SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED: May 16, 2022 6:16 PM
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 #115 ("Sales and Delivery of Alcohol Beverages") Petitioner: Christopher Fine v. Respondents: Steven Ward and Levi Mendyk and Title Board: Theresa Conley, David Powell, and Jeremiah Barry	**▲COURT USE ONLY▲**
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PETITIONER'S OPENING BRIEF ON PROPOSED INITIATIVE 2021-2022 #115 ("SALES AND DELIVERY OF ALCOHOL BEVERAGES")

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).

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X It contains 9,358 words.

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X 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, 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.

s/ Mark G. Grueskin
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INTRODUCTION

Proponents made a startling admission before the Title Board. They took their multi-subject alcohol expansion measure and just "cut" one subject (third-party alcohol delivery) from the other (wine in grocery stores). Where there was only one measure before, suddenly there were two. And where Proponents had argued the broad single subject of "expansion of retail alcohol sales," suddenly that label only applied to their wine-in-food-stores measures because the single subject of their other measure was "authorization for the third-party delivery of alcohol beverages."

Taking a step back, at the end of the period for qualifying an initiative for the 2022 ballot, Proponents filed a rash of measures addressing comprehensively or separately wine sales in food stores and delivery of all alcohol beverages. Behind these measures is a coalition attempting to achieve distinct ends. Part of the coalition is seeking yet again to authorize the sale of wine in grocery stores, while another part is seeking to expand the "gig economy" to include third-party delivery of alcohol beverages. With their separate, substantive aims, there is little surprise that Proponents have had difficulty settling on one version of their measure.

The Title Board waded through no fewer than 20 of these measures, five of which are now pending before the Court (as well as several others, including a nearly identical alcohol delivery measure, filed by other proponents). Each of these

measures violates the single subject requirement by either combining wine sales and delivery in one measure; comingling regulation of beer and other alcohol beverages, which are legally separate and distinct at the retail level; and/or through the measure's "repeal and reenact" clauses. And as to some measures, the titles set by the Title Board violate the clear title requirement by either misleadingly describing the measure's single subject or omitting key elements of the measure from the titles.

Given the significant overlap among the various versions of the initiatives—and consistent errors raised on appeal—briefing in these matters is necessarily duplicative. The following chart clarifies across the different initiatives the issues presented for the Court's consideration:

Single Subject	#67	#115	#121	#122	#128	#139
Wine sale & Delivery	✓	✓			✓	
Separate & Distinct		✓	✓	✓	✓	✓
Repeal & Reenact		✓	✓			
Clear Title						
Single Subject Statement	✓	✓				
Technology Providers		✓				
On-premises / Off premises consumption	✓					

ISSUES PRESENTED

1. Whether Initiative #115 violated the constitutional single subject requirement because:

   a. It includes both (a) an expansion of permitted sales of a single type of alcohol beverage (wine) at a single category of retail sellers (food stores) and (b) authorization for third-party delivery of all types of alcohol beverages (including wine, beer, and spirits) from virtually all licensed sellers of alcohol beverages;

   b. Under existing Colorado statute, the regulation of beer at the retail level is "separate and distinct" from regulation of wine at the retail level, meaning this measure contains "separate and distinct" purposes and therefore violates the constitutional requirement that initiatives be comprised of only one subject; and

   c. The Initiative's "repeal and reenact" clauses function to in effect alter the generally applicable procedure for resolving conflicts among statutory provisions and ballot measures, and is separate from the substantive changes the Initiative makes to Colorado liquor law in violation of the single subject rule.

2. Whether the Board violated the "clear ballot title" requirement because:

a. The single subject statement set by the Title Board for Initiative #115 ("the expansion of retail sale of alcohol beverages") is inaccurate, as "delivery" of alcohol is a not a "retail sale" of alcohol and does not necessarily expand such sales.

b. The Title Board failed to state in the titles that technology services companies can play a central role in third-party delivery of alcohol beverages but are expressly exempt from having to obtain any state or local permit or license for their role in transferring such alcohol beverages to consumers.

STATEMENT OF THE CASE

A. Statement of Facts

Steven Ward and Levi Mendyk ("Proponents") proposed Initiative 2021-2022 #115 ("Initiative #115" or the "Initiative"). The Initiative seeks to change distinct aspects of Colorado's liquor law and, among its changes, are a number of unrelated purposes. The measure's separate substantive aims are to:

- Allow the sale of wine at food stores (e.g. grocery stores) that are currently authorized only to sell beer; and

- Create a new and expansive delivery scheme under which third-party delivery companies can obtain a permit authorizing them to deliver alcohol beverages from licensees to consumers.

Despite mixing the regulatory treatment of beer and other types of alcohol, the measure not only leaves in place but endorses the current statutory provision that beer is to be regulated as "separate and distinct" concern at the retail level from other alcohol beverages.

Proponents also seek to preempt any legislation passed by the General Assembly in 2022 or another 2022 ballot initiative that would address certain aspects of their measure. They accomplish this goal by repealing and reenacting selected provisions of the liquor and beer codes.

B. Nature of the Case, Course of Proceedings, and Disposition Below

A review and comment hearing was held before the Offices of Legislative Council and Legislative Legal Services. Proponents then filed a final version of Initiative #115 with the Secretary of State for submission to the Title Board.

A Title Board hearing was held on April 20, 2022, at which time the Board set titles for the Initiative. On April 27, 2022, Petitioner Christopher Fine ("Petitioner") filed a Motion for Rehearing, alleging that the Board lacked jurisdiction because Initiative #115 violated the single subject requirement, contrary

to Colo. Const. art. V, sec. 1(5.5), and that the Title Board set titles which are misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure and will mislead voters. A rehearing was held on April 29, 2022, during which the Board granted the Motion only to the extent that it made changes to the titles.

The single subject decision was determined on a 2-1 vote. The dissenting member, representing the Office of Legislative Legal Services (responsible for drafting state legislation and affixing single subjects to bills), agreed with Petitioner that the Initiative contained multiple subjects—specifically, wine sales in food stores and delivery:

> I am thinking there may very well be people who don't have a problem with adding wine to grocery stores and convenience stores but have a bigger concern when all types of hard liquor could be expanded and delivered in the manner that's proposed by Proponents.

