

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Janie VanWinkle, Carlyle Currier, Chris Kraft, Terri Diane Lamers, William Hammerich, and Joyce Kelly, Objectors,

vs.

Alexander Sage and Brent Johannes, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2020-2021 #16

Janie VanWinkle, Carlyle Currier, Chris Kraft, Terri Diane Lamers, William Hammerich, and Joyce Kelly (“Objectors”), registered electors of the State of Colorado, through undersigned counsel, submit this Motion For Rehearing on Initiative 2020-2021 #16 (“#16”), pursuant to C.R.S. § 1-40-107, and states:

The Title Board should grant this Motion for the following reasons:

1. Initiative #16 contains two subjects: removal of the livestock exemption from the animal cruelty statutes *and* an expansion, for political purposes, of statutes addressing “sexual act with an animal”;
2. The titles set by the Title Board are misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure; and
3. The Title Board impermissibly included political catchphrases in the titles.

Accordingly, the Title Board should grant this Motion and dismiss for lack of jurisdiction or, in the alternative, amend the title and ballot title and submission clause.

A. The Title Board set a title for Initiative #16 on March 17, 2021.

The Title Board designated and fixed the following title for Initiative #16:

A change to the Colorado Revised Statutes concerning expanding prohibitions against cruelty to animals, and, in connection therewith, expanding the definition of “livestock” to include fish; expanding the definition of “sexual act with an animal” to include intrusion or penetration into an animal’s anus or genitals with an object or part of a person’s body and allowing an exception only for care to improve the animal’s health and eliminating the existing exception for animal husbandry practices; defining the “natural lifespan” for certain species of livestock and providing that slaughtering those animals is not animal cruelty if done according to acceptable animal husbandry practices after the animal has lived 1/4 of the natural

lifespan; removing several exceptions to the animal cruelty statutes, including exceptions for animal husbandry; and providing that, in case of a conflict, the cruelty to animals statutes supersede statutes concerning animal care.

The Board designated and fixed the ballot title and submission clause to track the language in the title.

B. Initiative #16 violates the single subject limitation for ballot initiatives.

Colorado law provides that ballot initiatives may only contain a single subject. Colo. Const. art. V, sec 1 (5.5). This means that “the subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159 (Colo. 2014) (internal quotation marks and citation omitted). If a measure contains multiple subjects, the Title Board lacks jurisdiction to set titles. Colo. Const. art. V, sec 1 (5.5).

The measure’s Proponents stated that the single subject is the “the removal of the exemption that livestock has in the animal cruelty statutes.” Title Bd. Hr’g Mar. 17, 2021 at 9:50. The Proponents nonetheless included a second subject within the measure: redefinition of “sexual act with an animal.” These subjects are not “necessarily connected” but are logically distinct and separate issues. One issue concerns the expansion of the types of animals covered by the animal cruelty statute, while the other redefines a type of conduct that constitutes animal cruelty *regardless* of the animal. It is unnecessary to redefine “sexual act with an animal” in order to address the Proponents’ intent of removing the exceptions for livestock in the statute. The fact that both issues concern animals or animal cruelty generally does not avoid the single subject violation. *See, e.g., In re The Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 263 (Colo. 1999); *In re Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995*, 898 P.2d 1076, 1080 (Colo. 1995).

The second subject here violates the underlying concern behind single subject requirement that a subject pass on its own merits and without comingling of support for another subject. *See, e.g., In re 1999-2000# 29*, 972 P.2d at 261. “Sexual act with an animal” is a highly charged reference, used to attract supporters who would not otherwise be sympathetic to this measure. Further, it is unrelated to the central livestock question of how farmed animals are to be treated before they enter the food chain.

The proponents’ website admits they intend to argue that a “yes” vote will prevent sexual assaults of “all farmed animals.”

The initiative informally titled Protect Animals from Unnecessary Suffering and Exploitation, is a ballot initiative filed with the state of Colorado for the November 2022 midterm election.

If enacted, the initiative would simply extend the most basic animal welfare rights that are granted to pets to all farmed animals. **While the animal is alive, it must not be abandoned, abused, neglected, mistreated or sexually assaulted.**

See <https://www.coloradopause.org/about> (last viewed March 24, 2021) (attached). It is entirely appropriate for the Board to consider the proponents' contemporary political statements to the public – as communicated by means of their website – to determine the actual intent of those who propose this initiative. *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 281 (Colo. 2006) (hereafter “*In re #55*”) (citing proponents' website three times to find multiple subjects proposed by an initiative).

