

<b>COLORADO SUPREME COURT</b> 2 East 14th Avenue, Denver, Colorado 80203	
Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
<b>Petitioner:</b> Christopher Fine  v. <b>Respondents/Proponents:</b> Steven Ward and Levi Mendyk  and <b>Title Board:</b> Theresa Conley, David Powell, and Jeremiah Berry	<input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/>
<b>Attorneys for Respondents:</b>  Suzanne Taheri #23411 MAVEN LAW GROUP 6501 E. Belleview Ave., Suite 375 Englewood, Colorado 80111 Phone: (303) 263-0844 Email: staheri@mavenlawgroup.com	Case No.: 2022SA155
<b>Respondents' Answer Brief</b>	

## 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 **1,363** 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

**TABLE OF CONTENTS**

ARGUMENT..... 1

    I. Significant changes to different sections of the law are permitted within a single subject. .... 1

    II. The Proposed Initiative’s provisions are not required to bear a “necessary” relationship to each other. .... 4

    III. The Proposed Initiative does not present a logrolling dilemma. .... 6

CONCLUSION ..... 7

## TABLE OF AUTHORITIES

### Cases

<i>Golden v. People</i> , 74 P.2d 715 (Colo. 1937) .....	1
<i>Hayes v. Spalding (In re 2013-2014 #76)</i> , 333 P.3d 76 (Colo. 2014) .....	2
<i>Herpin v. Head (In re Title, Ballot Title &amp; Submission Clause)</i> , 4 P.3d 485 (Colo. 2000).....	2
<i>In re 2013-2014 #89</i> , 328 P.3d 172 (Colo. 2014) .....	6
<i>In re Proposed Initiative for 1999-2000 # 25</i> , 974 P.2d 458 (Colo. 1999).....	5
<i>In re Title v. John Fielder</i> , 12 P.3d 246 (Colo. 2000).....	5
<i>In re Title, Ballot Title and Submission Clause, and Summary Regarding Petition Procedures</i> , 900 P.2d 104 (Colo. 1995) .....	4
<i>In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995 (Public Rights in Waters II)</i> , 898 P.2d 1076 (Colo. 1995).....	4
<i>Johnson v. Curry (In re Title, Ballot Title, &amp; Submission Clause for 2015-2016 #132)</i> , 374 P.3d 460 (Colo. 2016) .....	2
<i>Kelley v. Tancredo (In re Proposed Ballot Initiative on Parental Rights)</i> , 913 P.2d 1127 (Colo. 1996) .....	4
<i>People v. Sours</i> , 74 P. 167 (Colo. 1903).....	4
<i>Stamp v. Vail Corp.</i> , 172 P.3d 437 (Colo. 2007) .....	3

**Statutes**

§ 2-4-203(1)(g), C.R.S. (2021)..... 3

§ 24-4.1-119, C.R.S. (2021)..... 3

§ 42-4-1701, C.R.S. (2021)..... 3

§ 44-3-103, C.R.S. (2021)..... 3

§ 44-3-301, C.R.S. (2021)..... 3

§ 44-3-304, C.R.S. (2021)..... 4

§ 44-3-307, C.R.S. (2021)..... 4

§ 44-3-601, C.R.S. (2021)..... 4

§ 44-3-701, C.R.S. (2021)..... 4

§ 44-4-102(2), C.R.S. (2021) ..... 3

§ 44-4-102, C.R.S. (2021).....3, 4

Article 44, Part 8, C.R.S. (2021) ..... 4

Article 44, Part 9, C.R.S. (2021) ..... 4

**Other Authorities**

Colorado House Bill 22-1417, [https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a\\_1417\\_01.pdf](https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a_1417_01.pdf)..... 6

Joey Bunch, *Hickenlooper signs into law biggest change to alcohol sales in Colorado since Prohibition*, THE DENVER POST, June 10, 2016 ..... 1

Petitioner’s Opening Brief ..... 2

Senate Bill 16-197 ..... 1

Respondents Steven Ward and Levi Mendyk, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2021-2022 #128 (“Initiative #128”), 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 #128.

## **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 further expand retail access to alcohol for Colorado consumers. While Petitioner argues that this is not a “meritorious policy objective,” that is a determination left to the voters and legislature. *See* Petitioner’s Opening Brief, p.1. More importantly, the merit of an initiative is not a relevant factor in determining single subject.

