

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

DATE FILED: May 5, 2014 4:44 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 #102 (“Dairy Cattle Protection”)

Petitioner: Marc Arnusch

v.

**Respondents: Mike Callicrate and Angela
Smith**

▲ COURT USE ONLY ▲

and

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

Attorneys for Petitioner:

Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
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Denver, CO 80202
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Case No.

**REFILED PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING PROPOSED
INITIATIVE 2013-2014 #102 (“DAIRY CATTLE PROTECTION”)**

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 titles and ballot title and submission clauses set for Initiative 2013-2014 #102 (“Dairy Cattle Protection”).

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 #101 and #102, which were both informally captioned “Dairy Cattle Protection” by legislative staff. The Court accepted the Notice for #101 but has requested a separate notice for #102. 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 #102

Mike Callicrate and Angela Smith (hereafter “Proponents”) proposed Initiative 2013-2014 #102 (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 violate the single subject requirement found in Art. V, § 1(5.5), and are also 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:

1. The Proposed Initiatives violate the single subject requirement because measure does not address just the treatment of bovine animals on "certain farms" as it also regulates their treatment on non-farm facilities that simply raise cattle or process milk or dairy products.
2. The titles set by the Title Board violate the clear title requirement by failing 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 #101 and #102, central to voters' understanding.

PRAYER FOR RELIEF

Petitioner respectfully requests that 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 5th 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 #102 (“DAIRY CATTLE PROTECTION”)** was transmitted this day, May 5, 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

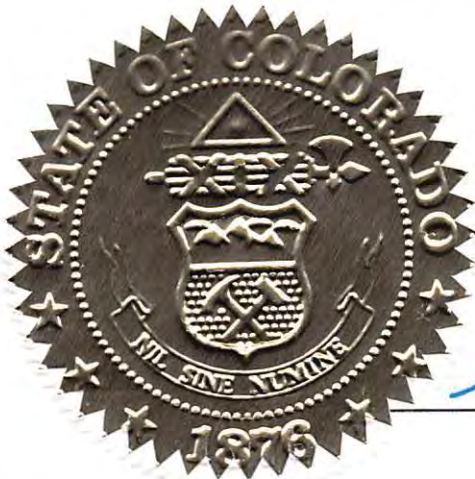
CERTIFICATE

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 #102 'Dairy Cattle Protection'".....

[A large, wavy red line representing a signature or seal impression extends across the page.]

..... **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.



[Handwritten signature of Scott Gessler in blue ink.]

SECRETARY OF STATE

RECEIVED

S. WARD

APR 04 2014

2:20P.M.

Colorado Secretary of State

Proposed Initiative 2013-2014 #102

Original

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

SECTION 1. In Colorado Revised Statutes, add 18-9-210 as follows:

§ 18-9-210. Dairy cattle protection. (1) Definitions. AS USED IN THIS SECTION:

- (a) "DAIRY CATTLE" MEANS ANY LIVING BOVINE HELD ON A DAIRY FARM.
- (b) "DAIRY FARM" MEANS THE LAND, BUILDINGS, SUPPORT FACILITIES, AND OTHER EQUIPMENT THAT ARE WHOLLY OR PARTIALLY USED FOR THE COMMERCIAL PRODUCTION OF DAIRY CATTLE OR MILK OR OTHER DAIRY PRODUCTS, AND DOES NOT INCLUDE LIVE ANIMAL MARKETS.
- (c) "DOCK" MEANS TO CUT OR REMOVE ANY PORTION OF THE FLESH OR BONE OF AN ANIMAL'S TAIL.
- (d) "ENCLOSURE" MEANS A CAGE, STALL, CRATE, OR OTHER STRUCTURE USED FOR CONFINEMENT, INCLUDING WHAT IS COMMONLY REFERRED TO AS A "TIE-STALL" OR "STANCHION" FOR DAIRY CATTLE.
- (e) "FARM OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A DAIRY FARM; AND DOES NOT INCLUDE ANY NON-MANAGEMENT EMPLOYEE, CONTRACTOR, OR CONSULTANT.
- (f) "FULLY EXTENDING ITS LIMBS" MEANS FULLY EXTENDING ALL LIMBS WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE.
- (g) "HUMANELY EUTHANIZE" MEANS TO KILL BY A MECHANICAL, CHEMICAL, OR ELECTRICAL METHOD THAT RAPIDLY AND EFFECTIVELY RENDERS THE ANIMAL INSENSITIVE TO PAIN.
- (h) "NON-AMBULATORY DAIRY CATTLE" MEANS DAIRY CATTLE THAT WILL NOT STAND AND WALK UNASSISTED.
- (i) "SLAUGHTERING FACILITY" MEANS ANY ESTABLISHMENT THAT IS NOT REGULATED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE PURSUANT TO THE FEDERAL MEAT INSPECTION ACT WHERE ANIMALS ARE KILLED FOR HUMAN CONSUMPTION.
- (j) "TURNING AROUND FREELY" MEANS TURNING IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT, INCLUDING A TETHER, AND WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE.

(2) Prohibitions. (a) NO FARM OWNER OR OPERATOR SHALL KNOWINGLY DOCK THE TAIL OF ANY DAIRY CATTLE, OR PROCURE THE SAME TO BE DONE, EXCEPT WHERE SUCH PROCEDURE IS PERFORMED BY A LICENSED VETERINARIAN FOR THE PURPOSE OF TREATING A SICK OR INJURED ANIMAL.

(b) NO FARM OWNER OR OPERATOR SHALL KNOWINGLY TETHER OR CONFINE DAIRY CATTLE IN AN ENCLOSURE IN A MANNER THAT PREVENTS SUCH ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING ITS LIMBS, AND TURNING AROUND FREELY. THIS SUBSECTION DOES NOT APPLY DURING TRANSPORTATION; AT STATE OR COUNTY FAIR EXHIBITIONS, 4-H PROGRAMS, AND SIMILAR EXHIBITIONS; DURING HUMANE SLAUGHTER IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS; DURING MEDICAL RESEARCH; DURING EXAMINATION, TESTING, INDIVIDUAL TREATMENT, OR OPERATION, BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN, OR TO THE TEMPORARY CONFINEMENT FOR ANIMAL HUSBANDRY PURPOSES FOR NO MORE THAN SIX HOURS IN ANY TWENTY-FOUR HOUR PERIOD.

(c) NO PERSON SHALL KNOWINGLY TRANSPORT LIVE NON-AMBULATORY DAIRY CATTLE TO, FROM, OR BETWEEN ANY SLAUGHTERING FACILITY, LIVESTOCK MARKET, FEEDLOT, OR SIMILAR FACILITY THAT TRADES IN DAIRY CATTLE, AND ALL NON-AMBULATORY DAIRY CATTLE MUST EITHER BE PROMPTLY HUMANELY EUTHANIZED OR PROVIDED WITH PROMPT TREATMENT BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN BEFORE TRANSPORT TO, FROM, OR BETWEEN SUCH LOCATIONS.

(d) NO PERSON SHALL KNOWINGLY ACCEPT DELIVERY OF LIVE NON-AMBULATORY DAIRY CATTLE AT ANY SLAUGHTERING FACILITY, LIVESTOCK MARKET, FEEDLOT, OR SIMILAR FACILITY THAT TRADES IN DAIRY CATTLE, WITHOUT PROMPTLY HUMANELY EUTHANIZING OR PROMPTLY PROVIDING TREATMENT BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN.

(3) Penalty. (a) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION COMMITS A CLASS 2 MISDEMEANOR.