(Apr. 6, 2022, Title Bd. Hr'g, Comments of J. Barry at 2:39:30 to 2:40:01, incorporated by the Board to apply to Initiative #115.[1]) Mr. Barry explained further in voting that the Board lacked jurisdiction:

[1] Many of the comments quoted above were made in connection with the Board's consideration of Proponents' Initiative #66, which was an earlier version of the Initiative. The Board and parties incorporated the arguments and discussion from other versions of the initiative, including Initiative #66. (*See* Apr. 20, 2022, Title Bd. Hr'g, 2:03:09 to 2:04:25; Apr. 29, 2022, Title Bd. Hr'g at 2:24:49 to 2:25:30.) Thus, the discussion regarding Initiative #66 applies to Initiative #115.

> No for the grounds that I believe that adding wine to the fermented malt beverage license and in the same measure authorizing delivery of any kind of [alcohol] from any kind of license, alcohol or licensee, constitutes two subjects.

(Apr. 29, 2022, Title Bd. Hr'g at 2:19:45 to 2:20:10.[2]) The other members of the Board recognized the Initiative raised single subject concerns (Apr. 6, 2022, Title Bd. Hr'g, Comments of T. Conley at 2:37:39 and D. Powell at 2:38:10 (recognizing it is a "good argument"). The Board's chair agreed that voters could see wine sales and delivery very differently:

> I do think you're right. People may say ok its fine wine is being sold in a liquor store [sic.] but I don't know if I want cases of alcohol of whatever nature to be delivered.
>
> . . .
>
> I am not concerned about adding delivery of wine as a single subject. But I am chewing a little bit on the idea that your, one part of the measure is expanding being able to buy wine at the grocery store but the other measure isn't just delivering that same wine it's also delivering alcohol, spirits, and things of that nature. . . .

The Board chair validated those concerns, saying "I do see those (delivery and supermarket wine access) as being two things" that not all voters would naturally

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The recording of the April 6, 20, and 29 Title Board hearings can be found at https://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html.

[2] Mr. Barry made this comment during the discussion of Initiative #113, which comment he incorporated to explain his "no" vote on Initiative #115. (Apr. 29, 2022, Title Bd. Hr'g at 2:28:35 to2:28:40.)

support in the same measure. (*Id.*, Comments of T. Conley, 2:43:09 to 2:43:20, 2:46:31 to 2:46:52, 2:49:12 to 2:49:26.)

Despite the single subject concerns expressed over Proponents' distinct subjects, the Board voted it had jurisdiction by a single vote. The Board amended the titles it set originally for Initiative #115 with the following title:

> Shall there be a change to the Colorado Revised Statutes concerning the expansion of retail sale of alcohol beverages, and, in connection therewith, establishing a new fermented malt beverage and wine retailer license for off-site consumption to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine; automatically converting such a fermented malt beverage retailer license to the new license; allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local licensing authority; allowing retail establishments, including restaurants and liquor stores, to deliver any alcohol beverages, they are licensed to sell, to a person 21 years of age or older through a third-party delivery service that has obtained a delivery service permit; and removing the limit on the percentage of gross sales revenues a licensee may derive from alcohol beverage deliveries?

SUMMARY OF ARGUMENT

Initiative #115 presents the challenges for voters that the single subject requirement is intended to prevent. It combines different substantive aims (wine sales and delivery) that bear no necessary or logical relationship to each other. It packages in one measure topics (beer and other alcohol beverages) that the General Assembly has determined are "separate and distinct" as a matter of state regulatory

policy at the retail level. It includes a novel procedural mechanism (repeal and reenact) to preempt competing legislation from the General Assembly or another ballot measure—even if those measures do not conflict with Initiative #115's substantive aims.

Proponents' admissions at hearings on their various measures should be conclusive for the Court. They stated that their measures, with two subjects combined and split into 20 initiatives, reflected the different interests of their different coalition members. They also admitted that, to separate the two subjects, they just "cut" the third-party delivery permit provisions from the wine-in-grocery-stores provisions. It seemed like a natural division of topics and easy to accomplish. That ease should be telling for the Court's own single subject analysis.

And on top of these constitutional flaws, the Title Board did not even describe the single subject of the measure accurately. It also omitted from the titles a description of the unlicensed and permitted nature of technology companies under the bill, which is a critical element of the measure—a fact made plain by the Board itself, which included that description in the titles for alcohol delivery only measures, such as Initiatives #122 and 139, which are pending before this Court.

LEGAL ARGUMENT

I. Initiative #115 contains multiple separate and distinct subjects, which deprives the Title Board of jurisdiction to set titles.

A. Standard of review; preservation of issue below.

The Colorado Constitution requires that any initiative must comprise a single subject. Colo. Const., art. V, § 1(5.5). Where a measure contains multiple subjects, the Board lacks jurisdiction to set a title. The Board's analysis and this Court's review is a limited one, addressing the meaning of an initiative to identify its subject or subjects. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175*, 987 P.2d 243, 245 (Colo. 1999). To find that a measure addresses only one subject, the Court must determine that an initiative's topics are "necessarily and properly" related to the general single subject, rather than "disconnected or incongruous" with that subject. *In re Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 (1996-17)*, 920 P.2d 798, 802 (Colo. 1996).

Petitioner raised this issue in his Motion for Rehearing, and during the hearing on Proponents' initiatives, and, therefore, preserved the issue for review. (*See* Pet.'s Mot. for Reh'g on Initiative 2021-2022 #115 at 1-3.)

B. Initiative #115's multiple subjects.

Proponents' measure contains multiple subjects in violation of the single subject rule: (1) permitting wine sales (***one*** type of alcohol) in food stores (***one*** type of licensee); (2) allowing the delivery of ***any type*** of alcohol beverage (beer, wine, hard liquor, etc.) from ***any type*** of retail licensee by ***anyone*** so long as they hold a delivery permit (distinguished from a liquor license); (3) altering the regulatory scheme for beer ***and*** other types of alcohol, which, as a matter of law, are "separate and distinct" regulatory concerns at the retail level; and (4) preempting any bill passed by the General Assembly in 2022 or other 2022 ballot measures that addresses certain provisions of Initiative #115—regardless of what those other bills concern or how many votes another successful initiative receives—through the Initiative's "repeal and reenact" clauses.

