

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Clint McKnight and Florence Gaia
Objectors,

v.

Stan VanderWerf and Spencer Thomas,
Designated Representatives of Initiative 2025-2026 #35.

**MOTION FOR REHEARING ON
INITIATIVE 2025-2026 #35**

Through their legal counsel, Clint McKnight and Florence Gaia, registered electors of La Plata County, hereby file this motion for rehearing on Initiative 2025-2026 #35.

On April 2, 2025, the Title Setting Board set the following ballot title and submission clause for Initiative 2025-2026 #35:

Shall there be a change to the Colorado Revised Statutes concerning the presence of wolves in Colorado, and, in connection therewith, ending the reintroduction of gray wolves by December 31, 2026; removing “nongame” from the definition of gray wolf; including livestock guard and herding animals as livestock for the purposes of compensation for losses caused by a gray wolf; and prohibiting the importation of wolves into Colorado?

In setting this title, the Board erred in the ways set forth below.

I. Initiative #35 violates the constitutional single subject requirement.

Although purportedly concerned simply with ending the State’s reintroduction of wolves in Colorado, Initiative #35 includes several distinct subjects. The tell comes from Proponents themselves who, in their initial submission of the measure to the Board, were forced to use “and” in describing their single subject: “Single subject: End gray wolf reintroduction ***and*** prohibit the importation of wolves from out-of-state.” 2025-2026 #35 Final Text (CDOS Received: March 6, 2025 9:26 A.M. CH) (emphasis added). But even that statement masks Proponents’ true intent. As explained in the announcement of the filing of the initiative with the Board, Initiative #35 encompasses four distinct parts:

“The measure proposes to:

- End the state’s reintroduction of gray wolves by December 31, 2026

- Remove the classification of gray wolves as ‘nongame’ wildlife
- Include livestock guard and herding animals in depredation compensation programs
- Prohibit the importation of gray wolves into Colorado”

Ex. A, “Colorado Advocates for Smart Wolf Policy Announces Ballot Initiative to End Wolf Reintroduction by 2026,” press release, Mar. 20, 2025. *See In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 281 (Colo. 2006) (citing proponents’ website three times to find multiple subjects proposed by an initiative). Each of these is a distinct subject that is not necessarily and properly connected to the measure’s single subject.

- Subject 1: The measure’s first subject is to end the state’s reintroduction of gray wolves by December 31, 2026. The provision within the measure ends a state-run program in which voters directed the commission to develop and implement a plan to reintroduce wolves to Colorado. *See* C.R.S. § 33-2-105.8.
- Subject 2: The second subject is to redefine wolves from being “nongame wildlife” to “game wildlife.” These are statutorily defined terms. Part 1 of Title 33 defines “‘game wildlife’ ... [as] those wildlife species which may be lawfully hunted or taken for food, sport, or profit and which are classified as game wildlife by the commission.” C.R.S. § 33-1-102(23). “Nongame wildlife,” in turn, “means all native species and subspecies of wildlife which are not classified as game wildlife by rule or regulation of the commission.” *Id.* § 33-1-102(29). As these definitions make clear, Initiative #35 is removing gray wolves from a protected status under state law. *See also* 2 CCR 406-10, art. I #1000(a) (providing that “[n]ongame species and subspecies, including threatened or endangered wildlife are protected and harassment, taking, or possession is prohibited” unless an exception applies). Initiative #35 further removes gray wolves from the ambit of Colorado’s Nongame, Endangered, or Threatened Wildlife and Rare Plant Conservation Act, *see* C.R.S. §§ 33-2-101 *et. seq.*, which affects the Commission’s regulatory authority, *see id.* § 33-2-104.

Whether wolves are “nongame” or “game” is not “necessarily and properly connected” to whether the State should continue its reintroduction program. *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159 (Colo. 2014). Each involves different policy choices and considerations, and it is insufficient that “wolves” is involved in both questions. That is the type of overly broad theme that the Supreme Court has disapproved. *See, e.g., In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55, ¶ 22 (explaining that a “unifying label” such as “‘animal cruelty’ ... is the type of overly broad theme” the Court has disapproved).

The sleight of hand to change the classification of wolves, and the related change in commission authority, is the type of voter surprise the single subject requirement prohibits. *See* C.R.S. 1-40-106.5(1)(e)(ii) (declaring that the single subject requirement is intended to “prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters”).

- Subject 3: Proponents’ third subject is to redefine the “livestock” that is subject to compensation from depredation by wolves by including “livestock guard or herding animals.” This change involves two single subject problems. The first is that a compensation scheme for depredation by wolves bears no relation to *ending* wolf reintroduction. A compensation scheme is a component of a program to return wolves to the state or to implement a reintroduction scheme. Ending reintroduction does not require or logically involve changes to a compensation scheme for the introduction of wolves.