(b) IT IS NOT AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE ANIMAL WAS KEPT IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(c) IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN PART 2 OF ARTICLE 9 OF TITLE 18, C.R.S., THAT THE ANIMAL WAS TREATED IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(4) Severability and applicability. (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

(b) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER LAWS PROTECTING ANIMAL WELFARE. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT ANY MORE STRINGENT STATE LAW OR RULES PROTECTING THE WELFARE OF ANIMALS OR TO PREVENT A LOCAL GOVERNING BODY FROM ADOPTING AND ENFORCING ITS OWN ANIMAL WELFARE LAWS AND REGULATIONS.

(c) THIS SECTION APPLIES TO OFFENSES COMMITTED ON OR AFTER THE EFFECTIVE DATE OF THIS INITIATED MEASURE.

(5) Effective date. ALL PROVISIONS OF THIS SECTION ARE EFFECTIVE ONE YEAR FROM THE 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.

Proponent Representative 1

Name: Mike Callicrate

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Proponent Representative 2

Name: Jacquelyn Pyun

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Phone: 720-737-6006

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E-mail: jpyun@humanesociety.org

RECEIVED

APR 04 2014

SWARD

2:20 PM

Colorado Secretary of State

Proposed Initiative 2013-2014 #102
Amended

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

SECTION 1. In Colorado Revised Statutes, add 18-9-210 as follows:

§18-9-210. Dairy cattle protection. (1) Definitions. AS USED IN THIS SECTION:

- (a) "DAIRY COWATTLE" MEANS ANY LIVING BOVINE HELD ON A DAIRY FARM.
- (b) "DAIRY FARM" MEANS THE LAND, BUILDINGS, SUPPORT FACILITIES, AND OTHER EQUIPMENT THAT ARE WHOLLY OR PARTIALLY USED FOR THE COMMERCIAL PRODUCTION OF DAIRY COWSATTLE OR MILK OR OTHER DAIRY PRODUCTS; AND DOES NOT INCLUDE LIVE ANIMAL MARKETS.
- (c) "DOCK" MEANS TO CUT OR REMOVE ANY PORTION OF THE FLESH OR BONE OF AN DAIRY COW'S ANIMAL'S TAIL.
- (d) "ENCLOSURE" MEANS A CAGE, STALL, CRATE, OR OTHER STRUCTURE USED FOR CONFINEMENT, INCLUDING WHAT IS COMMONLY REFERRED TO AS A "TIE-STALL" OR "STANCHION" FOR DAIRY COWSATTLE.
- (e) "FARM OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A DAIRY FARM; AND DOES NOT INCLUDE ANY NON-MANAGEMENT EMPLOYEE, CONTRACTOR, OR CONSULTANT.
- (f) "FULLY EXTENDING ITS LIMBS" MEANS FULLY EXTENDING ALL LIMBS WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE.
- (g) "HUMANELY EUTHANIZE" MEANS TO KILL BY A MECHANICAL, CHEMICAL, OR ELECTRICAL METHOD THAT RAPIDLY AND EFFECTIVELY RENDERS THE ANIMAL INSENSITIVE TO PAIN.
- (h) "NON-AMBULATORY DAIRY COWATTLE" MEANS A DAIRY COWATTLE THAT WILL NOT STAND ~~AND OR~~ WALK UNASSISTED.
- (i) "SLAUGHTERING FACILITY" MEANS ANY ESTABLISHMENT THAT IS NOT REGULATED BY THE UNITED STATES ~~DEPARTMENT OF AGRICULTURE~~ AGRICULTURE PURSUANT PURSUANT TO THE ~~FEDERAL~~ FEDERAL "MEAT INSPECTION ACT", AS AMENDED, 21 U.S.C. SECS. 601-695, WHERE ANIMALS ARE KILLED FOR HUMAN CONSUMPTION.
- (j) "THERAPEUTIC" MEANS FOR THE PURPOSE OF TREATING A SICK OR INJURED DAIRY COW, WHERE SUCH TREATMENT IS DEEMED MEDICALLY NECESSARY BY A LICENSED VETERINARIAN, AND NOT MERELY PROPHYLACTIC.
- (k) "TURNING AROUND FREELY" MEANS TURNING IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT, INCLUDING A TETHER, AND WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE.