1. Initiative #115's first subject: wine sales at food stores.

Colorado traditionally has circumscribed the sale of alcohol beverages, including restrictions governing the types of alcohol different licensees can sell. In particular, Colorado limited what food stores such as grocery stores could sell to low-alcohol beer (so-called 3.2 beer). That approach changed when the General Assembly passed Senate Bill 16-197, which, among other changes, allowed food stores to begin selling full strength beer. *See generally* Colo. Liquor Enforcement

Div., "Senate Bill 16-197," https://sbg.colorado.gov/senate-bill-16-197 (providing background on SB 16-197).

Senate Bill 16-197 did not remove all of the limits on what food stores could sell. Notably, it did not authorize food stores to sell wine or hard liquor. The retail sale of those types of alcohol beverages for off-premises consumption (i.e. not consumed at an establishment such as a restaurant) remained limited to certain licensees (e.g. retail liquor store licensees).

Initiative #115 is, therefore, a significant change to existing law that permits the purchase of more and qualitatively different alcoholic beverages in food stores. In order to achieve this purpose, Proponents need only make targeted changes to Colorado's liquor law, which they accomplish by expanding the privilege of a fermented malt beverage license under the Colorado Beer Code to include wine sales (what becomes a "fermented malt beverage and wine retailer" license) and adjusting certain procedural issues. Proponents do not need to change the privileges or authorizations applicable to ***other*** types of licensees or the delivery of ***other*** types of alcohol beverages to achieve their objective of wine sales in food stores.

But to achieve this aim, Proponents know they need more than a measure that simply proposes allowing wine sales at grocery stores. For more than 40 years, grocery store owners have tried to win this authority. *See, e.g., In re Title, Ballot*

Title & Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores Initiative, 646 P.2d 916 (Colo. 1982). They were soundly defeated when they proposed Amendment 7 on the 1982 ballot[3]—it received only 35% of the vote.[4] And since then, they haven't yet succeeded to do so with legislators or voters.

2. Initiative #115's second subject: alcohol delivery.

Aware of their past challenges in getting popular or legislative support for the concept of wine sales in grocery stores, Proponents created a new coalition and combined a second subject to their Initiative by creating a broad authorization for alcohol delivery by unlicensed, third-party delivery services. As Proponents' counsel described it:

> When proponents bring things forward, they make policy choices. In this particular case, we have a large coalition. ***Some of their interests are in one place, and some of their interests are in another***. And then there are things that happen at the legislature.

[3] Legislative Council of the Colo. Gen. Assembly, *An Analysis of 1982 Ballot Proposals* at 33-36, available at https://www.coloradosos.gov/pubs/elections/Results/BlueBooks/1982BlueBook.pdf (last viewed May 3, 2022).

[4] Colorado Secretary of State, *1982 Abstract of Vote* at 186-87, available at https://www.coloradosos.gov/pubs/elections/Results/Abstract/pdf/1900-1999/1982AbstractBook.pdf (last viewed May 3, 2022).

(Apr. 29, 2022, Title Bd. Hr'g at 11:30 to 12:45 (arising in discussion of Initiative #112)). Rarely are proponents so candid that they have melded inconsistent interests in order to produce a single initiative. If their interests behind this Initiative are in two separate camps, there is no reason to think that the voters would share concerns that the aforementioned interests do not share. Of course, they won't. Voters will be appealed to separately to create a coalition to pass two distinct concepts that could not each pass separately.

Furthermore, if these two subjects are essentially the same thing, the split measures should have the same single subject description. They don't. The Title Board used the subject of "expansion of retail alcohol sales" to describe the wine-in-food-stores only measures.[5] They didn't use this same single subject to describe the delivery only measures. Instead, the single subject of those initiatives was "authorization for the third-party delivery of alcohol beverages."[6] If these two proposals are essential, constituent parts of the same subject, how are their "clear" single subject descriptions so different and disconnected?

[5] *See, e.g., In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #121*, Case No. 2022SA000148; Record at 13.

[6] *See, e.g., In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #122*, Case No. 2022SA000149; Record at 7.

That is because the new delivery scheme bears no logical or necessary relationship to allowing food stores to sell wine; it is unnecessary to allow delivery of alcohol (all types) in order to permit food stores to add wine on their shelves. Initiative #115 thus includes a second subject to legislate to achieve an entirely unrelated objective. Like wine sales in grocery stores, third-party alcohol delivery hasn't exactly generated a significant amount of support on its own. When a bill for third-party delivery of just beer was considered by the General Assembly in 2021 (SB21-086), it got exactly one (1) vote—in committee—and died there.[7]

The separateness of these two topics is revealed in the Initiative's own declaration, which had to use the conjunction "and" to describe the measure:

> The People of the State of Colorado hereby find and declare that Article 4 of Title 44, Colorado Revised Statutes, known as the "Colorado Beer Code", shall be amended to allow, beginning March 1, 2023, the sale of wine in grocery and convenience stores that are licensed to sell beer; ***and*** permit home delivery of alcohol sales made by licensed retailers through a third-party home delivery service provider.

(Initiative #115, sec. 1. (emphasis added). The separateness of Proponents' objectives becomes more obvious in the statutory changes they must make. Allowing wine sales in food stores requires substantive changes to the Colorado Beer Code (with some conforming changes in the Liquor Code). But adding delivery of any

[7] See Exhibit A, attached hereto, and the bill history for SB21-086 is available at http://leg.colorado.gov/bills/sb21-086.

alcohol from other licensees requires Proponents to substantively change an entirely different code—the ***Liquor*** Code.

