

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #100

MOTION FOR REHEARING

On behalf of Lauren Dever and Julie McCaleb, registered electors of the State of Colorado, the undersigned counsel hereby submits to the Title Board ("Board") this Motion for Rehearing on Proposed Initiative 2013-2014 #100 ("Initiative"), and as grounds therefore states that the title and submission clause for the Initiative do not conform to constitutional and statutory requirements.

I. BACKGROUND

On April 18, 2014, the Board designated and fixed the following title for the Initiative:

An amendment to the Colorado constitution prohibiting the cutting or removal of tails of cattle except when medically necessary to treat sick or injured cattle and requiring the establishment of penalties.

On April 18, 2014, the Board designated and fixed the following ballot title and submission clause for the Initiative:

Shall there be an amendment to the Colorado constitution prohibiting the cutting or removal of tails of cattle except when medically necessary to treat sick or injured cattle and requiring the establishment of penalties?

As set forth below, the title and ballot title and submission clause do not comply with the constitutional and statutory requirements for title setting and require substantial amendment consistent with the following concerns.

II. GROUNDS FOR RECONSIDERATION

A. The Title and Ballot Title and Submission Clause are Confusing, Misleading, and Do Not Reflect the Intent of the Proponents.

Contrary to the constitutional and statutory requirements for ballot titles as set forth in Colo. Const. art. V, § 1(5.5) and C.R.S. §§ 1-40-106(3)(b), the Board set a title and submission clause for the Initiative that is confusing, misleading, and not reflective of the proponents' intent.

According to state statute, the Board must consider the public confusion that might be caused by misleading titles and set a title that "correctly and fairly express[es] the true intent and meaning" of the initiative. C.R.S. §§ 1-40-106(3)(b). The Board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice. *In re Ballot Title 1999-2000 No. 29*, 972 P.2d 257 (Colo. 1999); *Matter of Title, Ballot Title and Sub. Cl.*, and *Summary for 1999-2000 No. 37*, 977 P.2d 845 (Colo. 1999); *Matter of Title, Ballot*

Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999). The duty to voters is paramount. The Board is statutorily required to exercise its authority to protect against public confusion and reject an initiative that cannot be understood clearly enough to allow the setting of a clear title. *In re Proposed Initiative 1999-2000 No. 25*, 974 P.2d 458 (Colo. 1999).

For the following reasons, the title and submission clause are confusing, misleading, and fail to correctly and fairly express the true intent and meaning of the Initiative:

1. The Initiative purports to prohibit docking of “bovine” tails, and yet at the title setting the Proponents specifically requested that the Board use the term “cattle” because: (a) voters will not likely know what is meant by the term “bovine” and (b) Proponents intended for the Initiative to apply to cattle. Although the Initiative itself fails to define “bovine,” the statutory definition of “bovine livestock” includes: “(a) All cattle and calves; and (b) All sheep being treated as livestock at the request of the owner thereof. C.R.S. § 35-41-100.3 (emphasis added). The Initiative is therefore fatally flawed because Proponents, by their own admission, inadvertently captured a species that was not intended to be covered. Because the Proponents’ intent cannot be reconciled with the actual language of the initiative, *any* title would be misleading and would fail to provide accurate language enabling informed voter choice. *See e.g., In re Proposed Initiative 1999-2000 No. 25*, 974 P.2d at 458 (the Board must reject an initiative that cannot be understood clearly enough to allow the setting of a clear title).
2. The Initiative is impermissibly misleading because it fails to inform voters that the practice of docking, which is presently legal as an accepted animal husbandry practice, would be a criminal act under the Initiative. To be accurate, the title must make clear that any farmer, rancher, veterinarian or other person that docks a bovine’s tail is subject to criminal charges and penalties. *See e.g., Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000) (eliminating or omitting a key feature of an initiative from the title is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes).
3. The title is defective because it omits a key feature of the initiative. Specifically, the title fails to inform voters that, rather than simply adding a prohibition against tail docking, it would also eliminate an existing affirmative defense to an alleged *criminal offense* and further state that the use of accepted animal husbandry practices will no longer negate elements of animal cruelty offenses. Although titles need not state every detail of an initiative or restate the obvious, they must not mislead the voters or promote voter confusion. For that reason, the Supreme Court has held that titles containing a material and significant omission, misstatement, or misrepresentation cannot stand. *See In re Ballot Title 1997-98 #62*, 961 P. 2d 1077, 1082 (Colo. 1998).
4. The title fails to fully inform voters regarding the additional requirements necessary to invoke the exception for medical treatment of sick or injured cattle. Contrary to the language in the title, under the Initiative, medical necessity by itself does *not* render bovine tail docking permissible. As set forth in the Initiative, bovine tail docking may be performed only if medically necessary, performed by a licensed veterinarian under hygienic conditions and “(III) the procedure is conducted in such a way as to minimize any pain and suffering of the bovine; and (IV) the bovine has been adequately

anesthetized to minimize the bovine's pain and suffering during the operation." See Initiative § (2)(b). The title is misleading and fails to accurately express the intent of the Initiative because the title makes no mention of these other requirements. Moreover, the meaning of section III is impossible to discern because it appears to suggest that one must minimize pain and suffering in addition to adequately anesthetizing the bovine, but does not provide any information as to how that ambiguous requirement is to be met. In this respect, the Initiative cannot be understood clearly enough to allow the setting of a clear title.

Based on the foregoing, the title and submission clause as drafted violates constitutional and statutory requirements and, to the extent no title can accurately inform voters of the Initiative's true intent, title setting must be denied. In the alternative, the title must be significantly amended to address the concerns described above.

B. The Title and Ballot Title and Submission Clause Use Impermissible Catch Phrases Designed to Prejudice Voters

Use of the terms "cutting or removal" instead of "dock" unfairly appeals to emotion that would prejudice voters and therefore constitutes an impermissible "catch phrase." See *Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1098 (titles may not contain a catch phrase that unfairly prejudices the proposal in its favor). Furthermore, because the term "dock" is defined in the Initiative and does not constitute a new or controversial legal standard, the Board does not need to define it in the title. See e.g., *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000) (the titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative). To be fair and accurate, the term "dock" should be used instead of "cutting or removal."

Based on the foregoing, the title and submission clause as drafted do not comply with the constitutional and statutory requirements for title setting.

III. REQUEST FOR RELIEF

The Objectors request that this Motion for Rehearing be granted and that the Board reject setting title based on the Initiative's fatal flaws as described above. Alternatively, Objectors request that the Board amend the title and ballot title and submission clause to address the concerns set forth above.

Respectfully submitted this 23rd day of April, 2014.

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