

SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203

DATE FILED: May 6, 2014 2:50 PM

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiatives
2013-2014 #97 (“Care of Livestock
Animals”)

Petitioner: Marc Arnusch

v.

**Respondents: Mike Callicrate and Angela
Smith**

and

**Title Board: SUZANNE STAIERT;
DAVID BLAKE; and SHARON
EUBANKS**

▲ COURT USE ONLY ▲

Attorneys for Petitioner:

Mark G. Grueskin, #14621
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Case No. 14SA143

**REFILED PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING PROPOSED
INITIATIVE 2013-2014 #97 (“CARE OF LIVESTOCK ANIMALS”)**

Marc Arnusch (“Petitioner”), registered elector of the State of Colorado, through his undersigned counsel, respectfully petitions this court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title and ballot title and submission clause set for Initiative 2013-2014 #97 (“Care of Livestock Animals”).

INTRODUCTION

In a timely manner on May 1, 2014, the Petitioner filed a Notice of Appeal from the Title Board's decisions regarding Initiatives 2013-2014 #97 and #98, which were informally captioned "Care of Livestock Animals" and "Protection of and Prevention of Cruelty to Livestock Animals" by legislative staff. The Court has requested separate notices for #97 and #98. This Refiled Notice of Appeal meets the Court's directive in that regard. Thereafter, the Court may consider motions for consolidation if filed by the parties.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #97

Mike Callicrate and Angela Smith (hereafter “Proponents”) proposed Initiative 2013-2014 #97 (the “Proposed Initiative”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter the Proponents submitted a final version of

the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on April 18, 2014 to establish the single subject of and set a title for both measures. On April 23, 2014 Petitioner filed Motion for Rehearings, alleging that the titles were confusing, misleading, and failed to reflect the intent of the Proponents. The rehearings were held on April 24, 2014, at which time the Title Board granted in part the Motions for Rehearing to cure certain deficiencies in the title it had set but denied the Motions in other respects, some of which are at issue in this appeal.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motions for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of each initiative filed by the Proponents; (2) the original ballot titles set; (3) the Motions for Rehearing filed by the Petitioner; and (4) the rulings on the Motions for Rehearing as reflected by the title and ballot title and submission clause set by the Board.

Petitioner believes that the Title Board erred in denying certain aspects of the Motions for Rehearing. Consequently, this matter is properly before this Court.

GROUNDS FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the titles set by the Title Board are unfair, misleading, not fairly and correctly reflective of the true meaning of the Proposed Initiative, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioner's brief:

The Title Board failed to state the complete and accurate standard for the affirmative defense being repealed ("accepted animal husbandry practices") which is a brief but essential element of Initiatives 2013-2014 #97 and #98, central to voters' understanding.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles set for the Proposed Initiatives are neither fair nor accurate and remand the Proposed Initiatives to the Title Board with instructions to redraft the titles to accurately and fairly represent the text of the Proposed Initiatives.

Respectfully submitted this 6th day of May, 2014.

/s Mark G. Grueskin

Mark G. Grueskin, #14621

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **REFILED PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #97 (“CARE OF LIVESTOCK ANIMALS”)** was transmitted this day, May 6, 2014, via ICCES, to counsel for the Initiatives’ Proponents and counsel for the Title Board:

Sarah Clark
Brownstein Hyatt Farber Shreck
410 17th Street, #2200
Denver, CO 80202