Initiative #115 repeals the limited authorization for alcohol delivery that currently exists in Colorado law and replaces it with a broad authorization for alcohol delivery that extends beyond licensees to gig services as well as delivery conglomerates such as Amazon. Under this new scheme, not only can any on-premises (e.g., restaurant) or off-premises (e.g., liquor store) licensee deliver alcohol from its inventory through its employees to its customers, so too can any other person or business, regardless of whether they are Colorado businesses or residents, deliver alcohol so long as they obtain a "delivery permit." (Initiative #115, sec. 13, proposed C.R.S. § 44-3-911.5.) The holder of a delivery permit can thus deliver any type of alcohol.

Under Initiative #115, then, a company that operates like Uber Eats or Grubhub could start delivering alcohol from any liquor licensee to a consumer (an example of this type of company is Drizly, https://drizly.com/). And the Initiative removes the current statutory revenue caps on alcohol deliveries, which means that delivery could be the ***entire*** business venture (as opposed to a limited component of a licensees' business). (*Id.*, secs. 14-16.)

Delivery, however, has no logical or necessary relationship to the Initiative's first purpose, wine sales in food stores. Proponents can authorize wine sales in food stores without changing Colorado's law with respect to alcohol delivery. Similarly, Proponents could have authorized alcohol delivery without changing the privileges of a fermented malt beverages retailer license to permit wine sales in grocery stores. Neither is necessary to address the other, a fact made plain by Proponents filing other initiatives on these subjects that separates them.

Proponents filed multiple standalone initiatives that address either wine sales in food stores ***or*** alcohol delivery after Petitioner had objected to the single subject of their first measures, Initiatives #66 and #67, which combined both subjects. *Compare, e.g.*, Initiatives 2021-2022 #122-125 (third party delivery of alcohol), *with* Initiatives 2021-2022 #120, 121, 129 (wine sales in food stores).[8] As the division of Initiative #115's subjects into those initiatives demonstrates, Proponents can achieve one objective without addressing the other—in other words, the objectives are logically and legally independent of each other.

[8] After Petitioner filed for review in this Court, Proponents withdrew Initiatives 120, 123-25, and 129. All of the measures are available on the Secretary of State's website at https://www.coloradosos.gov/pubs/elections/Initiatives/titleBoard/index.html.

In fact, Proponents explained their first wine-in-food-stores only measure (Initiative #120) in a telling way. Explaining how it was different from the initiatives that combined this subject with third-party delivery, the Proponents stated about Initiative #120: "It is only adding wine to the beer license; [Proponents] just cut all the delivery out of the question." Two subjects, so easily severed from one another, represent the epitome of a measure that violates the single subject mandate.

It is not just the actions and statements of Proponents that establish single subject overreach, although such actions and statements are compelling evidence that this measure does not satisfy the single subject requirement. Initiative #115 itself admits as much. In describing the availability of delivery permits to liquor licensees, the Initiative states that delivery is a privilege "***separate***" from the licensee's license privileges:

> The holder of a license listed in this subsection (1) must apply for and to hold a delivery service permit ***as a privilege separate from its existing license*** in order to use independent contractors for delivery.

(Initiative #115, 13, proposed C.R.S. § 44-3-911.5(1) (emphasis added).) By being a "separate" privilege, Proponents are saying that sales does not include delivery and delivery does not include sales. One can exist without the other.

What Proponents have done is to take a single change to one subject (wine sales in food stores) and used it as a way to add votes to a broad proposal that, itself,

has faced stiff political winds (third-party delivery). The second subject here violates the underlying concern behind the single subject requirement that a subject pass on its own merits and without comingling of support for another subject. *See In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶11, 274 P.3d 562, 566 (Colo. 2012) (single subject rule prevents "combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions . . . could lead to the enactment of measures that would fail on their own merits"). The Court has specifically, and recently, rejected essentially what Proponents attempt to do.

The case concerned an initiative to amend the state's animal cruelty laws. *In re Title, Ballot Title and Submission Clause for 2021-2022 #16 (In re # 16)*, 2021 CO 55, 489 P.3d 1217. The purpose of the measure was to extend the state's animal cruelty laws to livestock. 2021 CO 55, ¶¶ 2, 21-22. The proponents added a second subject: a redefinition of "sexual act with an animal" that applied to ***all*** animals. *Id.* ¶ 2. The Court held that this was impermissible, explaining: "Initiative 16 fails to satisfy the single-subject requirement because expanding the definition of 'sexual act with an animal' isn't necessarily and properly connected to the measure's central focus of incorporating livestock into the animal cruelty statutes." *Id.* ¶ 41. The same conclusion holds true here. Expanding delivery of all types of alcohol by licensees

and non-licensees is not "necessarily and property connected" to the Initiative's "central focus" of allowing wine sales at food stores.

Before the Board, Proponents attempted to avoid this straightforward application of *In re # 16* by describing the single subject of the Initiative expansively as amending Colorado liquor laws. However, describing the single subject in broad terms does not avoid a single subject violation, as the Court explained in *In re # 16*. The proponents and the Board there framed the initiative's subject as "animal cruelty." *Id.*, ¶ 20. The Court explained that initiative proponents cannot avoid single subject issues through the use of a general subject. "Animal cruelty" was "the type of overly broad theme that we've rejected" for single-subject analysis. *Id.* ¶ 22. The Court reiterated that "vague subjects" are impermissible because they allow "incongruous and disconnected provisions [to] be contained in a single initiative and the very practices the single subject requirement was intended to prevent would be facilitated." *Id.* ¶ 22 (quoting *In re The Title, Ballot Title And Submission Clause, And Summary For 1997-1998 # 64*, 960 P.2d 1192, 1200 (Colo. 1998)).

Proponents' subject in Initiative #115 is, as in *In re # 16*, impermissibly vague or overly general. Although Initiative #115 involves alcohol and Colorado's liquor laws, its aim is a multi-faceted remake of the current limits on food store sales of alcohol beverages as well as a whole new authorization for delivery agents who

operate apart from heavily regulated, licensed liquor sales operations. Proponents cannot obscure the distinct goals they seek to advance in a generic single subject.