The second problem, which is related to the first, is that this is a log rolling violation. The single subject rule prohibits “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.” C.R.S. § 1-40-106.5(1)(e)(i). The compensation gambit here is a classic sweetener: the addition of a provision to attract support that may not otherwise exist.

Various communities may be ambivalent about whether to continue the wolf reintroduction program, but they do feel strongly that ranchers should be compensated when depredation occurs. For example, the initial version of Proponents’ measure sought to repeal the ballot measure that created the gray wolf introduction program. *See* Initiative 2025-2026 # 10, *available at* <https://leg.colorado.gov/sites/default/files/initiatives/2025-2026%2520%252310.pdf>. This version of the initiative was opposed by interested constituencies because it might end compensation for wolf depredation. To address the concerns raised by that political group—in other words, to attract their support for a coalition—Proponents added this provision. *See, e.g., Ex. B*, Ali Longwell, “A ballot measure to halt Colorado’s wolf reintroduction by 2026 hits next stage,” *Post Independent*, Mar. 24, 2025, (“The modification came following stakeholder engagement with ranching and farming industry stakeholders, who expressed concerns that repealing it entirely would lead to the loss of reimbursement for livestock losses, according to Stan VanderWerf, one of the designated representatives for the ballot measure.”), *available at* <https://www.postindependent.com/news/a-ballot-measure-to-halt-colorados-wolf-reintroduction-by-2026-hits-next-stage-2/>; *see also Ex. C*, Marianne Goodland, “Colorado ranchers and commissioners urge halt on wolf ballot measure, seek better management plan from state,” https://www.coloradopolitics.com/news/western-slope-county-commissioners-against-wolf-reintroduction/article_c5f2b005-3c9a-4952-b4df-76d3d1c52d51.html, updated Mar. 31, 2025 (explaining opposition to initial measure and “changes were made to protect two wolf compensation funds”).

Proponents thus added a provision that bears no necessary relation to the measure’s single subject to enlist support from another constituency to secure its passage. That’s a single subject violation.

- Subject 4: Finally, Proponents seek to prohibit the importation of “wolves.” This change in law extends beyond ending the state’s reintroduction program, as it prohibits any “person” from importing “wolves.” Proponents’ choice of language is telling. Under the state reintroduction program, the state is to reintroduce “gray wolves,” which is a defined

term: “‘Gray wolf’ means nongame wildlife of the species *canis lupus*.” C.R.S. § 32-2-105.8(5)(b). Proponents used instead the general, non-defined term “wolf” and “wolves” in their importation prohibition. The prohibition on importation they seek, therefore, extends beyond ending the reintroduction of “gray wolves” and prohibits the state from importing any type of “wolf” (unless fitting under the narrow exception).

Moreover, Proponents are not seeking simply to end the state’s reintroduction program, as the importation prohibition applies to any “person.” Proponents thus seek to regulate private activity through this initiative. Whether and to what extent private persons can obtain a wolf is not necessarily and properly connected to whether the state should end a reintroduction program to release gray wolves into the wild.

In setting the title, the Board respectfully attempted to create a bridge over these different subjects by reframing Proponents’ single subject as “concerning the presence of wolves in Colorado.” But this framing is overly broad and obscures what the measure is intended to do, which is to end the state’s gray wolf reintroduction. As the Supreme Court has emphasized in recent years, a single subject violation cannot be cured through an abstract or overly general single subject. *See In re 2021-2022 #1*, 2021 CO 55, ¶ 22, *supra*; *see also In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 20 (rejecting “expanding the retail sale of alcohol beverages” as a single subject).

II. The titles set are incomplete and misleading.

The titles set by the Board violate the clear title requirement that the single subject “shall be clearly expressed” through the title’s use of the single subject description “concerning the presence of wolves in Colorado.” *See Colo. Const. art. V, sec. 1(5.5)*. Not only does the phrase deviate from the intended purpose of the measure—to end the state’s reintroduction program—it will mislead voters. This single subject description is not a clear statement of what this measure purports to accomplish. Instead, it is so general as to leave voters scratching their heads to know what this measure’s central purpose actually is.

Furthermore, the measure is not a neutral approach to managing wolf-related issues, as the phrase suggests, but is an affirmative attempt to prevent wolves from being in Colorado. A ballot title must communicate a ballot measure’s key aspects to voters “whether familiar or unfamiliar with the subject matter of a particular proposal” so that, no matter how informed about the law each may be, a voter can “determine intelligently whether to support or oppose such a proposal.” *In re Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121, 1123 (Colo. 1984). The title here does not do that and, instead, will mislead voters as to the intent and operation of what they are being asked to consider.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #35 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading and incomplete ballot title that has been set.

Respectfully submitted this 9th day of April, 2025.

RECHT KORNFELD, P.C.

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025-2026 #35** was sent this day, April 9, 2025, via first-class mail, postage paid to:

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s/ Erin Mohr