Sueanna P. Johnson
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203





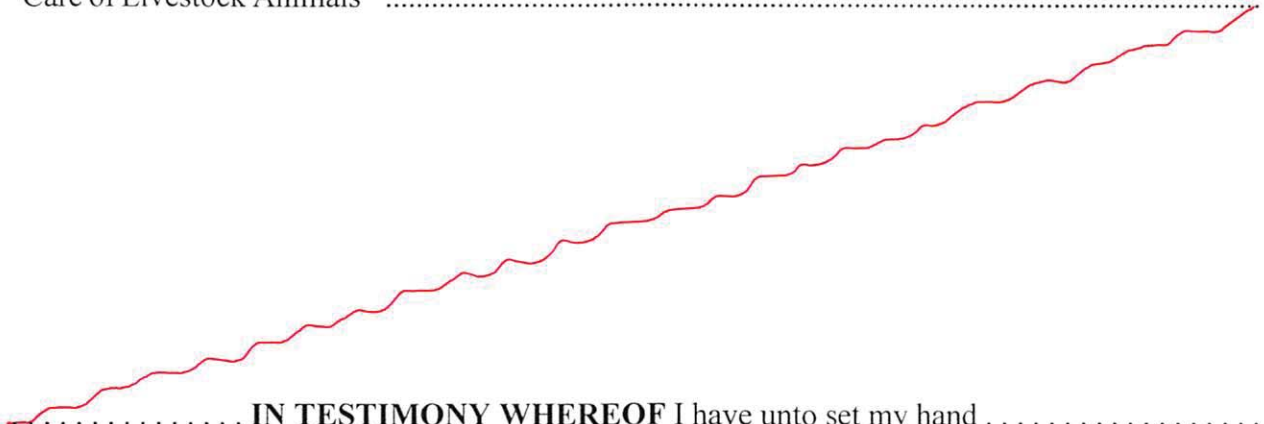
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, motions for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #97 'Care of Livestock Animals'"



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 28th day of April, 2014.



A blue ink signature of Scott Gessler, written in a cursive style.

SECRETARY OF STATE



REPRODUCTION OF ORIGINAL

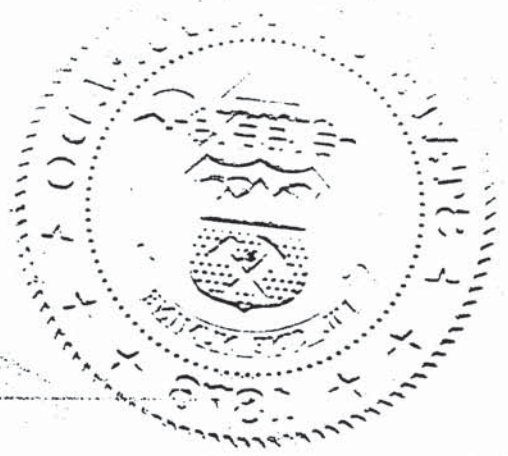
REPRODUCTION OF ORIGINAL

STATE OF COLORADO

BY AND FOR THE

GOVERNMENT

THE STATE OF COLORADO, by and for the Governor, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the State of Colorado.



PRINTED AND BOUND BY

APR 04 2014

S. WARD
2:20 P.M.

Colorado Secretary of State

Proposed Initiative 2013-2014 #97

Original

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-9-201.5, **amend** (1) as follows:

§ 18-9-201.5. Scope of part 2. (1) Nothing in this part 2 shall affect accepted animal husbandry practices utilized by any person ~~in the care of companion or livestock animals or in~~ the extermination of undesirable pests as defined in articles 7, AND 10, ~~and 43~~ of title 35, C.R.S.

SECTION 2. Effective date. SECTION 18-9-201.5(1), COLORADO REVISED STATUTES, AS AMENDED, IS EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR, PURSUANT TO SECTION I(4) OF ARTICLE V OF THE CONSTITUTION OF THE STATE OF COLORADO.

Dashes through words indicate deletions from existing statutes.

Proponent Representative 1

Name: Mike Callicrate

Physical Address: 1184 Hill Cir., Colorado Springs, CO 80904

Mailing Address: 1184 Hill Cir., Colorado Springs, CO 80904

Phone: 785-332-8218

Fax: N/A

E-mail: mike@nobull.net

Proponent Representative 2

Name: Angela Smith

Physical Address: 4655 Calhan Hwy, Calhan, CO 80808

Mailing Address: 4655 Calhan Hwy, Calhan, CO 80808

Phone: 719-478-2581

Fax: N/A

E-mail: highplainsangela@live.com

REC'D S.WARD
APR 11 2014 2:20 P.M.

Colorado Secretary of State

Proposed Initiative 2013-2014 #97
Amended

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-9-201.5, amend (1) as follows:

§-18-9-201.5. Scope of part 2. (1) Nothing in this part 2 shall affect accepted animal husbandry practices utilized by any person ~~in the care of companion or livestock animals or~~ in the extermination of undesirable pests as defined in articles 7, AND 10, ~~and 43~~ of title 35, C.R.S.