An initiative that groups fundamentally separate subjects in one measure presents "the logrolling dilemma that the voters intended to avoid when they adopted the single subject requirements of article V, section 1(5.5) of the Colorado Constitution." *In re Title, Ballot Title, and Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 31, 274 P.3d 562, 571. Other voters may not even understand that they are authorizing fundamentally different—or surreptitious—activities. Combining different subjects creates the "risk of surprising voters with a 'surreptitious' change,' because voters may focus on one change and overlook the other." *In re # 16*, 2021 CO 55, ¶ 41 (internal citation omitted).

The Board saw evidence of just how one subject of this measure could overshadow another in terms of messaging with voters. A well-known op-ed writer wrote a column for *The Denver Post* about how this initiative could help rid the state of outdated liquor laws. She focused entirely about the ease of shopping in one store to meet one's grocery and wine needs. Other than a passing reference to "internet sales" and "E-commerce" in the third paragraph from the end, the issue of third-party delivery was never mentioned in a piece that argued for support of Initiative #115. (*See* Kafer, K., "Don't postpone repeal of the last Prohibition-style laws just

to save the liquor stores," *The Denver Post* (Ex. A to Pet.'s Mot. for Rehr'g on Initiative 2021-2022 #115; R. at 26-27). If ever the Court had a preview of coming attractions in campaign rhetoric, this column provides concrete insight about what can be expected when voters are urged to cast their votes based on only one of the measure's two subjects.

In its current form, Initiative #115 forces voters to weigh a trade-off between finding a nice Cabernet in the Gatorade aisle at their neighborhood grocery store against home delivery of every alcohol type by Uber drivers under a law that allows liquor licensees to do 100% of their business via deliveries with ***no*** in-store sales at all. For some, the former is the priority; for others, the convenience of a broader delivery service is all they want. But to get one, they must accept both—at least under this version of Proponents' measure.

Proponents want to accomplish two substantive objectives. Both fall within the overly broad umbrella of "alcohol"—wine sales in food stores and delivery—but that's where their common thread ends. As such, they are different subjects. Accomplishing one of these goals does not require addressing the other. Combining them in one initiative violates the single subject requirement, and the Board lacked jurisdiction to set titles.

3. Initiative #115's third subject: comingling retail regulation of beer and other alcohol beverages.

The separateness of Proponents' measure is emphasized by the General Assembly's finding that different types of alcohol are, as a matter of law, to be treated separately at the retail level. The General Assembly concluded that beer presents different and lesser public health and safety concerns than wine and spirits or hard liquor. The so-called "Beer Code" creates a separate regulatory framework for the retail sale of beer. *See* C.R.S. §§ 44-4-101 *et seq*. The Beer Code affirmatively declares that the regulation of beer at the retail level is "separate and distinct" from other alcohol beverages:

> The general assembly further recognizes that fermented malt beverages and malt liquors ***are separate and distinct from***, and have a unique regulatory history in relation to, vinous and spirituous liquors; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages under this article 4 is no longer necessary ***except at the retail level***. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article 4.

C.R.S. § 44-4-102(2) (emphasis added). In other words, the General Assembly has directed, as an exercise of its "police powers," *see* C.R.S. § 44-3-102(1), that retail offerings of beer and other alcohol beverages are to be dealt with as separate regulatory matters.

The General Assembly has long been responsible for the regulation of liquor, and it has created an intricate framework to control the distribution and sale of alcohol beverages. These policies stem from a long history of careful, targeted regulatory treatment of various types of alcohol which triggers different levels of state-directed oversight. It is no surprise, then, that the regulation of all types of alcohol is a matter of statewide concern. *See, e.g., Kelly v. City of Fort Collins*, 431 P.2d 785, 787 (Colo. 1967).

The legislature's decision to treat beer differently and declare its regulation as "separate and distinct" at retail from other alcohol beverages was a consequential legislative choice that neither the courts nor the Title Board should displace in the absence of the repeal of such a declaration. Indeed, far from repealing the declaration, Proponents endorse it in their measure:

> The general assembly further recognizes that fermented malt beverages and malt liquors are separate and distinct from, and have a unique regulatory history in relation to, vinous and spirituous liquors; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages AND FERMENTED MALT BEVERAGES AND WINE under this article 4 is no longer necessary ***except at the retail level***. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages AND FERMENTED MALT BEVERAGES AND WINE, except when otherwise expressly provided for in this article 4.

(Initiative #115, sec. 7, C.R.S. § 44-4-102(2).) Under Proponents' revisions, the provision says that a separate regulatory framework for beer and wine is unnecessary "***except at retail***."

It is incumbent upon this Court "to ascertain and give effect to the General Assembly's intent," *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2011-2012 Nos. 67, 68, and 69 ["2011-2012 Nos. 67, 68, and 69"]*, 2013 CO 1, ¶ 12, 293 P.3d 551, and the Title Board has no greater latitude than this Court would have to bypass clear statutory pronouncements. *Cf. Price v. Mills*, 728 P.2d 715, 720 (Colo. 1986) (no deference due to administrative interpretation of a statute that "contravenes . . . legislative . . . policies").

The General Assembly's determination that beer and more potent alcohol beverages are separate and distinct should guide the application of the single subject rule here. As the Court has recognized, the General Assembly plays an important role in implementing the Constitution's provisions governing ballot initiatives. For instance, the General Assembly created the Title Board and assigned to it the constitutional responsibilities for setting ballot titles. *See, e.g.*, *2011-2012 Nos. 67, 68, and 69*, *supra*, 2013 CO 1, ¶ 14. The General Assembly has further delineated the procedures and timelines for the ballot title setting process, which this Court has held it must apply as intended by the legislature. *See, e.g.*, *In re Title, Ballot Title*

and Submission Clause for 2019-2020 #74 and In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #75, 2020 CO 5, 455 P.3d 759.

