

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2021-2022 #139

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 #139 contains more than a single subject.

The initiative establishes a third-party delivery scheme for alcohol and also sets regulations for the compensation of employees and independent contractors of these third-party delivery companies. If the initiative simply covered wages, it would be possible to support a single-subject argument. However, the proposed initiative also requires the third-party delivery company to provide short-term and long-term disability insurance – a benefit that employers in Colorado may choose to offer but is not required. Furthermore, the measure creates a single-subject problem when it extends these benefits to independent contractors – a practice that is unprecedented in Colorado.

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

2. The measure violates the clear title requirement.

On April 20, 2022, the Title Board set the ballot title as follows:

A change to the Colorado Revised Statutes concerning authorization for third-party delivery of alcohol beverages from retailers licensed to sell alcohol, and, in connection therewith, establishing a third-party delivery service permit that authorizes an individual or business entity to deliver alcohol beverages sold by licensed alcohol beverage retailers for consumption off the licensed premises; establishing the requirements for obtaining a

delivery service permit, including requirements to carry insurance and to provide insurance, health-care benefits, and reimbursement for fuel costs to employees and independent contractors; requiring persons delivering and receiving alcohol beverages to be at least 21 years of age; eliminating the revenue limit on sales of alcohol beverages for delivery; and allowing a technology services company, without obtaining a third-party delivery service permit, to provide software or a digital network application that connects consumers and licensed retailers for the delivery of alcohol beverages.

The title as set by the Board does not clearly state the requirements in the measure. Many of the details left out of the title are central features of the initiative.:

- The requirement to provide short-term and long-term disability insurance is omitted from the measure.
- The title states that the third-party delivery company is required to provide insurance but does not include the specific requirements such as general liability insurance for \$1,000,000 per incident.
- The title does not state that uninsured motorist and comprehensive and collision coverage must be provided for the vehicle used for deliveries and does not note that there is no exclusion to this requirement which would allow the company to provide such insurance only while the vehicle is in operation to make deliveries.
- The measure incorrectly states that the delivery service permittee must provide, “health-care benefits,” when the actual requirement is for a stipend to pay for health care benefits. There is no requirement for the stipend to be used to purchase insurance.
- The measure, by requiring a stipend at individual market rate, precludes the organization from providing healthcare insurance to employees and independent contractors at a negotiated group rate.

Recognizing that the Title Board cannot set a title which is prejudicial to the proponents or opponents of an initiative, the goal of each of these requirements is clear. Each of these benefits is costly, and they are required to be purchased in a manner that exacts the highest cost to the third-party delivery company. The Board must recognize that the regulatory scheme proposed by #139 is burdensome by placing the specific requirements in the title.

Respectfully submitted this 27th day of April, 2022.

s/Suzanne Taheri
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