

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #144 (“Veterinary Telehealth”)</p> <p>Petitioners:</p> <p>Will French and Diane Matt,</p> <p>v.</p> <p>Respondents:</p> <p>Apryl Steele and Ali Mickelson,</p> <p>and</p> <p>Title Board: Theresa Conley, Christy Chase, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>THE TITLE BOARD’S OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 2,529 words (principal brief does not exceed 9,500 words, reply brief does not exceed 5,700 words)

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

The brief contains, under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

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ISSUES PRESENTED FOR REVIEW

I. Whether the Title Board correctly determined that Proposed Initiative 2023-2024 #144 contains a single subject.

II. Whether the Title Board acted within its discretion when it used the phrases “veterinarian licensed in Colorado to use telehealth[,]” “veterinary telehealth[,]” “controlled substances[,]” and “establishing parameters on controlled substances” to describe parts of the measure.

STATEMENT OF THE CASE

Proposed initiative 2023-2024 #144 proposes to authorize veterinary telehealth. *See* Record, p. 3-4. The measure defines “Veterinary telehealth” as the practice of veterinary medicine through telecommunication systems to allow for assessing, diagnosing, and/or treating an animal patient located in Colorado. *See id.* at 3. The measure expressly limits the practice of veterinary telehealth to veterinarians holding an active Colorado Veterinary License. *Id.*¹

¹ The initiative proposes to add the following statutory definition of Veterinary telehealth: “A VETERINARIAN HOLDING AN ACTIVE COLORADO LICENSE MAY PRACTICE VETERINARY TELEHEALTH ON A PATIENT LOCATED IN COLORADO.”

At its February 7, 2024, meeting, the Board concluded that the measure contained a single subject and set a title. *Id.* at 5. Petitioners Will French and Diane Matt (“Petitioners”) filed a timely motion for rehearing. *Id.* at 9-15. The Board considered the motion at its February 21, 2024 meeting, denying it in its entirety. *Id.* at 7.

The title fixed by the Board for #144 is as follows:

Shall there be a change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient located in Colorado; allowing a veterinarian to establish a relationship with an animal patient and the owner or caretaker through the use of audio-video communication; and establishing parameters on prescribing controlled substances?

Id.

Petitioners now challenge whether #144 contains a single subject and whether the title complies with the clear title requirement.

SUMMARY OF THE ARGUMENTS

The proposed initiative contains a single subject: authorizing the practice of Veterinary telehealth by licensed Colorado Veterinarians.

Petitioners object that the provision authorizing veterinarians to

establish relationships with animals located in Colorado and their owners through audio-visual communications creates a second subject, purportedly applying to *all* veterinarians regardless of licensure status. But that provision is necessarily and properly connected to the initiative's purpose of authorizing veterinary telehealth by veterinarians licensed in Colorado. Petitioners speculate that the provision may allow *other* veterinarians to practice veterinary telehealth. But the Court should not engage in such speculation as to the potential effects of the initiative in determining whether the single subject requirement is met. Furthermore, #144 does not create the risk of logrolling or causing voter confusion, which are the principal ills the single subject rule seeks to avoid. The measure, accordingly, satisfies the purpose of the single subject rule and the Court should affirm the Title Board.

Petitioner's clear title objections fail to surmount the strong deference this Court affords to the titles set by the Board. But the phrases challenged by Petitioners do not rise to the level of rendering the title misleading or inaccurate. In other instances, Petitioners'

arguments mirror their single subject arguments and or rely on their own strained interpretation of how the measure may be implemented. Such arguments are insufficient to sustain a clear title objection.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the

initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

The Title Board agrees this issue is preserved. *See Record* at 10-13.

B. Initiative #144 does not contain a second subject authorizing unlicensed veterinarians to provide care to animals in Colorado.

Petitioners contend that the Board lacked jurisdiction to set title because the initiative purportedly contains a second subject – authorizing unlicensed veterinarians to practice veterinary telehealth. *Pet.*, at 3. Petitioners acknowledge that the initiative “grants a new licensing privilege to veterinarians licensed in Colorado: the ability to provide care through ‘veterinary telehealth’”. *Record*, p. 17. The first sentence of the ballot title and submission clause as designated and

fixed by the Board states, in pertinent part: “Shall there be a change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, allowing a *veterinarian licensed in Colorado to use telehealth.*” *Id.* at 5 (emphasis added).

