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2022 ELECTION RESULTS: MIXED

VOTERS REJECT MOST PROPOSED CHANGES TO ALCOHOL LAWS OF SEVERAL STATES



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While most Americans facing the 2022 Midterm Elections focused on “R” vs. “D,” Pro Choice vs. Pro Life, and whether (or to what extent) marijuana should be legalized, there were a number of important races addressing expanded access to alcohol beverages. Colorado and Massachusetts both faced voter referenda that sought significant changes to laws that had pretty much controlled the alcohol industry in those states since the repeal of Prohibition.

Although most alcohol-related referenda failed this election cycle, there was at least one success in Atlanta, Georgia, where votes chose to do away with the last vestiges of the City’s old Sunday sales ban. Below are the detail and what they may reveal about voter attitudes toward elections on a broader level.

COLORADO

Voters failed to approve two of three ballot initiatives outright that would have substantially liberalized the State’s restrictive system for distributing alcohol beverages. Each ballot measure required 50.01% to pass. Propositions 124 and 126 were decisively defeated; the third referendum, Proposition 125, is so close that the outcome is uncertain even with 97% of ballots counted; as of Monday, the competing sides on Proposition 125 were separated by a mere 16,600 votes out of approximately 2.2 million ballots cast, indicating that a mandatory recount likely will be triggered.

For decades, only licensed liquor stores could sell most packaged alcohol beverages. Moreover, an owner could only control a single liquor store. A state law passed in 2016 allowed full-strength beer sales in convenience and grocery stores, the first small opening in Colorado’s rigid regulatory scheme for alcohol beverages. From there, the allure of greater sales in more outlets became irresistible to industry and consumers.

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Colorado voters rejected Propositions [124](#) and [126](#), but may yet have passed [125](#) –three ballot initiatives designed to open up the alcohol markets in the Rocky Mountain State to larger players, including chain liquor stores, national grocery giants, and online delivery platforms like Drizly and Door Dash. Had these three measures passed, the new laws would have meant that for the first time since before Prohibition, or really the first time ever, Coloradans could buy wine in a grocery store, pick up alcohol from a big chain liquor store, or get distilled spirits (as well as beer and wine) delivered straight to their doorsteps. Given the stakes, it is not surprising the campaigns behind Propositions 124, 125, and 126 raised a combined \$27 million to convince voters to support them, and that these races were among the 10 most expensive ballot fights in the nation this election, according to OpenSecrets, a campaign finance tracker.

Here are the results, although passage of Proposition 125 remains an open question as the ballot counting continues for a race where victory and defeat are separated by less than one-tenth of one percentage point.

Proposition 124 would have allowed liquor store chains to eventually have an unlimited number of locations. Instead, the status quo will continue to restrict them to only operate three; the existing limit for grocers remains eight full liquor licenses per company. 62.4% of Colorado voters felt additional liquor licenses were not a good idea.

Proposition 125 by the slimmest of margins (16,627 votes, as of November 14) appears to have passed. If the victory is confirmed, the new law will make it much easier for grocers and convenience stores to sell wine, instantly converting hundreds of locations from “beer only” to “beer and wine.” This was the closest of the three referenda. As of the Monday following Tuesday’s vote, 97% of ballots had been counted, with the vote tally standing at 1,178,814 votes in favor vs. 1,162,187 votes against the measure. Given that victory requires 50.01%, passage appears to have the advantage, but this result may change as the remaining ballots are counted.

Proposition 126 would have made alcohol deliveries to consumers much more widespread. Instead, alcohol-selling businesses, including restaurants, grocers, and bars, will continue to deliver only if they use their own employees, which has limited the appeal for businesses. Proposition 126 was put forward to expand those options by allowing third-party delivery services to enter the market; rather than relying on retailers to buy vans and hire staff for delivery, online giants like Instacart and Door Dash would have been able to dispatch their gig drivers to take alcohol from licensed stores to consumers’ doorsteps. However, more than 52% of Colorado voters rejected that proposal.

