization to “facilitate” a sale is a broad authority for permittees, as it empowers them to “help people deal with a process... without getting directly involved.” Cambridge Business English Dictionary, last visited April 27, 2022 (defining “facilitate”), <https://dictionary.cambridge.org/us/dictionary/english/facilitate>.

The fact that the initiative expressly identifies that the permittee’s role is to help with two different functions – sale and delivery – makes the point. They are separate acts, but this measure looks to cover them both. If they were all part of one customer interface, there would be no reason to add “sale and.” But they aren’t, and this provision effectively admits that the permittees will be engaged in multiple functions, thus serving multiple purposes of the initiative.

Not only does this intermingling of delivery and sales itself violate the single subject rule, it necessarily interjects yet another single subject concern into the Initiative. Under existing law, C.R.S. § 44-4-102, the General Assembly has declared that the regulation of retail sale of wine and beer are “separate and distinct”:

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). Proponents have not repealed this legislative declaration through Initiative #123. 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 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” as a matter of their regulatory history and, at the retail level, their current regulatory needs. But that is what Initiative #123 does. It allows a delivery permittee to facilitate the “sale” of “alcohol beverages,” which includes both beer and wine. *See* C.R.S. § 44-3-103(2)

(defining “alcohol beverages”). These are, pursuant to C.R.S. § 44-4-102(2), “separate and distinct,” and bundling them together therefore violates the single subject requirement.

II. This measure violates the clear title requirement for initiative titles.

The titles set by the Board are incomplete or misleading in the following ways:

(a) The single subject statement is inaccurate for the following reasons:

- a. The measure is not limited to delivery but instead allows delivery permittees to engage in sales activities; and,
- b. The measure is not limited to third-party delivery, as it allows a licensee to obtain a delivery permit or have its employees deliver alcohol beverages.

(b) The titles use of “Removing the limit” on the percentage of gross revenue sales is a double negative and confusing to voters; this phrase should read either:

- a. Allowing licensees to obtain up to all of their revenue from alcohol beverage deliveries; or
- b. Removing the restriction that alcohol beverage deliveries not exceed 50% of gross annual revenues by liquor licensed drugstores, retail liquor stores, fermented malt beverage retailers, and take-out orders from on-premises consumption licensees.

(c) The following should be added to the titles to address central elements of the Initiative:

- a. Authorizing deliveries of alcohol beverages served for on premises consumption as well as for off premises consumption; and,
- b. Specifying that technology services companies may provide network applications (which undeniably have the widest possible market penetration and thus relevance to voters) for alcohol beverage delivery without obtaining a delivery service permit.

RESPECTFULLY SUBMITTED this 27th day of April, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

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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 #123** was sent this day, April 27, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri
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s/ Erin Holweger