Nevertheless, Petitioners claim that measure’s use of the word “veterinarian” in a subsequent clause “allowing a veterinarian to establish a relationship with an animal patient and the owner . . . through the use of audio-video communication” expands the reach of the measure to allow unlicensed veterinarians to provide care to animals in Colorado through telehealth.

The measure, however, authorizes no such thing. The measure includes a clause allowing a veterinarian to establish a relationship with an animal patient and its owner through audio-visual communication (the “relationship” provision).

Where “an initiative tends to effectuate one general objective or purpose, then the initiative presents a single subject.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. And where an initiative does not treat incongruous

subjects in the same measure and its subject matter is necessarily and properly connected, an initiative presents a single subject. *Id.* at ¶ 10.

Here, Initiative #144 advances a single general objective and purpose – adding veterinary telehealth as a licensing privilege for veterinarians licensed in Colorado. And to the extent the relationship provision authorizes veterinarians licensed in Colorado to “establish relationships” to animals and their owners through audio-visual communications, this is “necessarily and properly connected” to the licensing privilege of veterinary telehealth, “rather than disconnected or incongruous.” *See id.*; *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

Veterinarians necessarily need to establish relationships with animal patients and their owners in order to effectively practice telehealth. And absent their ability to establish such relationships, the practice of telehealth would be greatly altered.

Petitioners’ single subject argument is reliant on speculation concerning interpretation and implementation of the measure.

Petitioners note that the measure uses the term “veterinarian”, which is defined in C.R.S. § 12-315-104(18), rather than the term “licensed

veterinarian”, which is defined in C.R.S. § 12-315-104(11). According to Petitioners, using the term “veterinarian” in the relationships provision may allow veterinarians without Colorado licenses to establish relationships with Colorado animals and their owners through audio-visual communications and, therefore, this must amount to a second subject.

However, Petitioners’ concerns center on interpretation and implementation, which is not within the Board’s purview. As this Court has said, “[a]ny problems in the interpretation of the measure . . . are beyond the functions assigned to the title board . . . and outside the scope of [this Court’s] review of the title board’s actions.” *In re Title, Ballot Title & Submission Clause for 1997-1998 #10*, 943 P.2d 897, 901 (Colo. 1997). Instead, “implementation details that are directly tied to the initiative’s central focus do not constitute a separate subject.” *In re 2021-2022 #16*, 2021 CO 55, ¶ 29 (quotations omitted). And here, the relationships provision is directly tied to the initiative’s central focus: authorizing veterinarians licensed in Colorado to use veterinary telehealth. Record, p. 5.

Furthermore, Petitioners' argument that the measure would authorize unlicensed veterinarians to practice telehealth in Colorado is "mere speculation about the potential effects of the initiative," and this Court should not "predict its application if adopted by the electorate." *See In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 59 (Colo. 2008) (quotations omitted).

The dual purposes of the single-subject rule are satisfied by #144. The single-subject rule seeks to avoid "logrolling," where the proponent attempts to obtain support from various factions by combining unrelated subjects in a single matter, and hidden aspects "coiled up in the folds of complex initiative." *See In re 2013-2014 #76*, 2014 CO 52, ¶ 32. Initiative #144, however, presents no such risk. The measure seeks only to allow veterinarians licensed in Colorado the licensing privilege of veterinary telehealth and so does not risk courting support from different factions. And the measure does not contain "hidden aspects." Instead, in a single page, the measure straightforwardly grants licensing privilege and allows veterinarians licensed in Colorado to exercise this privilege by establishing relationships with animals and

their owners using audio-visual communications. Accordingly, voter confusion is not a serious risk with #144.

II. The title set by the Board satisfies the clear title standard.

A. Standard of Review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. “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. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.*

The Title Board agrees that this issue is preserved. *See Record at 13-14.*

B. The Board acted within its discretion in describing the measure as authorizing a “veterinarian licensed in Colorado to use telehealth”.

Petitioners raise four clear title objections, all of which are unavailing.