In fact, the Court has recognized the authority of the General Assembly to implement and enforce the single subject requirement itself. As the Court explained, in passing C.R.S. § 1-40-106.5, the General Assembly described through a legislative declaration the concerns behind the single subject rule, and it "***directed*** that the single subject and title requirements for initiatives be liberally construed, 'so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.'" *In re Title, Ballot Title and Submission Clause, and Summary with regard to a Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X (Amend Tabor 25)*, 900 P.2d 121, 124-25 (Colo. 1995) (quoting C.R.S. § 1-40-106.5) (emphasis added). This Court has relied on that legislative declaration from the time immediately following its enactment, *see id*., and it remains a source of consistent direction for this Court as well as the Title Board, *see, e.g.*, *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶¶ 12-14, 500 P.3d 363, 365.

Although the General Assembly has authorized the Board to fix titles and enforce the single subject requirement, *see* C.R.S. §§ 1-40-106 and -106.5, the

legislature has not endowed it with authority to make its own legislative determinations or to change or deviate from those made by the General Assembly—or in this case, from the Proponents themselves. Rather, the Board must act within the limits prescribed by the General Assembly, which includes the "substantive requirements" of state statute as they affect the title setting process. *See 2011-2012 Nos. 67, 68, and 69, supra*, 2013 CO 1, ¶ 16 (holding Board lacked authority to deviate from a "substantive" requirement of Title 1, Article 40, the mandatory attendance by both designated representatives at all hearings on their measure). And that is the situation here. The General Assembly has already pronounced, as an exercise of its police powers, that the regulation of beer and other alcohol beverages (i.e. wine and spirits) is "separate and distinct" at the "retail level." C.R.S. § 44-4-102(2).

Initiative #115 effectively bypasses the statutory division of the regulation of wine and beer at retail. It allows for the sale of wine in food stores along with beer, and it also proposes an expansive new delivery scheme that operates at the retail level to deliver any and all alcohol beverages from licensees to consumers—beer, wine, hard liquor, as well as alcohol beverages by the drink. It does so under the guise of a delivery permit which triggers little real regulation of the companies that will provide this service. This is precisely the mixing of the regulation of beer with

other alcohol beverages—substances of different potency and therefore different impact on consumers—that C.R.S. § 44-4-102(2) dictates should not generally occur, both in current statute and in this Initiative. The Title Board could not ignore a legislative finding of separateness by the General Assembly that Proponents themselves endorse.

For example, the General Assembly's use of a safety clause, a legislative declaration that a law is necessary for the immediate preservation of the public peace, health, or safety—and thus beyond the referendum power of voters—"is conclusive upon all departments of government" and is determinative of whether the right of referendum may be exercised regarding that legislation. *Van Kleeck v. Ramer*, 156 P. 1106, 1109 (Colo. 1916). As a general matter, when it considers an initiative for title setting, the Title Board does not have "authority that the General Assembly withheld." *In re Title, Ballot Title, and Submission Clause for 2013-2014 #103*, 2014 CO 61, ¶ 18, 328 P.3d 127, 131. Thus, the Board could not ignore the clear legislative assessment of beer and wine at the retail level to be a separate subject for this purpose.

The legislature's declaration that Proponents endorse in this Initiative relates directly to the single subject standard that is this Court's central inquiry, i.e., identifying a separate and distinct purpose. Where "[t]here is nothing in the record

to show that this legislative declaration was arbitrary or unfounded in reason" (and there is nothing to suggest such lack of thought by the General Assembly here), that declaration "is conclusive" on the parties to which it applies, and the Court "is bound by" it. *Milheim v. Moffat Tunnel Improv. Dist*., 211 P. 649, 658 (Colo. 1922); *see also Slack v. City of Colorado Springs*, 655 P.2d 376, 379 (Colo. 1982).

This principle has not been limited in this Court's application to safety clauses. A legislative determination dealing with more routine matters can still be "conclusive" as a matter of law. *Milheim, supra,* 211 P. at 658 (giving effect to legislative declaration that assessments did not exceed the benefits of a publicly financed improvement project as "conclusive" on the courts). Even a legislative declaration that is not deemed to be conclusive is "entitled to great weight." *Id*. at 657. Here, the Title Board did not evaluate how much weight to give this legislative declaration; the Board just ignored it.

The Title Board's willingness to look away from this legislative determination, if accepted by this Court, produces a slippery slope. If the legislature's distinction regarding agency regulation of wine and beer is deemed to be of no consequence, such a decision would also erase the underpinnings for differential levels of regulation (depending on the alcohol beverages at issue and their alcoholic content) and, as importantly, differential levels of taxation as

determined by the taxing governmental entity. *See Springston v. City of Ft. Collins*, 518 P.2d 939, 940 (Colo. 1974) (upholding district court finding that different categories of license were "separate and distinct" from one another and therefore there was a rational basis for different levels of taxation on the two types of products sold under these liquor licenses).

So long as the retail level regulation of beer and other alcohol beverages is legally categorized as "separate and distinct," a measure that ignores this delineation and authorizes the same treatment of them at the retail level necessarily violates the single subject requirement. An initiative cannot have a single subject if it involves two matters that the law mandates are "separate and distinct." As such, under specialized facts unique to this statutory scheme, the Court should hold the Board erred in finding it had jurisdiction.

4. Initiative #115's fourth subject: the repeal and reenact.

Proponents included in two sections of their Initiative "repeal and reenact" clauses. The purpose of these clauses, as Proponents' counsel admitted during the April 20 title hearing, was to prevent any amendments to these sections made by the General Assembly in 2022 or another 2022 ballot measure from being effective:

> Board Chair: If there is pending legislation right now that passes this session . . . it would then repeal . . . any changes made before Nov. 8, 2022.

> S. Taheri: Or it would potentially conflict with another measure that were to pass at the same time.

(Apr. 20, 2022, Title Bd. Hr'g, 1:32:51 to 1:33:16.[9]) This provision raises several single subject concerns.

Proponents seek to side step the usual procedures for determining whether a conflict between ballot initiatives exists, and if so determining which provision prevails, through their "repeal and reenact" clauses. These clauses seek to declare preemptively that Initiative #115 prevails over legislation that was passed by the General Assembly in the 2022 session, at a special session if that is called before this measure is adopted, or through another ballot measure that is adopted at the 2022 election. Proponents seek to prevail ***regardless*** of whether there is an irreconcilable conflict between the provisions and without any attempt to harmonize the provisions as the courts usually do, and ***regardless***, in the case of ballot measures, of which measure receives the most votes.

