

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #97

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 #97 (“Initiative”), and as grounds therefore states that Initiative violates single-subject requirements and 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:

A change to the Colorado Revised Statutes eliminating the exemption in the animal cruelty statutes for accepted animal husbandry practices related to companion or livestock animals.

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

Shall there be a change to the Colorado Revised Statutes eliminating the exemption in the animal cruelty statutes for accepted animal husbandry practices related to companion or livestock animals?

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 Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of Single-Subject Requirements

Contrary to the requirement that every constitutional amendment proposed by initiative be limited to a single subject, which shall be clearly expressed in its title (Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5), the Board set title for the Initiative at issue despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, the Initiative purports to regulate “companion and livestock animals” when in fact these are two wholly unrelated industries.

The term “companion animals” is not defined in the Initiative, but is defined by state statute as “domestic dogs, domestic cats, small pet birds, and other nonlivestock species.” C.R.S. § 35-42-103(5) (emphasis added). The care and treatment of companion animals is regulated by article 80 of Title 35, the “Pet Animal Care and Facilities Act.” This article further defines a “pet animal” as: “dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets,

birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet, except livestock, as defined in subsection (9) of this section. "Pet animal" does not include an animal that is used for working purposes on a farm or ranch. C.R.S. § 35-80-102(10)(emphasis added). The article further regulates, *inter alia*, dog breeders, animal shelters, pet stores, and sterilization practices. In contrast, livestock is subject to a wholly separate and elaborate regulatory framework set forth in articles 41 through 57.9 of Title 35. The two industries have no connection, relationship or interdependence.

Because "companion animals" and "livestock animals" are separate subjects, the single-subject requirement cannot be met by "grouping" them under the catch-all topic of "accepted husbandry practices" or "husbandry." *See In re Proposed Initiative 1996-4*, 916 P.2d 528 (Colo. 1996) (grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single-subject requirement); *see also, In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e)*, 1 P.3d 720 (Colo. 2000). The Title Board therefore lacks jurisdiction to set title and title setting should be denied.

B. 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 title uses the confusing phrase "eliminating the exemption," which is essentially a double-negative and is inherently unclear and facially confusing. Absent any explanation, it cannot be readily understood what this phrase means and hence, what the Initiative actually accomplishes.
2. The title is confusing because it fails to inform voters what is meant by "husbandry" or "accepted animal husbandry practices," or which types of activities might be included in those terms that voters are being asked to reject. The title is especially confusing because it refers to "accepted animal husbandry practices related to companion or livestock animals" when the term "animal husbandry" is commonly understood to relate to the raising of livestock for food and does not appear to have anything to do with companion animals. *See* <http://www.merriam-webster.com/dictionary/animal%20husbandry>. *See*

e.g., Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999) (the title and summary on an initiative concerning judicial personnel held unclear; title and summary contain contradictory language regarding the definition of personnel, and a voter would not be able to determine which judicial personnel were included in the initiative). Thus, without further clarification, voters may not know that the Initiative subjects individuals, including pet owners and veterinarians, to criminal sanctions for engaging in the widely accepted practices of spaying or neutering companion animals and conforming dog breeds to their standard breed traits, or earmarking, tagging and branding livestock for identification purposes. Indeed, the initiative specifically amends section 18-9-201.5 to delete the reference to Title 35, article 43, so that compliance with the state's livestock branding regulations is no longer an accepted animal husbandry practice.

3. The title is misleading because it fails to inform voters that the Initiative is creating a new legal standard for pet owners, farmers, ranchers, veterinarians and other individuals who would face criminal charges and penalties for engaging in an undefined set of practices that are commonly accepted. *See e.g., In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990)* (failure of title, ballot title, and submission clause to include definition of abortion which would impose a new legal standard which is likely to be controversial made title, ballot title, and submission clause deficient in that they did not fully inform signers of initiative petitions and voters and did not fairly reflect the contents of the proposed initiative).

Based on the foregoing, the title and submission clause as drafted do not comply with the constitutional and statutory requirements for title setting and require substantial amendment consistent with these concerns.

III. REQUEST FOR RELIEF

The Objectors request that this Motion for Rehearing be granted and that the Board amend the title and ballot title and submission clause as set forth above.

Respectfully submitted this 23rd day of April, 2014.

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