(2) Prohibitions. (a) ~~NO A~~ FARM OWNER OR OPERATOR SHALL NOT KNOWINGLY DOCK THE TAIL OF ANY DAIRY COWATTLE, OR PROCURE THE SAME TO BE DONE, EXCEPT WHERE SUCH PROCEDURE IS PERFORMED BY A LICENSED VETERINARIAN FOR THE PURPOSE OF TREATING A SICK OR INJURED ANIMAL FOR A THERAPEUTIC PURPOSE.

(b) ~~NO A~~ FARM OWNER OR OPERATOR SHALL NOT KNOWINGLY TETHER OR CONFINE A DAIRY COWATTLE OR PROCURE THE SAME TO BE DONE, IN AN ENCLOSURE IN A MANNER THAT PREVENTS SUCH ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING ITS LIMBS, ~~AND OR~~ TURNING AROUND FREELY. THIS SUBSECTION DOES NOT APPLY DURING TRANSPORTATION; AT STATE OR COUNTY FAIR EXHIBITIONS, 4-H PROGRAMS, ~~AND OR~~ SIMILAR EXHIBITIONS; DURING HUMANE

SLAUGHTER IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS; DURING MEDICAL RESEARCH; DURING EXAMINATION, TESTING, INDIVIDUAL TREATMENT, OR OPERATION, BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN, OR TO THE TEMPORARY CONFINEMENT FOR ANIMAL HUSBANDRY PURPOSES FOR NO MORE THAN SIX HOURS IN ANY TWENTY-FOUR HOUR PERIOD.

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(3) **Penalty.** (a) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION COMMITS A CLASS 2 MISDEMEANOR.

(b) IT IS NOT AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE ~~DAIRY COW~~ANIMAL WAS KEPT IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(c) IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN ~~THIS SECTION~~PART 2 OF ARTICLE 9 OF TITLE 18, C.R.S., THAT THE ~~DAIRY COW~~ANIMAL WAS TREATED IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(4) **Severability and applicability.** (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

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(c) THIS SECTION APPLIES TO OFFENSES COMMITTED ON OR AFTER THE EFFECTIVE DATE OF THIS INITIATED MEASURE.

(5) **Effective date.** All provisions of this section are effective one year from the 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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Proponent Representative 1

Name: Mike Callicrate

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

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

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E-mail: mike@nobull.net

Proponent Representative 2

Name: Jacquelyn Pyun

Physical Address: PO Box 18911, Denver CO 80218

Mailing Address: PO Box 18911, Denver CO 80218

Phone: 720-737-6006

Fax: N/A

E-mail: jpyun@humanesociety.org

APR 04 2014

S. WARD
2:20 P.M.

Colorado Secretary of State

Proposed Initiative 2013-2014 #102
Final

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

SECTION 1. In Colorado Revised Statutes, **add** 18-9-210 as follows:

18-9-210. Dairy cattle protection. (1) Definitions. AS USED IN THIS SECTION:

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- (c) "DOCK" MEANS TO CUT OR REMOVE ANY PORTION OF THE FLESH OR BONE OF A DAIRY COW'S TAIL.
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- (j) "THERAPEUTIC" MEANS FOR THE PURPOSE OF TREATING A SICK OR INJURED DAIRY COW, WHERE SUCH TREATMENT IS DEEMED MEDICALLY NECESSARY BY A LICENSED VETERINARIAN, AND NOT MERELY PROPHYLACTIC.
- (k) "TURNING AROUND FREELY" MEANS TURNING IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT, INCLUDING A TETHER, AND WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE.

(2) Prohibitions. (a) A FARM OWNER OR OPERATOR SHALL NOT KNOWINGLY DOCK THE TAIL OF ANY DAIRY COW OR PROCURE THE SAME TO BE DONE, EXCEPT WHERE SUCH PROCEDURE IS PERFORMED FOR A THERAPEUTIC PURPOSE.