These two subjects are recognized as separate topics. A prominent online journalism site, *The Colorado Sun*, ran an article on #16, the subtitle of which summarized both of the measure's subjects: “The proposed ballot measure would expand the definition of sex acts with animals ***and*** require that hogs, cattle, chickens and other farm animals get to live 25% of their natural lifespan.” Brown, J., “Animal cruelty initiative aggravates Colorado ranchers fresh off MeatOut Day controversy,” *The Colorado Sun*, March 22, 2021 <https://coloradosun.com/2021/03/22/animal-cruelty-ballot-measure/> (last viewed March 24, 2021) (emphasis added).

A third subject in #16 is the requirement that specified animals live one-quarter of their new, statutorily designated lifespans. A mandate for a guaranteed term of years for certain animals is not integrally or necessarily related to either of the above discussed subjects.

The single subject statement (“expanding prohibitions against cruelty to animals”) is simply too broad to be a single subject under Colorado law. “[C]onsistent with the goal of prohibiting a single legislative act from addressing disconnected or incongruous measures, an initiative grouping distinct purposes under a broad theme will not satisfy the single subject requirement.” See *In re #55, supra*. 138 P.2d at 275. Thus, because Initiative #16 violates the Constitution's single subject restriction, the Board lacks jurisdiction to set the titles.

C. The title and ballot title and submission clause are misleading and incomplete.

In setting a title, the Title Board “shall consider the public confusion that might be caused by misleading titles,” and ensure that a title “correctly and fairly express[es] the true intent and meaning” of the proposed law. C.R.S. § 1-40-106(3)(b). The title must “fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board.” *In re Title, Ballot Title, & Submission Clause 2007-2008 # 62* 184 P.3d 52, 58 (Colo. 2008) (internal quotation marks and citation omitted).

1. The titles fail to reflect the measure's true intent and meaning, which is to remove livestock exception from the animal cruelty statutes.

The titles do not express the intent behind the measure, which is to remove the exception for livestock from the animal cruelty statutes. Instead, the titles generally state that the measure “concern[s] expanding prohibitions against cruelty to animals.” Further, while the titles note that the measure eliminates exceptions to the animal cruelty statutes, they do not unambiguously state that the targeted exception concerns “livestock” and, instead, refer to “animal husbandry” exceptions. Animal husbandry is a term of art with which an average elector may not be familiar,

and the use of the phrase without definition does not adequately describe the measure's meaning and intent. *See In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 649 (Colo. 2010) (title language must not "conceal some hidden intent").

2. The titles are incomplete and misleading because they do not state that Initiative #16 changes the criminal laws concerning livestock.

Initiative #16 proposes amendments to the criminal code governing the treatment of animals. However, the titles do not provide any indication or notice that the measure concerns criminal liability; indeed, the titles do not even reference that the statute is a criminal statute. The titles instead refer to "animal cruelty," but a voter may not know that "animal cruelty" is a criminal violation and not a civil violation. That the measure proposes changes to the criminal code is a material consideration that may directly affect whether an elector supports the measure. Thus, the titles should clearly state that the measure addresses and expands criminal liability. *See In re Title, Ballot Title, & Submission Clause for Initiative 2007-2008 #57*, 185 P.3d 142, 147 (Colo. 2008) (Title Board correctly summarized initiative's change to criminal statute as "extending criminal liability...").

3. The titles inadequately describe the scope of the revisions to "sexual act with an animal" by omitting the "however slight" language from the measure.

Although the titles address the measure's revision to the definition of "sexual act with an animal," they omit a critical component of the measure's sweep: that any intrusion or penetration "*however slight*" falls within the revised definition. The inclusion of "however slight" effectively makes any contact with an animal's anus or genitals—for instance while brushing or washing a pet—a "sexual act with an animal." The revised definition thus "adopt[s] a new or controversial legal standard which would be significant to all concerned," and must therefore be included in the titles. *In re The Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 255*, 4 P.3d 485, 497 (Colo. 2000) (internal quotations marks and citation omitted).

