

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2023-2024 #91

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**MOTION FOR REHEARING**

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I, David Blake, a registered elector of the State of Colorado, hereby submit this Motion for Rehearing for Initiative 2023-2024 #91 pursuant to C.R.S. § 1-40-107. The Title Board lacks jurisdiction to set a title for Initiative #91 because (1) the proposed Title is misleading because the underlying Initiative is fundamentally flawed and there is no way to set a Title that would make clear to the voters the intent of the Proponents, and (2) the Initiative contains more than one subject, specifically it attempts to surreptitiously remove from the Colorado Parks and Wildlife any discretion to regulate hunting of certain species of wild game, treats three legally incongruous species as one and lumps hunting and trapping animals together though they are regulated differently and practiced by different constituencies.

The Title Board lacks jurisdiction when it cannot determine how a measure's key features will operate because it is unable to identify the measure's single subject. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468 (Colo. 1999). "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. (Colo. 2014). "The single subject requirement serves two functions:

- (1) "[t]o forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits"; and
- (2) "[t]o prevent surreptitious measures and apprise the people of the subject of each measure, that is, to prevent surprise and fraud from being practiced upon voters." § 1-40-106.5(1)(e).

Id. at ¶ 11.

For purposes of being consistent with my other concerns about single subject, and to keep this as simple as possible, I will attempt to illustrate my primary concern by referencing only one of the multiple subjects, mountain lions.

During the initial hearing of the Title Board on Initiative #91, the Board Members unsurprisingly struggled with the scope and clarity of the newly defined term "trophy hunting." "Trophy hunting" is defined broadly as the "KILLING, WOUNDING, PURSUING, OR

ENTRAPPING [of]” or “DISCHARGING OR RELEASING ANY DEADLY WEAPON . . . AT” of a mountain lion. This, of course, is simply a complete ban on any type of hunting of mountain lions. Proponents approach is clear, sweep broadly with the definition and then create narrowly applicable exemptions.

A complete ban on hunting is likely exactly what the proponents actually want, but they are unwilling to be that clear in their proposal. The Title Board cannot resolve this for them. The use of the word “trophy” has no import whatsoever under the actual definition. If Proponents meant “trophy hunting” to be limited to the taking of mountain lions when the only purpose is to take the hide or skull, then that is the language they should have used in the definition; they did not. “Trophy” doesn’t work to shrink the scope of the definition as you’d expect when modifying the word “hunting” with “trophy”. It seems to be included as nothing more than an illegal catch phrase. “Trophy” is not separately defined, as proponents claim, as the skin, teeth or skulls of these animals. (@ ~2:44 of the recorded Title Board Hearing on October 18, 2024). There is no limiting concept included in the definition whatsoever. Nonetheless, proponents insist “trophy hunting” is different, but unfortunately, that difference seems to only appear in the Legislative Declaration (which has no force and effect of law). This is a legalistic sleight of hand. The stated single subject is a prohibition on the trophy hunting of mountain lions which is incongruous with the language of the proposal. The Title Board cannot set a clear title if the proponents mean one thing, yet the proposal states something else.

Further, as a matter of law, proponents misleading Initiative cannot be cured. In Colorado, mountain lions may only be harvested “for human consumption”. C.R.S. § 33-6-119(2). That is the only way to legally hunt mountain lions in Colorado. Leaving a mountain lions carcass to waste, and only taking the hide or skull, is illegal. When asked if there is an exception in the Initiative for hunting mountain lions solely for meat, counsel for the proponents bluntly answers “no.” That is because they are banning hunting, and the Initiative fails to limit its footprint to just banning “trophy hunting” – whatever that might actually mean.

The proponents have placed the Title Board in an impossible position. Proponents are asking for the Title to convey to the public that Initiative #91 is a narrow ban on the hunting of only certain species and only when the hunter has the singular intent to only acquire an undefined “trophy” yet the actual language of the provisions sweeps much broader by banning any hunting of mountain lions, including for meat.

Second, Initiative #91 has multiple subjects. The regulation of mountain lions, bobcats and lynx are each their own subject. Each of these species is addressed by separate sections of Colorado code. One is a big game animal, one is a small game animal and a furbearer, and the other is an animal that can’t be hunted for any lawful purpose under existing State and Federal law. To glum them together as one is to create exactly the confusion that single subject precedent compels the Board to avoid. These separate categories in turn raise two more subjects – that of hunting, which is highly regulated in a specific manner and of trapping, which is highly regulated differently. For example, hunting which is enjoyed by the general public but not normally as a profession is different from those persons whose livelihood depends on trapping furbearers, such as Bobcats. Finally, Colorado has traditionally adopted the North American Model of Wildlife Conservation, whereby the regulation of the public’s fish and wildlife is

effectively managed through sound science and by experts. Here, the Colorado Parks and Wildlife takes the lead role in implementing this model of wildlife management. Initiative #91 seeks to remove entirely the long-time deference the public has granted to CPW and replace a sophisticated, science based and interactive management model with a blunt prohibition.

Thank you in advance for your consideration of the above concerns.

Respectively submitted,

David Blake