

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></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 #67 (“Sales and Delivery 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>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 style="text-align: center;"><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #67 (“SALES AND DELIVERY OF ALCOHOL BEVERAGES”)</b></p>	

Christopher Fine (“Petitioner”), registered elector of 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 #67 (“Sales and Delivery of Alcohol Beverages”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2021-2022 #67.**

Steven Ward and Levi Mendyk (hereafter “Proponents”) proposed Initiative 2021-2022 #67 (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 March 16, 2022, at which time titles were set for 2021-2022 #67. On March 23, 2022, Petitioner Christopher Fine filed a Motion for Rehearing, alleging that Initiative #67 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), 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 6, 2022, at which time the Title Board granted in part and denied in part the Motion for Rehearing with one member of the Board dissenting.

## **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 Initiative #67 violated the constitutional single subject requirement by addressing separate and distinct purposes including:
  - a. Allowing the sale of a single type of alcohol beverage (wine) at a single category of retail sellers (food stores) which now sell only beer; and
  - b. Authorizing licensed sellers of alcohol beverages, including but also other than food stores, to deliver all types of alcohol beverages (including wine, beer, and spirits), including through third party delivery services, as a privilege that is separate from retail sales.
2. Whether the Board violated the “clear ballot title” requirement because:
  - a. The titles’ current statement of single subject (“the expansion of retail sale of alcohol beverages”) is inaccurate as “delivery” of alcohol is a not a “retail sale” of alcohol and can be accomplished, under this initiative, by unrelated third parties who are not licensed or in any way engaged in retail sales; and

b. The titles fail to state this initiative expands alcohol delivery for alcohol beverages that are sold for off-premises consumption as well as for alcoholic drinks that are sold for on-premises consumption.

### **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 13th day of April, 2022.

*s/ Mark G. Grueskin*

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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 #67 (“SALES AND DELIVERY OF ALCOHOL BEVERAGES”)** was sent electronically via Colorado Courts E-Filing this day, April 13, 2022, to the following:

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*/s Erin Holweger*  
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