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MASSACHUSETTS

Voters in the Commonwealth rejected [Question 3](#) on the Massachusetts ballot, which would have allowed for an increase in the number of alcohol licenses a single company can hold. 55.3% of voters decided to stick with the status quo, which is a state law intended to prevent monopolies by allowing individual retailers to own only up to nine licenses to sell alcohol.

Specifically, there are two types of alcohol licenses in Massachusetts: one license for beer and wine, and one often called "full" for distilled spirits, as well as beer and wine. Today, every licensed Massachusetts retailer is capped at nine full alcohol licenses and nine total licenses, which can be any combination of the two license types.

Various companies, including multi-location convenience store chains, lobbied to loosen this restriction and in recent years have proposed eliminating the cap altogether. With bigger retail chains securing alcohol licenses, concerns about mounting competition grew among smaller package stores.

As a result of Tuesday's vote, the license caps remain, but so do the existing limits on the ability of alcohol regulators to penalize licensees who violate the rules regulating Massachusetts' alcohol industry. When a licensed retailer illegally sells alcohol, such as to a minor, the Massachusetts Alcoholic Beverage Control Commission can suspend the retailer's alcohol license or accept a fine in lieu of suspension. The fines currently are calculated at 50% of total alcohol sales per each day that the company's license would have been suspended. Had Question 3 passed this election cycle, 50% of a store's total gross sales — not just alcohol sales — would determine the fine, effectively making violations more costly.

Also, the failure to adopt Question 3 leaves the issue of alcohol purchases at self-checkout stations unsettled. Current law neither allows nor prohibits self-checkouts. Had Question 3 passed, the issue would have been clarified to expressly prohibit such sales.

Finally, it is worth noting that the passage of Question 3 would have allowed alcohol-licensed retailers to accept out-of-state driver's licenses as proof of a consumer's ability to purchase alcohol legally. Because the status quo remains in place, licensees still can only accept inspection of a Massachusetts driver's license (along with certain federally issued IDs, such as a passport) to confirm a consumer's legal age.

ATLANTA, GEORGIA

Voters in Atlanta, Georgia, overwhelmingly passed the [Sunday Alcohol Sales Measure](#) that permits the sale of alcohol at package stores, grocery stores, and other retail outlets selling alcohol

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beverages in the City of Atlanta to begin at 11:00 a.m. on Sundays rather than 12:30 p.m. The bill also extends that Sunday buying time to 12:00 a.m. Midnight, instead of 11:30 p.m.

In 2018, Atlantans voted overwhelmingly in favor of the [Brunch Bill](#), allowing restaurants across the city to begin serving alcohol at 11:00 a.m. on Sunday. Tuesday's referendum extended that privilege to package stores, grocery stores, wine shops, and other licensed retailer throughout Atlanta. More than 150,000 Atlanta voters – or over 82.2% of the vote – approved the extended hours.

THE TAKE AWAY: Setting aside Atlanta's burial of an old Blue Law, the elections in Colorado and Massachusetts suggest a deep mistrust of change in alcohol regulatory policies. Changes in technology indisputably have revolutionized the marketplace. Demographic studies suggest consumers desire, and even demand, greater access to a wider variety of alcohol beverages, as well as low and no-alcohol products. And yet, voter mistrust that reforms will deliver responsible results as promised repeatedly fell below the half-way mark.

Doubtless the aggressive anti-passage campaigns launched by the respective special interests in each race contributed to that mistrust. Many of the campaigns were negative in nature, and most questioned the integrity of their opponents while simultaneously casting doubt on the ability of the proposed referenda to deliver the results promised.

But these results do beg the question: Is our election system working when voters cling to post-Prohibition rules and reject phenomena that border on the ubiquitous in today's society—for example, an alcohol delivery by Drizly or the consistency and convenience offered by a successful chain store retailer selling beer, wine, and spirits under one roof in multiple locations? Do voters really prefer the "old ways?" Or are they intimidated to reject change by ever more aggressive campaigns that focus less on facts and more on fear?

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