(b) A FARM OWNER OR OPERATOR SHALL NOT KNOWINGLY TETHER OR CONFINE A DAIRY COW OR PROCURE THE SAME TO BE DONE, IN AN ENCLOSURE IN A MANNER THAT PREVENTS SUCH ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING ITS LIMBS, OR TURNING AROUND FREELY. THIS SUBSECTION DOES NOT APPLY DURING TRANSPORTATION; AT STATE OR COUNTY FAIR EXHIBITIONS, 4-H PROGRAMS, OR SIMILAR EXHIBITIONS; DURING HUMANE SLAUGHTER IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS; DURING MEDICAL RESEARCH; DURING

EXAMINATION, TESTING, INDIVIDUAL TREATMENT, OR OPERATION, BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN, OR TO THE TEMPORARY CONFINEMENT FOR ANIMAL HUSBANDRY PURPOSES FOR NO MORE THAN SIX HOURS IN ANY TWENTY-FOUR HOUR PERIOD.

(c) A PERSON SHALL NOT KNOWINGLY TRANSPORT A LIVE NON-AMBULATORY DAIRY COW TO, FROM, OR BETWEEN ANY SLAUGHTERING FACILITY, LIVESTOCK MARKET, FEEDLOT, OR SIMILAR FACILITY THAT TRADES IN DAIRY COWS, AND ALL NON-AMBULATORY DAIRY COWS MUST EITHER BE PROMPTLY AND HUMANELY EUTHANIZED OR PROVIDED WITH PROMPT TREATMENT BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN BEFORE TRANSPORT TO, FROM, OR BETWEEN SUCH LOCATIONS.

(d) A PERSON SHALL NOT KNOWINGLY ACCEPT DELIVERY OF A LIVE NON-AMBULATORY DAIRY COW AT ANY SLAUGHTERING FACILITY, LIVESTOCK MARKET, FEEDLOT, OR SIMILAR FACILITY THAT TRADES IN DAIRY COWS, WITHOUT PROMPTLY HUMANELY EUTHANIZING OR PROMPTLY PROVIDING TREATMENT BY OR UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN.

(3) **Penalty.** (a) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION COMMITS A CLASS 2 MISDEMEANOR.

(b) IT IS NOT AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE DAIRY COW WAS KEPT IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(c) IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN THIS SECTION THAT THE DAIRY COW WAS TREATED IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

(4) **Severability and applicability.** (a) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

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(5) **Effective date.** All provisions of this section are effective one year from the 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.

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: Jacquelyn Pyun

Physical Address: PO Box 18911, Denver CO 80218

Mailing Address: PO Box 18911, Denver CO 80218

Phone: 720-737-6006

Fax: N/A

E-mail: jpyun@humanesociety.org

Ballot Title Setting Board

Proposed Initiative 2013-2014 #102¹

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

A change to the Colorado Revised Statutes concerning the treatment of dairy cows, and, in connection therewith, prohibiting a dairy farm owner or operator from cutting or removing the tail of a dairy cow except when medically necessary to treat sick or injured cows; limiting the circumstances in which dairy cows may be confined in a way that restricts their ability to turn around freely; regulating the treatment of dairy cows that will not stand unassisted and their transfer to certain livestock facilities including slaughter houses and feedlots; and designating a violation as a class 2 misdemeanor.

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

Shall there be a change to the Colorado Revised Statutes concerning the treatment of dairy cows, and, in connection therewith, prohibiting a dairy farm owner or operator from cutting or removing the tail of a dairy cow except when medically necessary to treat sick or injured cows; limiting the circumstances in which dairy cows may be confined in a way that restricts their ability to turn around freely; regulating the treatment of dairy cows that will not stand unassisted and their transfer to certain livestock facilities including slaughter houses and feedlots; and designating a violation as a class 2 misdemeanor?