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 cites to 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 both types of retail license, it contains “separate and distinct” purposes and therefore



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 § 44-4-102, 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 § 44-4-102 does not support the notion that malt beverages and other types of alcohol cannot together constitute a single subject.

**II. The Proposed Initiative’s provisions are not required to bear a “necessary” relationship to each other.**

The Court has determined that an initiative has more than one subject if its text “relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause, and Summary Regarding Petition Procedures*, 900 P.2d 104, 109 (Colo. 1995) (citing *People v. Sours*, 74 P. 167, 178 (Colo. 1903)). There is no requirement that the provisions have a “necessary” relationship to each other, as Petitioner suggests. Rather, if they are “necessarily *or properly* connected” the single subject requirement is not violated. *Kelley v. Tancredo (In re Proposed Ballot Initiative on Parental Rights)*, 913 P.2d 1127, 1131 (Colo. 1996); (citing *In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995 (Public Rights in Waters II)*, 898 P.2d 1076, 1079 (Colo. 1995)).

Moreover, “just because a proposal ... makes policy choices that are not inevitably interconnected” does not mean that it violates the single-subject requirement. *In re Title v. John Fielder*, 12 P.3d 246, 254 (Colo. 2000). “It is enough that the provisions of a proposal are connected.” *Id.* (citing *In re Proposed Initiative for 1999-2000 # 25*, 974 P.2d 458, 463 (Colo. 1999)).

The Proposed Initiative addresses two existing barriers to consumers’ retail access to alcohol. Curiously, it seems Petitioner’s primary issue is that the measure expands wine sales in grocery stores but does not limit the delivery to just wine. Using this logic, if Respondents had chosen to allow for all alcohol in grocery stores and delivery then Petitioner would also be satisfied. But Respondents are permitted to make this policy choice. Respondent’s decision to only expand wine sales and not all alcohol sales does not create a single subject problem. If Respondents could do the latter, then they can also do the former.

Petitioner further argues that Respondent’s submission of multiple initiatives is somehow an admission that the initiative is not a single subject. This argument is misplaced. There are countless policy choices that could be combined to achieve an expansion of the retail sales of alcohol beverages. Proponents chose to expand retail alcohol sales by allowing additional licensees to sell wine and allowing third-party delivery of all types of alcohol beverages. While these provisions are not

necessarily required to exist in the same measure, “necessary” is not the standard for provisions to fall under a single subject. The provisions are properly connected, and, therefore, do not violate the single subject requirement.

Finally, while Petitioner places great emphasis on the arguments presented by Board Member Barry as the only member who drafts laws, but he neglects to offer that upon the conclusion of the Title Board’s term, a bipartisan bill dealing with these very same provisions was introduced in the General Assembly.<sup>1</sup> As drafted, the bill would expand distance requirements, increase retail liquor licenses, limit drug store licenses and allow for third-party delivery.

### **III. The Proposed Initiative does not present a logrolling dilemma.**

This measure does not attempt to attract different constituencies, as Petitioner suggests. Rather, it is meant to appeal to voters who approve of expanding access to retail alcohol sales. There is no trade-off required to support the policy choices made by the Proponents in the Proposed Initiative; more convenient access to alcohol at the grocery store and via delivery both point in the same direction with the goal of expanding retail sales of alcohol. *See In re 2013-2014 #89*, 328 P.3d 172, 178 (Colo. 2014).

---

<sup>1</sup> [https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a\\_1417\\_01.pdf](https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a_1417_01.pdf)

## 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 #128.

Dated: May 23, 2022

Respectfully submitted,

*s/Suzanne Taheri*

\_\_\_\_\_  
Suzanne Taheri (#23411)

MAVEN LAW GROUP, LLP

*Attorney for Respondents Steven Ward and  
Levi Mendyk*

## 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:

Mark G. Grueskin, #14621  
Recht Kornfeld, P.C.  
1600 Stout Street, Suite 1400  
Denver, Colorado 80202  
303-573-1900 (telephone)  
303-446-9400 (facsimile)  
mark@rklawpc.com  
*Attorney for Petitioner*

Emily Buckley, #43002  
Assistant Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
Telephone: (720) 508-6403  
emily.buckley@coag.gov  
*Attorney for the Title Board*

s/ Suzanne Taheri  
Suzanne Taheri