Although Proponents tried to walk back their admission that the repeal and reenact clauses are intended to have this effect, (*see* Apr. 29, 2022, Title Bd. Hr'g 2:09:45 to 2:13:18), the Court should take Proponents, speaking through experienced

[9] This discussion occurred in the context of Initiative #113, which was the first version of Proponents' measure the Board considered with the "repeal and reenact" provisions.

counsel, at their word when they initially explained their reasoning. Proponents only disclaimed their intent ***after*** Petitioner filed his motion for rehearing raising the issue, and on the substance, the repeal and reenact clauses may only have meaning as to other ballot measures.

Given the flood of alcohol measures in the initiative system in 2022, Proponents are trying to have the last word even if their measure conflicts with another but gets fewer votes than the conflicting initiative. Their intent is to create a unique procedure for resolving conflict between simultaneously enacted laws, and that gambit is a separate and distinct subject from the substantive changes to Colorado's liquor laws that Proponents also seek.

This drafting trick gives new meaning to "coiled in the folds." Voters would never think that two "yes" votes on two ballot measures that seem to affect the regulation of alcohol would actually result in a "yes" vote on one measure that was designed to, and would, cancel their vote on the other. If ever the concern behind the single subject requirement had a poster child, this provision would be it.

The Court has seen this type of measure before. Where a measure appeared to modify petition procedures but then also repealed the single subject requirement itself, the Court held that such a measure struck at the heart of the single subject mandate and violated it. "Obfuscating the repeal of such a fundamental requirement

within the folds of a complex initiative purporting to deal only with the procedural right to petition violates this provision. In fact, it is precisely the type of ploy article V, section 1(5.5) was intended to protect against." *In re Title, Ballot Title And Submission Clause For Proposed Initiative 2001-02 # 43*, 46 P.3d 438, 447 (Colo. 2002).

In the same way, this measure holds unhappy surprises for voters. Either they will not know they are cancelling out their own vote on another measure by approving this Initiative, or they will understand that fact (although the titles do not apprise them of this) and be forced into trade-offs to figure out which measure(s) they can support so that all of their votes have meaning. Ballot initiatives shouldn't put voters in this position.

The repeal and reenact clauses raise an additional single subject problem because they displace specified sections of the statute regardless of their content. Proponents could be repealing provisions of law that have nothing to do with the substantive aim of their Initiative, depending on what is contained within the statutory section being repealed and reenacted. To give an example from one Title Board member:

> If a law was changed between now and when this is on the ballot . . . a new provision [was] put in place that says [inaudible] if you sell diapers, you automatically get a liquor license.

(Apr. 20, 2022, Title Bd. Hr'g at 1:44:43 to 1:45:01.) Such random changes in the substantive law would not be related to Proponents' objective of wine sales in food stores or alcohol delivery. These "bystander" provisions would simply fall because of Proponents use of the "repeal and reenact" rubric. Just as the Board struggled to understand the consequences of the repeal and reenact provisions, as shown in the quotation above, voters will have no notice as to what law they may be changing by approving the measure. *See In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006) (measure's failure to define "non-emergency services," which could cover a variety of different welfare and administrative related services, violated single subject rule because the "Initiative fails to inform voters of the services its passage would affect").

Consider, for instance, proposed C.R.S. § 44-3-301(12)(a), which governs distance requirements between retail licensees, and § 44-3-301(12)(c), which concerns how to measure distances. These are generally applicable distance requirements and are not specific to the beer and wine license Initiative #115 concerns (as shown by proposed 44-3-301(12)(a.5), which applies to that license). Repealing and reenacting general distance requirements bears no relation to wine sales in food stores or delivery; however, if the General Assembly or another bill modifies those requirements, Proponents' distance requirement would prevail. Or in

the Beer Code, by repealing and reenacting C.R.S. 44-4-104(1), Proponents are preempting any changes to various licensing and regulatory matters such as the license application fee (-104(1)(c)(I)(A)), who the retail licensee may purchase product from (-104(c)(I)(B)), and the definition of an "underserved area" (-104(c)(IV)) and what population statistics are used to determine it (-104(c)(V))—all of which have nothing to do with authorizing food stores to sell wine.

Initiative #115 may generally involve alcohol beverages, but layered within its folds are a variety of different subjects that bear no logical or necessary connection to each other. As such, the measure violates the single subject rule, and the Title Board erred by finding it had jurisdiction to set titles.

II. The titles set by the Board fail to inform voters about certain central elements of the measure and would mislead voters.

A. Standard of review; preservation of issue below.

An initiative title must "fairly summarize the central points" of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin*., 877 P.2d 311, 315 (Colo. 1994). Titles must be "fair, clear, accurate, and complete" but are not required to "set out every detail of the initiative." *In the Matter of the Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006).

This Court will review titles set by the Board "with great deference" but will reverse the Board where "the titles are insufficient, unfair, or misleading." *Id.* No such deference is required where the titles "contain a material and significant omission, misstatement, or misrepresentation." *In re Ballot Title 1997-1998 #62*, 961 P.2d 1077, 1082 (Colo. 1998). "Perfection (in writing a ballot title) is not the goal; however, the Title Board's chosen language must not mislead the voters." *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #29*, 972 P.2d 257, 266 (Colo. 1999).

Petitioner raised these issues in his Motion for Rehearing and, therefore, preserved them. (*See* Mot. for Reh'g on Initiative 2021-2022 #115 at 4.)

B. The titles are misleading.

This appeal also concerns the Board's inadequate titles, which fail to provide voters with the necessary insight to understand key elements of the Initiative. The Court reviews the Board's work "to ensure that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board." *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 24, 369 P.3d 565, 569. Given the defective titles fixed by the Board, voters will not understand (1) the single

subject of the measure and (2) that the measure does not require technology providers involved in alcohol delivery to obtain a permit or license.

1. The titles inaccurately describe the measure's single subject because "delivery" is not an "expansion of retail sale of alcohol beverages."