*Hearing April 18, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:18 a.m.*

¹ Unofficially captioned “**Dairy Cattle Protection**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Marc Arnusch, Objector

vs.

Mike Callicrate and Jacquelyn Pyun, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #102

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 #102 ("Dairy Cattle Protection").

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

Shall there be a change to the Colorado Revised Statutes concerning the treatment of dairy cows, and, in connection therewith, prohibiting a dairy farm owner or operator from cutting or removing the tail of a dairy cow except when medically necessary to treat sick or injured cows; limiting the circumstances in which dairy cows may be confined in a way that restricts their ability to turn around freely; regulating the treatment of dairy cows that will not stand unassisted and their transfer to certain livestock facilities including slaughter houses and feedlots; and designating a violation as a class 2 misdemeanor?

ADVISORY GROUNDS FOR RECONSIDERATION

- A. The title set does not meet requirements for a single subject in a ballot initiative, Colo. Const. art. V, sec. 1(5.5).
1. The initiative regulates activities on farm lands and facilities where the exclusive activity is producing milk and dairy products as well as any place where an entirely incidental or naturally occurring production of milk or dairy products occurs.
 2. The initiative regulates facilities dealing solely with the production of animals (i.e., dairy cows) as well as facilities dealing solely with the production of milk and/or dairy products.

B. 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. The title is misleading and should reflect the measure's true meaning, based on the initiative text, using the term "bovine" or "any living bovine" rather than "dairy cow."
2. If the title uses the phrase "dairy farm," it should reflect that a "dairy farm" is any land and improvements used wholly or partially to produce dairy cows or milk or other dairy products.
3. The title should reflect that the initiative prohibits both the act of bovine tail docking and the procuring of such act.
4. The title should reflect that the initiative prohibits only tail docking done "knowingly."
5. The title should reflect that the initiative prohibits the removal of "any portion" of a bovine's tail.
6. The title should: (a) define an "accepted animal husbandry practice;" and (b) state that, in the instance of criminal prosecution, accepted animal husbandry practices are not an affirmative defense and cannot be used to negate a criminal charges.
7. The title should state that the measure does not limit more stringent state or local laws or rules.

RESPECTFULLY SUBMITTED this 23rd day of April, 2014.

RECHT KORNFIELD, P.C.



Mark Grueskin
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Objector's Address:

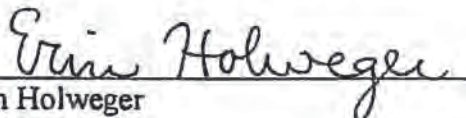
Marc Arnusch
6506 County Road 65
Keenesburg, CO 80643

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #102** 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

Jacquelyn Pyun
PO Box 18911
Denver, CO 80218


Erin Holweger

S.WARD
4:45P.M.

RECEIVED

APR 23 2014

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #102

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 #102 ("Initiative"), and as grounds therefore states that the Initiative violates single-subject requirements and therefore the Board lacks jurisdiction to set title. Alternatively, the title and submission clause do not conform to constitutional and statutory requirements and must be rejected or amended.

I. BACKGROUND

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

A change to the Colorado Revised Statutes concerning the treatment of dairy cows, and, in connection therewith, prohibiting a dairy farm owner or operator from cutting or removing the tail of a dairy cow except when medically necessary to treat sick or injured cows; limiting the circumstances in which dairy cows may be confined in a way that restricts their ability to turn around freely; regulating the treatment of dairy cows that will not stand unassisted and their transfer to certain livestock facilities including slaughter houses and feedlots; and designating a violation as a class 2 misdemeanor.

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 concerning the treatment of dairy cows, and, in connection therewith, prohibiting a dairy farm owner or operator from cutting or removing the tail of a dairy cow except when medically necessary to treat sick or injured cows; limiting the circumstances in which dairy cows may be confined in a way that restricts their ability to turn around freely; regulating the treatment of dairy cows that will not stand unassisted and their transfer to certain livestock facilities including slaughter houses and feedlots; and designating a violation as a class 2 misdemeanor?