SECTION 2. Effective date. Section 18-9-201.5(1), Colorado Revised Statutes, as amended, is effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1(4) of article V of the constitution of the state of Colorado.

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Dashes through words indicate deletions from existing statutes.

Proponent Representative 1

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Name: Angela Smith
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E-mail: highplainsangela@live.com

RECEIVED

APR 04 2014

S. WARD
2:20 P.M.

Colorado Secretary of State

Proposed Initiative 2013-2014 #97

Final

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-9-201.5, **amend** (1) as follows:

18-9-201.5. Scope of part 2. (1) Nothing in this part 2 shall affect accepted animal husbandry practices utilized by any person ~~in the care of companion or livestock animals or~~ in the extermination of undesirable pests as defined in articles 7 AND 10 ~~and 43~~ of title 35, C.R.S.

SECTION 2. Effective date. Section 18-9-201.5(1), Colorado Revised Statutes, as amended, is effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1(4) of article V of the constitution of the state of Colorado.

Dashes through words indicate deletions from existing statutes.

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Fax: N/A

E-mail: highplainsangela@live.com

Ballot Title Setting Board

Proposed Initiative 2013-2014 #97¹

The title as designated and fixed by the Board is as follows:

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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there 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?

*Hearing April 18, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 9:53 a.m.*

¹ Unofficially captioned “Care of Livestock Animals” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

APR 23 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

S.WARD 2:24 P.M.

Marc Arnusch, Objector

vs.

Mike Callicrate and Angela Smith, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #97

Marc Arnusch, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #97 ("Care of Livestock Animals").

On April 18, 2014, the Board set the following ballot title and submission clause:

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?

ADVISORY GROUNDS FOR RECONSIDERATION

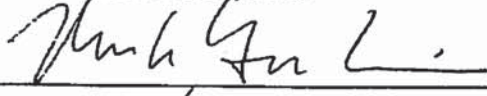
A. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred by setting the current title for this measure.

1. "Animal cruelty" is a prohibited political catchphrase.
2. The title fails to state that the statutes affected by this repeal are criminal statutes.
3. "Accepted animal husbandry practices" is an unknown phrase to most voters and must be defined or clarified in the title.
4. "Companion" animals must be defined or clarified in the title.
5. The repealed phrase, "in the care of," must be included in the title.
6. A legal defense to criminal charges is not an "exemption" and should not be so described in the title.

7. Because of the legal change sought, the title should use "repealing" rather than "eliminating."

RESPECTFULLY SUBMITTED this 23rd day of April, 2014.

RECHT KORNFELD, P.C.



Mark Grueskin

1600 Stout Street, Suite 1000

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rechtkornfeld.com

Objector's Address:

Marc Arnusch
6506 County Road 65
Keenesburg, CO 80643

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #97** was sent this day, April 23, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

Mike Callicrate
1184 Hill Cir.
Colorado Springs, CO 80904

Angela Smith
4655 Calhan Hwy
Calhan, CO 80808



Erin Holweger

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.

HOGAN LOVELLS US LLP

/s/ Chantell L. Taylor

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Hogan Lovells US LLP
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Phone: (303) 899-7300
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Attorneys for Lauren Dever and Julie McCaleb

Objectors address:

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Keenesburg, CO 80643

Julie McCaleb
3918 CRD AA
Anton, CO 80801

Ballot Title Setting Board

Proposed Initiative 2013-2014 #97¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes repealing the exemption from criminal offenses related to the mistreatment of animals for a person who uses generally accepted practices in the care of companion or livestock animals.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there a change to the Colorado Revised Statutes repealing the exemption from criminal offenses related to the mistreatment of animals for a person who uses generally accepted practices in the care of companion or livestock animals?

*Hearing April 18, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 9:53 a.m.*

*Hearing April 24, 2014:
Motion for Rehearing denied except to the extent that the Board made changes to the titles.
Hearing adjourned 11:54 a.m.*

¹ Unofficially captioned “Care of Livestock Animals” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.