If the Court determines that the measure does not violate the Constitution's single subject requirement, then it should at least ensure that the titles accurately describe the measure. The Constitution prescribes that "[n]o measure shall be proposed by petition containing more than one subject, ***which shall be clearly expressed in its title***[.]" Colo. Const. art. V, sec. 1(5.5) (emphasis added). The use of "clearly" to modify "single subject" was a consequential choice, whether it applies to legislative bills or to initiatives. "The matter covered by legislation is to be 'clearly,' not 'dubiously' or 'obscurely,' indicated by the title." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 25*, 974 P.2d 458, 462 (Colo. 1999). The titles here do not past that test.

The Board fixed the titles' statement of single subject as the "expansion of retail ***sale*** of alcohol beverages." Although that statement is accurate as to one of the Initiative's purposes (allowing wine sales at food stores), it does not capture the second, substantive aim of the initiative to enact a new delivery scheme.

In the era of Uber Eats and similar services, third-party delivery services provide convenience and access without serving as the originating point of a product. In order to obtain that product, some retail enterprise needs to be on the other end of that transaction. "The common usage of the term 'sale' 'refer[s] to a contract whereby the ***ownership of property*** is transferred from one person to another for a sum of money or other valuable consideration.'" *People v. Cardenas*, 2014 COA 35, ¶ 26, 338 P.3d 430, 434 (quoting *State Dep't of Revenue v. Adolph Coors Co.*, 724 P.2d 1341, 1351 (Colo. 1986) (Quinn, C.J., dissenting)) (emphasis in original); C.R.S. § 4-2-106(1) (defining for purposes of the Uniform Commercial Code, "A "sale" consists in the ***passing of title*** from the seller to the buyer for a price" (emphasis added)).

"Delivery," in contrast, is all about transferring ***possession*** of a good that originates from a producer or retailer. The common meaning of the word "deliver" is to "take and hand over to or leave for another." Merriam-Webster Online, last visited Apr. 26, 2022, https://www.merriam-webster.com/dictionary/deliver. This common meaning tracks its legal definition. "'Deliver' generally means to transfer possession." *Suncor Energy, Inc. v. Aspen Petroleum Prods.*, 178 P.3d 1263, 1267 (Colo. App. 2007) (quoting *Black's Law Dictionary* 1582 (8th ed. 2004)). Or as this

Court has put it, "To ship and deliver property means a change of custody." *Noble v. People*, 180 P. 562, 563 (Colo. 1919).

Given the common and ordinary meanings of these words, a voter perusing the single subject statement would not have reason to think that the "retail sale" of alcohol beverages includes a third-party "delivery." The act of purchasing an item is physically and functionally distinct from how the consumer obtains possession of it when a third-party is involved. The statement of single subject here, therefore, does not adequately apprise voters of the scope of the Initiative.

The Initiative works two, equally important changes to Colorado law, yet the statement of single subject only encompasses one of those changes. Voters only learn of the change to delivery as the last item in a list describing the law. Burying the change to delivery at the end of the titles does not properly alert voters to it. *See In re Title, Ballot Title, and Submission Clause Approved February 2, 1994, Respecting the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito (Limited Gaming IV)*, 873 P.2d 733, 736 (Colo. 1994) (disapproving a title where key provisions were "buried between references" to other parts of initiative, such that a "voter quickly scanning the Initiative could be misled" to its effect).

2. The titles fail to inform voters technology companies enabling third-party delivery do not obtain a permit or a license.

The Initiative specifically exempts technology companies involved in facilitating or enabling delivery from having to obtain any permit or license:

> (6) Nothing in this section shall be construed to require a technology services company to obtain a delivery service permit for providing software or a digital network application that connects consumers and licensed retailers for the delivery of alcohol beverages from the licensed retailer by employees or other delivery service providers of the licensed retailer. . . .

(Initiative #115, sec. 13, proposed C.R.S.§ 44-3-911.5(6).) This is a substantial deviation from Colorado's approach to regulation of alcohol beverages, which is highly regulated and requires licensure of companies involved in each level of the manufacture, distribution, and sale of alcohol beverages in the state.

On its face, this provision allows a company to create a consumer facing application for the sale of alcohol beverages. It appears this company could, essentially, be responsible for enabling all aspects of the transaction except for possessing the alcohol inventory (which the licensee would do) or delivering the alcohol (which the licensee or delivery permittee would do). There is no requirement in this provision that a consumer even know who the licensee is from which they are purchasing the alcohol. From the consumer vantage point, it may appear that the technology company is the vendor.

Voters would be surprised to learn that, in a measure about expanding alcohol licensure and creating a new type of "permit" for certain regulated activities, they are in fact blessing a new arrangement in which ***unlicensed*** and ***non-permitted*** companies are able to take a material and substantive role in the retail alcohol market. Given that voters understand the Colorado liquor industry to be highly regulated through licensure, this is a material component of the measure about which the titles should apprise them.

The Board itself recognized this is a substantive, important element of these types of measures. In setting the titles for Initiatives # 122-125 and139, the Board included within the title the following descriptive clause: "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 titles can be found under the "hearing results on the Title Board's website, which is available at https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/results/2021-2022/139Results.html.) With respect to delivery and the technology company role, there is no material difference between those initiatives and Initiative #115. If describing the authorization for technology companies was important enough to

include in those titles, then it must be important enough to include in Initiative #115's titles.

CONCLUSION

Proponents have a diverse coalition to satisfy. But with the separate interests came distinct subjects for their measure. This separateness is only emphasized by the General Assembly's declaration, left in place by Proponents, that beer and other alcohol beverages are to be treated separately. The single subject rule operates to prevent this piling of interests into one measure to obtain voter approval. As such, the Court should reverse the Title Board or, in the alternative, remand the titles to the Board with directions to revise them to accurately describe the measure.

Respectfully submitted this 16th day of May, 2022.

s/ Mark G. Grueskin
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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF ON PROPOSED INITIATIVE 2021-2022 #115 ("SALES AND DELIVERY OF ALCOHOL BEVERAGES")** was sent electronically via CCEF this day, May 16th, 2022, to the following:

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