

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021- 2022 #139 Petitioners: CHRISTOPHER FINE, STEVEN WARD and LEVI MENDYK v. Respondents/Proponents: ROBERT SCHRAEDER and JOEL ALLEN CATHEY and Title Board: THERESA CONLEY; DAVID POWELL; and JULIE PELEGRIN	▲ COURT USE ONLY ▲
<i>Attorneys for Respondents</i> Martha M. Tierney, No. 27521 Tierney Lawrence LLC 225 E.16 th Ave, Suite 350 Denver, CO 80203 Phone: (303) 356-4870 E-mail: mtierney@tierneylawrence.com	Case No.: 2022SA129
RESPONDENTS' ANSWER BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 1,324 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. __, p. __), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

By: s/Martha M. Tierney

TABLE OF CONTENTS

Page(s)

SUMMARY OF ARGUMENT 1

ARGUMENT 2

 I. The Initiative Complies with the Single Subject Requirement..... 2

 A. Initiative 2021-2022 #139 Contains a Single Subject..... 2

 II. The Title Board Set a Clear Title That Summarizes the Key Components
of the Initiative..... 5

 A. The Title Is Not Misleading 5

CONCLUSION 7

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>In re Initiative for 1999-2000 #256</i> 12 P.3d 246 (Colo. 2000).....	2
<i>In re Initiative for 2013-2014 #90,</i> 328 P.3d 155 (Colo. 2014).....	2, 5
<i>Walgreen Co. v. Charnes,</i> 819 P.2d 1039 (Colo. 1991).....	3
<i>Denver v. State,</i> 788 P.2d 764 (Colo. 1990).....	3
<i>Milheim v. Moffat Tunnel Improv. Dist.,</i> 211 P. 649 (Colo. 1922).....	3
<i>Slack v. City of Colorado Springs,</i> 655 P.2d 376 (Colo. 1982).....	3
<i>In re Initiative for 2013-2014 #89,</i> 328 P.3d 172 (Colo. 2014).....	5
<i>In re Initiative for 2001-2002 #43,</i> 46 P.3d 438 (Colo. 2002).....	5
<i>In re Initiative for 2007-2008 #62,</i> 184 P.3d 52 (Colo. 2008).....	7

STATUTES

§ 44-4-102(2), C.R.S.....	3
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Robert Schraeder and Joel Allen Cathey (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Answer Brief in support of the title, ballot title and submission clause that the Title Board set for Proposed Initiative 2021-2022 #139 (“Initiative”).

SUMMARY OF ARGUMENT

The Title Board properly exercised its broad discretion drafting the title for Initiative #139. The Initiative contains a single subject by authorizing third-party delivery of alcohol beverages from retailers licensed to sell alcohol. The remaining provisions flow from the measure’s single subject and are implementation features.

Initiative #139 does not present either of the dangers attending omnibus measures - the proponents did not combine an array of disconnected subjects into the measure for the purpose of garnering support from various factions; and voters will not be surprised by, or fraudulently led to vote for, any surreptitious provisions coiled up in the folds of a complex initiative. The text of the measure is plain and sets forth its provisions clearly. The Title fairly and accurately sets forth the major features of the Initiative and is not misleading.

The Title Board is only obligated to fairly summarize the central points of a proposed measure and need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

There is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

ARGUMENT

I. The Initiative Complies with the Single Subject Requirement.

A. Initiative 2021-2022 #139 Contains a Single Subject.

The Initiative contains a single subject by authorizing third-party delivery for alcohol beverages from retailers licensed to sell alcohol. The remaining provisions flow from the measure's single subject and are implementation features, plainly and properly connected to the measure's central focus. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 253 (Colo. 2000); *accord In re Initiative for 2013-2014 #90*, 328 P.3d at 159.

Petitioner Fine seeks to find a single subject violation in Initiative #139 based on the General Assembly's 2019 declaration that the regulation of beer at the retail level is separate and distinct from wine and liquor. *See, SB 19-011*; Section

44-4-102(2), C.R.S. *Pet. Fine Op. Brief*, pp. 8-9. Here, Petitioner Fine paints with too broad a brush.