4. The titles do not adequately state or describe the definition of the "natural lifespan" of certain livestock, which is a new and controversial legal standard.

Initiative #16 includes a new definition of the "natural lifespan" of certain types of livestock by defining specific lifespans for specific animals (e.g. rabbit 6 years). This definition is central to the measure, as it affects when it would be lawful to slaughter livestock. Yet the titles inadequately describe the new legal standard, as it simply references the new "natural lifespan" definition without restating or explaining it. A voter cannot understand the measure's 1/4 lifespan requirement for lawful slaughtering of livestock without understanding the nature of the new lifespan definition. Therefore, the titles are insufficient for failing to either restate the definition or adequately explain its scope by identifying the animals at issue and how "natural lifespan" is being defined. *See In re 1999-2000 # 255*, 4 P.3d at 497.

The titles' language is also misleading because it does not clearly state the central change for lawful slaughter: an animal owner must ensure an animal meets the 1/4 lifespan requirement

to avoid criminal prosecution. To adequately explain the measure, the titles should state the specific lifespans, mandated by and listed in this measure, for each affected animal.

5. The titles are incomplete and misleading as they do not identify the exceptions to the animal cruelty statutes the Initiative #16 removes.

The central purpose of the measure is to remove exceptions from the animal cruelty statute, including not only for livestock but also pack or draft animals, animals involved in activities regulated pursuant to article 32 of title 44, animals involved in rodeos, and hunting dogs. *See* 2021-2022 #16, sec. 3. The titles nowhere identify the exceptions the measure is removing, referring only to “animal husbandry” (itself a misleading reference to livestock). As the removal of these exceptions is a central element of the measure, the titles must identify them to apprise voters of the measure’s intent and purpose.

6. The titles’ description of the measure’s conflicts of laws provision is misleading.

Initiative #16 states that, “[i]n case of any conflict between animal care otherwise authorized by law, this part 2 shall control.” *See* 2021-2022 #16, sec. 2. Thus, where there is a conflict between the animal cruelty statutes and another statute concerning animal care, the animal care statute is of no effect. However, the titles ambiguously describe this change as the animal cruelty statutes “supersede” conflicting animal care statutes. This phrasing is misleading as to the effect of the measure on other statutes.

In addition, “supersede” is a vague term that could make certain voters believe that animal care statutes remain in place but are of no effect here, whereas other voters would think that such statutes have been repealed or replaced. “The word ‘supersede’ means to ‘be superior to,’ ‘to make obsolete, inferior, or outmoded,’ ‘to make void,’ ‘to make superfluous or unnecessary,’ ‘to take the place of,’ or ‘to cause to be supplanted in a position or function.’” *Bd. of County Comm’rs of San Miguel v. Roberts*, 159 P.3d 800, 804 (Colo. App. 2006), citing Webster’s Third New International Dictionary 2295 (1986) (emphasis added). The Board’s use of this word that is not used in #16 itself will lead to unnecessary voter confusion.

D. The title and ballot title and submission clause include “political catch phrases.”

The Title Board must avoid the use of “political catch phrases,” which are “terms that work in favor of a proposal without contributing to voter understanding; they trigger a favorable response to the proposal based not on its content but on its wording.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 454 P.3d 1056, 1062 (Colo. 2019).

First, the phrase “cruelty to animals,” which is used *both* at the beginning and end of the titles, is a “political catch phrase.” It evokes emotions supportive of the measure—protecting animals from abuse—that are disconnected from the wording and intent of the measure, which is changing the treatment of livestock under the law. The question for this Board is whether the referenced language will “**improperly distract voters or appeal to their emotions.**” *In re Title Ballot Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶27, 370 P.3d 628, 634 (emphasis added). Even though the phrase appears in the statute and the measure, “the Title

Board is not free to include this wording in the titles if, as here, it constitutes a catch phrase.” *In re Title, Ballot Title & Submission Clause for 1999-2000 # 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000).