First, Petitioners argue that the Title Board set a misleading title by describing the measure as authorizing “a veterinarian licensed in Colorado to use telehealth.” According to Petitioners, the measure actually authorizes *any* veterinarian to practice veterinary telehealth on an animal located in Colorado. This clear title objection largely mirrors Petitioners’ single subject objection addressed above. And just as above, neither the Board nor this Court may “speculate as to [a] measure’s efficacy, or its practical or legal effects.” *In re 2007-2008 #62*, 194 P.3d at 60. While Petitioners may believe that another phrase might better describe the measure, the Board need not “set the best possible title.” *In re 2019-2020 #3*, 2019 CO 107, ¶ 17. Because the title’s use of the phrase “a veterinarian licensed in Colorado to use telehealth” accurately describes both the purpose and effect of the measure, the title is not “insufficient, unfair, or misleading” and should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

C. The Board acted within its discretion in using the phrase “veterinary telehealth”.

Next, Petitioners argue that the Title Board set a misleading title by describing the measure as authorizing “veterinary telehealth.”

According to petitioners, the title should instead specifically indicate that veterinary telehealth “is the practice of veterinary medicine.” Once again, while Petitioners may believe that another phrase might better describe the measure, the Board need not “set the best possible title.” *In re 2019-2020 #3*, 2019 CO 107, ¶ 17. Because the title’s use of the phrase “veterinary telehealth” accurately describes both the purpose and effect of the measure, the title is not “insufficient, unfair, or misleading” and should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

D. The Board acted within its discretion in using the phrase “controlled substances.”

Petitioners raise a clear title objection that the Title Board set a misleading title by purportedly describing a veterinarian’s prescribing authority as limited to “controlled substances” without specifying that veterinarians’ prescribing authority extends to any “prescription drug[.]” *See Record*, at 14. But the phrase “controlled substances” accurately describes both the purpose and effect of the measure. Even if another phrase might better describe the measure, the Board need not “set the best possible title.” *In re 2019-2020 #3*, 2019 CO 107, ¶ 17. The

title is accurate and is not “insufficient, unfair, or misleading” and so should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

E. The Board acted within its discretion in using the phrase “establishing parameters on prescribing controlled substances”.

The final clause of the measure invites voters to determine whether there “[s]hall be a change to the Colorado Revised Statutes establishing parameters on prescribing controlled substances[.]” Record, at 11. Petitioners object that the title “vaguely refers to some parameters . . . without explaining what the parameters are.” *Id.*, at 14. The proposed statute specifies that a veterinarian practicing veterinary telehealth shall not order, prescribe, or make available a prescription drug that is a controlled substance, unless they have previously performed an in-person physical examination of the patient or made medically appropriate and timely visits to the premises where the patient is kept. Proposed C.R.S. § 12-315-127(7)(b). In other words, Petitioners’ objection is that the measure does not provide their desired degree of detail on the limitations that will be placed on veterinarians’ abilities to prescribe controlled substances.

This kind of detail, however, is not required. “An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title.” *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). And “[t]here is no requirement that the title clearly express the act’s provisions or the details by which its object is to be accomplished.” *People v. Sa’ra*, 117 P.3d 51, 58 (Colo. App. 2004). See *Matter of Title, Ballot Title & Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 930 (Colo. 1998) (rejecting argument that title required more detail). Instead, the title set by the Board must reflect only the measure’s “essential concept.” See *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 255*, 4 P.3d 485, 497 (Colo. 2000).

Here, the title’s use of the phrase “establishing parameters on prescribing controlled substances” in this instance accurately describes the essential concept of this provision, which is to include a limitation on their ability to prescribe controlled substances. Accordingly, the title

is not “insufficient, unfair, or misleading” and should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

CONCLUSION

The Title Board correctly determined that #144 contains a single subject and set an appropriate title. The Court should therefore affirm the title set by the Title Board on 2023-2024 #144.

Respectfully submitted this 19th day of March, 2024.

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CERTIFICATE OF SERVICE

I certify that I have duly served the foregoing **TITLE BOARD'S OPENING BRIEF** upon the following counsel electronically through the Colorado Courts E-Filing System (CCE) and/or electronic mail this 19th day of March, 2024, at Denver, Colorado, as follows:

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