First, despite Petitioner’s claim to the contrary, the Court is not bound by legislative declarations. *See Walgreen Co. v. Charnes*, 819 P.2d 1039, 1045 (Colo. 1991) *citing Denver v. State*, 788 P.2d 764, 768, n.6 (Colo. 1990). The cases cited by Petitioner Fine do not change this tenet of statutory construction when viewed in light of Initiative #139. *See Milheim v. Moffat Tunnel Improv. Dist.*, 211 P. 649, 652 (Colo. 1922) (“[J]udgment of the Legislature is not conclusive upon the courts”); *see also Slack v. City of Colorado Springs*, 655 P.2d 376, 379 (Colo. 1982) (“[A] legislative declaration of purpose for enacting emergency legislation is conclusive and will not be reviewed in the courts.”)(emphasis supplied).

Second, even if the Court were inclined to follow the legislative declaration, it has no effect on Initiative #139. The retention of a retail sales distinction between beer and wine/liquor is not implicated in Initiative #139. Rather, the Initiative singularly authorizes third-party delivery of alcohol, not retail sales. It is a retail alcohol licensee that makes the sale of any beer, wine, or liquor, not the third-party alcohol delivery permit holder. Even the language of Initiative #139 that allows 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 does not implicate retail sales of alcohol. Instead, that language allows a technology company to link up alcohol customers to a retail alcohol licensee, who will conduct the sale.

The language in the SB19-011 legislative declaration does not create a single subjection violation in Initiative #139.

Alternatively, Petitioners Ward and Mendyk contend that Initiative #139 violates the single subject requirement because it authorizes third-party delivery of alcohol beverages and requires third-party delivery companies to provide certain benefits to their employees and independent contractors who are delivering the alcohol, including auto insurance, health insurance (or a stipend), disability insurance, and mileage reimbursement. *Pet. Ward and Mendyk Op. Brief, pp. 5-6.* Here, too, Petitioners Ward and Mendyk portray Initiative #139 too broadly. The measure does not alter the legal structure of the independent contractor relationship generally, but rather establishes third-party delivery of alcohol beverages and sets forth implementation features, including benefits to alcohol delivery drivers, on such third-party alcohol delivery. The benefits provided to third-party delivery drivers do not create a separate subject in the measure.

There is no threat of logrolling here because the proponents did not combine an array of unconnected subjects into the measure for the purpose of garnering

support from groups with different, or even conflicting interests. *In re Initiative for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014).

Additionally, voters will not be surprised by, or fraudulently led to vote for, any provisions “coiled up in the folds” of Initiative #139. *In re Initiative 2001-2002 #43*, 46 P.3d 438, 442-43 (Colo. 2002). No such surprise would occur should voters approve Initiative #139, because the plain language of the measure unambiguously authorizes third-party delivery of alcohol beverages and sets forth the process for obtaining a third-party delivery permit, including the requirements applicable to delivery drivers. The Initiative does not expand benefits to anyone other than a third-party alcohol delivery employee or independent contractor and does not establish new requirements for independent contractors generally.

Initiative #139 complies with the single subject rule.

II. The Title Board Set a Clear Title That Fairly Summarizes the Key Components of the Initiative.

A. The Title Is Not Misleading.

The Title is clear and does not mislead the voters. “While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative.” *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted). Here, the Title thoroughly but succinctly captures the key features of the

measure, is not likely to mislead voters as to the Initiative's purpose or effect, nor does the Title conceal some hidden intent.

Petitioners Ward and Mendyk claim that the title is misleading because it does not include (1) the requirement to provide short-term and long-term disability insurance for delivery drivers, (2) the amount of the general liability insurance coverage required, or (3) more detailed descriptions of each of the insurance benefits and the amounts of coverage that must be provided to delivery drivers pursuant to the measure. *Pet. Ward and Mendyk Op. Brief, pp. 8-9.* These suggested additions are not necessary, or they are already included in the title.

For example, the title does include a description of what the requirements are for obtaining a delivery service permit, including "requirements to carry insurance and to provide insurance, health-care benefits or stipend, and reimbursement for fuel costs to employees and independent contractors." The Initiative does not expand benefits to anyone other than third-party alcohol delivery employees and independent contractors, so mention of those issues in the title would be misleading. The title as set by the Title Board is clear, understandable, and alerts voters to the central features of the measure.

The Court is not to "consider whether the Title Board set the best possible title; rather, [its] duty is to ensure that the title "fairly reflect[s] the proposed

initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board." *In re Initiative for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008).

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board for Proposed Initiative 2021-2022 #139.

Respectfully submitted this 15th day of May 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2022 a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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