

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2021-2022 #134

MOTION FOR REHEARING

On behalf of Steve Ward and Levi Mendyk, registered electors in the State of Colorado, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board's April 20, 2022, decision.

1. Proposed initiative #134 contains more than a single subject.

The initiative sets a minimum wage for employees of certain types of businesses. It also changes the definition of minimum wage for these employees to exclude tips and benefits and restricts employers from keeping any portion of the employee or contractor's tip. Exclusion of tips and benefits is a second subject not related to the establishment of a minimum hourly wage. To satisfy the single subject requirement in Colo. Const. art. V, § 1(5.5), the subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous. A proposed initiative presents only one subject if it tends to effect or carry out one general objective or purpose; minor provisions necessary to effectuate the single objective or purpose of the initiative may be properly included. Conversely, an initiative violates the single subject requirement where it relates to more than one subject and has at least two distinct and separate purposes. If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 1, 374 P.3d 460, 462

The initiative also creates a definition of "chain retailer" which would potentially capture any business that sells and delivers alcohol. For instance, defining a "chain retailer" as a person or group of persons that has an integrated commercial relationship could potentially include any business that uses a credit union, owns similar investments, or even accepts credit and debit cards. It would also potentially capture businesses such as restaurants that use third-party delivery and also happen to be licensed to sell alcohol. This surreptitious provision will be a surprise to voters and is not connected to the purpose of the measure.

2. The measure violates the clear title requirement.

Opponents assert that the titles as set violate clear title as they do not describe the central features of the measure including:

The ballot title set by the Board is as follows:

“An amendment to the Colorado constitution concerning establishing minimum wage rates to be paid by businesses involved in retail sales of alcohol beverages, and, in connection therewith, setting the minimum wage at \$20 per hour for employees of a chain retailer that sells alcohol and employees of a business providing third-party alcohol delivery services and setting the minimum wage at \$24 per hour for an independent contractor who provides third-party alcohol delivery services; effective January 1, 2024, increasing the minimum wage rates annually by the cost of living; and prohibiting a chain retailer and a business providing third-party alcohol delivery services from retaining any portion of gratuities or tips given by customers.”

The ballot title fails to note that under the definitions in the measure, a “business involved in retail sales of alcohol beverages” would include restaurants. This is a central feature of the measure that must be noted in the title because the measure would establish a \$20 per hour minimum wage for employees of liquor-licensed restaurants. It would also change the wage scheme for tipped employees who currently have a different minimum wage calculation which includes their tips.

Furthermore, because of the way the initiative defines a “chain retailer,” as having an integrated commercial relationship, the measure could potentially capture retailers which have only a single establishment which sells alcohol and has at least \$100 million in annual sales. For instance, if a retail liquor store or restaurant purchases alcohol from a wholesaler which has more than \$100 million in annual revenue from selling alcohol, based upon the definition provided, the smaller business must still pay its employees \$20 per hour. The word “chain” in the title which is generally indicative of a large corporation with multiple locations. However, because of the way the term “chain retailer” is defined in the initiative, its inclusion in the ballot title obscures the initiative’s effect and may lead voters to believe that the proposed initiative will not adversely affect any independently owned and operated business.

Respectfully submitted this 27th day of April, 2022.

s/Suzanne Taheri
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