As set forth below, the Initiative violates the single-subject requirements and the title and ballot title and submission clause do not comply with the constitutional and statutory requirements.

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, under the guise of “Dairy Cattle Protection” the initiative actually includes the following unrelated subjects:

1. Prohibits the practice of tail docking, which is presently legal as an accepted animal husbandry practice, and subjects any person who performs the procedure to criminal penalties;
2. Adopts a new definition of the term “dairy farm” that conflicts with the existing statutory definition;
3. Regulates the circumstances under which a farm owner or operator may tether or confine a dairy cow;
4. Regulates the treatment and transport of live non-ambulatory dairy cows to, from, or between slaughtering facilities, livestock markets, feedlots or similar facility that trades in dairy cows; and
5. Eliminates an existing affirmative defense to an alleged criminal offense and further states that the use of accepted animal husbandry practices will no longer negate elements of animal cruelty offenses.

None of these subjects is interdependent or connected to the other and “grouping” them under the catch-all title “Dairy Cattle Protection” will not satisfy the single-subject requirement. *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). To the contrary, the Initiative imposes varied requirements on different activities conducted by different industries at different types of facilities. 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 Impermissibly Confusing, Misleading, and Fail to 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 term “dairy cow” as used in the title does not accurately reflect the meaning of the term as defined by the Initiative. In fact, it is unlikely that any title can accurately express and fully inform voters as to how “dairy cow” is defined. Section (1)(a) of the Initiative defines “dairy cow” to mean: “any living bovine held on a dairy farm.” (Emphasis added). The Initiative does not define “bovine” but “bovine livestock” is statutorily defined to include “(a) All cattle and calves; and (b) All sheep being treated as livestock at the request of the owner thereof.” C.R.S. § 35-41-100.3 (emphasis added). The Initiative defines “dairy farm” broadly to mean: “the land, buildings, support facilities, and other equipment that are wholly or partially used for the production of dairy cows or milk or other dairy products and does not include live animal markets.” Initiative § (1)(b). This definition conflicts with the more plain definition provided currently in state statute, which states: “‘Dairy farm’ means the place or premises on which one or more lactating hooved animals are kept and from which a part or all of the milk produced thereon is delivered, sold, or offered for sale to a dairy plant for manufacturing purposes.” C.R.S. § 25-5.5-101(3).

Under Proponents definition of dairy farm, even *non-lactating bovine* that are “held” on a farm where the land, buildings or other equipment are used for the production of milk or milk products could be defined as a “dairy cow” subject to the terms of the Initiative. Thus, a beef cattle ranch could be deemed a dairy farm under the Initiative by the simple fact that the rancher maintains one lactating cow to produce milk for personal/family consumption or has equipment used to produce dairy products. If the cattle ranch is deemed a dairy farm, than any living bovines on the ranch are deemed to be dairy cows subject to the regulations enumerated in the Initiative. Proponents could have but declined to adopt the plainer and commonly understood definition of dairy farm provided in state statute, and instead drafted an over-inclusive definition that is impossible to fully comprehend. The Board must therefore reject the Initiative because it is impossible to set a title that can accurately inform voters of the Initiative’s full effect. *See e.g., In re Proposed Initiative 1999-2000 No. 25*, 974 P.2d at 458, 465 (the Board must reject an initiative that cannot be understood clearly enough to allow the setting of a clear title); *In re Proposed Initiative on Limited Gaming in Anotnito*, 873 P.2d 733, 741 (Colo. 1994) (holding that title was misleading since a voter scanning the initiative would be misled into believing that the measure concerned only one city, even though the proposed initiative also changed provisions applicable to other areas of the state was limited gaming was lawful).