Second, the title’s description of “sexual act with an animal” (“intrusion or penetration into an animal’s anus or genitals with an object or part of a person’s body”) is a socially and politically loaded phrase. The measure itself redefines sexual abuse with an animal in order to use that as a hook for voters. The language evokes emotions concerning sexual abuse of an animal, and graphically describes what constitutes such abuse under the measure. The graphic nature of the language, although included in the measure’s language, triggers a response separate and apart from the Initiative’s wording and effect, which impermissibly “tips the substantive debate surrounding the issue to be submitted to the electorate.” *Id.*

As evidence of this political catch phrase, the proponents’ own website tells voters that this provision isn’t about changing standards for animal care but is, instead, designed to ensure that farmed animals are not “sexually assaulted.” See <https://www.coloradopause.org/about> (attached). Further, one Colorado state representative has summarized the political volatility of this phraseology by noting that voters who are approached to support the measure will be asked “a simple question: ‘Who Wants to Have Sex with Animals?’” Smith, J., “The animal cruelty initiative is exacerbating controversy among Colorado ranchers,” *Arabica Post*, <https://arabicapost.net/the-animal-cruelty-initiative-is-exacerbating-controversy-among-colorado-ranchers/amp/> (last reviewed March 24, 2021) (comments of Rep. Richard Holtorf (R-Washington County)). Finally, this reference is intended to be – and will be – misleading to voters, as it triggers a canard that is unrelated to what is otherwise portrayed as the topic of this measure. See Cox, M., “Don’t buy the hype – it’s not about animals,” *Montrose Press*, Mar. 11, 2021, https://www.montrosepress.com/news/agriculture/don-t-buy-the-hype-it-s-not-about-animals/article_9b5550bc-8201-11eb-8db8-ff1f25d88ec3.html (given this wording, “those with pruriently active minds will think of people having sexual relations with an animal”).

Accordingly, as the titles include impermissible political catch phrases, the Title Board should amend the titles to omit the catch phrases.

WHEREFORE, a rehearing in this matter should be scheduled for the Board’s next regularly scheduled meeting, and the titles set March 17, 2021, should be reversed, due to the single subject violation, misleading and incomplete language, including the use of political catch phrases.

RESPECTFULLY SUBMITTED this 24th day of March, 2021.

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the Motion For Rehearing for Initiative 2020-2021 #16, was sent this 24th day of March, 2021 by first class mail, postage prepaid, to the designated representatives at:

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s/ Erin Holweger



About Ballot Initiative PAUSE

Introduction

The initiative informally titled Protect Animals from Unnecessary Suffering and Exploitation, is a ballot initiative filed with the state of Colorado for the November 2022 midterm election.

If enacted, the initiative would simply extend the most basic animal welfare rights that are granted to pets to all farmed animals. While the animal is alive, it must not be abandoned, abused, neglected, mistreated or sexually assaulted.

We believe there is no rational reason to exempt farmed animals from basic abuse laws that currently exist to protect our pets. To learn more, please see the [full form initiative](#) or our [FAQs page](#).



There is a lot of work ahead of us and a lot of money against any imposition of basic human kindness into the animal agriculture industry. Stand with us and help ensure animals are treated with dignity: [join here](#)

Background

After seeing with our own eyes, thousands of chickens on a Colorado organic free range farm left without food and severely abused, we knew there was a discrepancy between the public image and the reality of some farms.

We sought to make use of some time in the pandemic to research the loopholes in the current animal cruelty laws that allow this to happen. We learned that animal agriculture is explicitly exempt from the entire animal cruelty section of the Colorado Revised Statutes ([18-9-202](#)).

Result

The best initiative to write was clear and simple; extend the definition of animal cruelty to farmed animals. Exemptions were left in the statutes for slaughter,



Result

The best initiative to write was clear and simple; extend the definition of animal cruelty to farmed animals. Exemptions were left in the statutes for slaughter, research, and wildlife.

The resulting ballot initiative seeks to legally require farms to treat their animals with some respect, and bring the reality closer to the idealistic image of what the average consumer hopes is the truth.

The animal agriculture industry nationwide has shown the power of their money by passing the some of the most restrictive privacy laws of any industry. So we know we have an uphill battle ahead of us, but we know with even more conviction that the arc of history bends towards justice and compassion. Compassion is on our side for this campaign.

[Join us](#) and leave your mark by standing up to protect all animals from unnecessary suffering and exploitation.

See the full text of the initiative [here](#) for explicit details.





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