

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 15, 2020 8:47 PM</p>
<p>Original proceeding pursuant to § 1-40-107(2), C.R.S. (2019) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020 #314 (“Concerning Farm Animal Confinement”)</p> <p>Petitioners: Brett Rutledge and Joyce R. Kelly,</p> <p>v.</p> <p>Respondents: John Seber and John Surenkamp,</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Julie Pelegrin.</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No.: 2020SA157</p>
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<p>TITLE BOARD’S OPENING BRIEF</p>	

Respondents Theresa Conley, David Powell, and Julie Pelegrin, in their official capacities as members of the Title Board (collectively, the “Board”), by and through undersigned counsel, hereby submit their Opening Brief in this appeal:

CERTIFICATE OF COMPLIANCE

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

A. The brief complies with C.A.R. 28(g) because it contains 952 words.

B. The brief complies with C.A.R. 28(a)(7)(A) because each issue it contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority and (2) a citation to the precise location in the record, and not to an entire document, where the issue was raised and ruled on.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the title set for Proposed Initiative 2019-20 #314 reflects the central features of the measure to accurately convey its true intent and meaning.

STATEMENT OF THE CASE

Respondents John Seber and John Surenkamp seek to circulate Proposed Initiative 2019-20 #314 (“#314”), concerning the confinement standards for certain farm animal used in commercial production, to obtain the signatures needed to place the measure on the November 2020 general election ballot. Specifically, #314 is a proposed statutory amendment that seeks “to prevent animal cruelty by phasing out extreme methods of farm animal confinement.” *See* #314 Cert. Rec., at 2. The new statutory scheme does so by prohibiting confinement that does not meet specified space requirements for covered farm animals subject to certain exceptions, prohibiting businesses from selling eggs or meat produced from covered animals in violation of the statute,

imposing a fine for violations of the statute, and directing the commissioner of agriculture to enforce the statute. *See id.*, at 2-8.

The Board held a public hearing to consider #314 on April 15, 2020, at which it found that the measure contains a single subject and set title. *See #314 Cert. Rec.*, at 10. Petitioners Brett Rutledge and Joyce R. Kelly timely filed a motion for rehearing objecting to the Board's actions. *See id.*, at 11-17. On April 23, 2020, the Board denied the motion except to the extent that it made changes to the title previously set for #314. *See id.*, at 18. The final version of the ballot title reads:

A change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting confinement that does not meet specified space requirements for egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined in violation of the measure; allowing certain exceptions to the confinement standards for covered farm animals; imposing a fine for violations of the measure; and directing the commissioner of agriculture to enforce the measure.

Id.

Petitioners timely appealed the Board’s final decision to this Court. They complain that the title set for #314 is inaccurate and misleading because it does not detail that the “fine for violating this measure” is criminal in nature, the measure creates a civil remedy that is available to “any person,” or that those who violate the measure may be subject “to court-ordered auctions of, and liens on, their land and equipment.” *Pet. for Review*, at 4.

SUMMARY OF THE ARGUMENT

The Board’s actions in setting title for #314 must be affirmed because the title accurately summarizes its substance and is not misleading.

ARGUMENT

I. The title the Board set for #314 was proper.

A. Standard of review.

This Court does not demand that the Board “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2009-2010, #45* (“*In re #45*”), 234 P.3d 642, 648 (Colo. 2010). Rather, it “give[s] great deference to the Title Board in the exercise of its drafting authority and

will reverse its decision only if the titles are insufficient, unfair, or misleading.” *Id.* (citation omitted).

The Board agrees that Petitioners preserved their challenges to the substance of the title by raising them in the motion for rehearing and arguments made at the April 23, 2020 public rehearing.

B. The title for #314 is fair, clear, accurate, and not misleading.

The Colorado Constitution requires that the subject of a proposed initiative “shall be clearly expressed in its title[.]” COLO. CONST. art. V, § 1(5.5). The standard for setting clear titles is as follows:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes/for” or “no/against” vote will be unclear. The title for the proposed law . . . shall correctly and fairly express the true intent and meaning thereof[.] . . .Ballot titles shall be brief . . . and . . . unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S. (2020). In short, a title must be fair, clear, accurate, and complete. *In re Title, Ballot Title, & Submission Clause for 2007-2008, #62*, 184 P.3d 52, 58 (Colo. 2008).

Here, the Board’s title plainly expresses #314’s core purpose of prohibiting confinement of covered farm animals that does not meet specified space requirements subject to certain exceptions, prohibiting businesses from selling eggs or meat produced from those animals in violation of the measure, imposing a fine for violating the measure, and directing the commissioner of agriculture to enforce the measure. In doing so, the title “enable[s] the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.” *In re Title, Ballot Title, & Submission Clause for 2009-2010*, #24, 218 P.3d 350, 356 (Colo. 2009) (quotation omitted). That is all that is required because the Board “need *not* include every detail” of the proposed measure. *In re Title, Ballot Title, & Submission Clause for 2001-2002*, #22 & #23, 44 P.3d 213, 222 (Colo. 2020). Petitioners’ quibble that the title does not contain an exhaustive summary of every facet of the statutory scheme created by the measure therefore lacks merit. The title set for #314 was well-within the substantial discretion this Court gives the Board. *In re #45*, 234 P.3d at 648.

CONCLUSION

For the reasons given above, the Court should affirm the Board's decision regarding #314.

Respectfully submitted on this 15th day of May, 2020.

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CERTIFICATE OF SERVICE

This is to certify that on May 15, 2020, I electronically served the foregoing **TITLE BOARD'S OPENING BRIEF** upon all counsel of record for the parties to this appeal via the Colorado Courts E-filing System:

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