2. The Initiative and its current title are impermissibly misleading because they fail to inform voters that the practice of docking, which is presently legal as an accepted animal husbandry practice, would be a criminal act under the Initiative. It is not sufficient to state the classification of the offense, which most voters will not understand. To be accurate, the title must make clear that any farmer or operator who docks a bovine’s tail is subject to criminal charges and penalties. *See e.g., Matter of Title, Ballot Title and*

Sub. Cl., and Summary for 1999-2000 No. 258(A), 4 P.3d 1094, 1099 (Colo. 2000) (eliminating or omitting a key feature of an initiative from the title is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes).

3. The title is defective because it omits another key feature of the initiative. Specifically, the title fails to inform voters that, rather than simply adding a prohibition against tail docking, it would also eliminate an existing affirmative defense to an alleged criminal offense and further state that the use of accepted animal husbandry practices will no longer negate elements of animal cruelty offenses. Although titles need not state every detail of an initiative or restate the obvious, they must not mislead the voters or promote voter confusion. For that reason, the Supreme Court has held that titles containing a material and significant omission, misstatement, or misrepresentation cannot stand. *See In re Ballot Title 1997-98 #62*, 961 P. 2d 1077, 1082 (Colo. 1998).

Based on the foregoing, the title and submission clause as drafted violates constitutional and statutory requirements and, to the extent no title can accurately inform voters of the Initiative's true intent, title setting must be denied. In the alternative, the title must be significantly amended to address the concerns described above.

C. The Title and Ballot Title and Submission Clause Use Impermissible Catch Phrases Designed to Prejudice Voters

Inclusion of the term "slaughter houses" unfairly appeals to emotion in a way that would prejudice voters and, therefore, constitutes an impermissible "catch phrase." *See Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1098 (titles may not contain a catch phrase that unfairly prejudices the proposal in its favor). The fact that the Proponents advocated so vigorously to the Board for inclusion of the term "slaughter houses" underscores its prejudicial weight in their favor. As the Board recognized at the title setting, the use of the phrase "livestock facilities" sufficiently describes the scope of the Initiative's provision regarding transport of dairy cows. Because the specific types of facilities are defined in the Initiative, and the terms "slaughter houses and feedlots" do not constitute a new or controversial legal standard, the Board does not need to further define it in the title. *See e.g., In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000) (the titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative). To be fair and accurate, the extraneous and prejudicial term "slaughter houses" must be removed.

Based on the foregoing, the title and submission clause as drafted do not comply with the constitutional and statutory requirements for title setting.

III. REQUEST FOR RELIEF

The Objectors request that this Motion for Rehearing be granted and that the Board reject setting title based on the Initiative's fatal flaws as described above. Alternatively, Objectors request that the Board amend the title and ballot title and submission clause to address the concerns set forth above.

Respectfully submitted this 23rd day of April, 2014.

HOGAN LOVELLS US LLP

/s/ Chantell L. Taylor

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Ballot Title Setting Board

Proposed Initiative 2013-2014 #102¹

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

A change to the Colorado Revised Statutes concerning the treatment of bovine animals, including cattle, held on certain farms, and, in connection therewith, criminalizing as a class 2 misdemeanor the following conduct: the cutting or removal of tails of such animals, except when medically necessary to treat sick or injured animals; the confinement of such animals in a way that restricts their ability to turn around freely; and the treatment of such animals that will not stand unassisted and their transport to certain livestock facilities including slaughter facilities and feedlots.

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

Shall there be a change to the Colorado Revised Statutes concerning the treatment of bovine animals, including cattle, held on certain farms, and, in connection therewith, criminalizing as a class 2 misdemeanor the following conduct: the cutting or removal of tails of such animals, except when medically necessary to treat sick or injured animals; the confinement of such animals in a way that restricts their ability to turn around freely; and the treatment of such animals that will not stand unassisted and their transport to certain livestock facilities including slaughter facilities and feedlots?

*Hearing April 18, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:18 a.m.*

*Hearing April 24, 2014:
Motion for Rehearing denied except to the extent that the Board made changes to the titles.
Hearing adjourned 5:23 p.m.*

¹ Unofficially captioned "Dairy Cattle Protection" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.