

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2020-2021 #16 (“Laws Concerning Cruelty to Animals”)</p> <p>Petitioners: Janie VanWinkle, Carlyle Currier, Chris Kraft, Terri Diane Lamers, William Hammerich, and Joyce Kelly</p> <p>v.</p> <p>Respondents: Alexander Sage and Brent Johannes</p> <p>and</p> <p>Title Board: Teresa Conley, David Powell, and Julie Pelegrin</p>	
<p>Attorneys for Petitioners:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2020-2021 #16 (“LAWS CONCERNING CRUELTY TO ANIMALS”)</p>	

Janie VanWinkle, Carlyle Currier, Chris Kraft, Terri Diane Lamers, William Hammerich, and Joyce Kelly (“Petitioners”), registered electors of the State of Colorado, through undersigned counsel, respectfully petition 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, ballot title, and submission clause set for Initiative 2020-2021 #16 (“Laws Concerning Cruelty to Animals”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2020-2021 #16.

Alexander Sage and Brent Johannes (hereafter “Proponents”) proposed Initiative 2020-2021 #16 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions 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 March 17, 2021, at which time titles were set for 2020-2021 #16. On March 24, 2021, Petitioners Janie VanWinkle, Carlyle Currier, Chris Kraft, Terri Diane Lamers, William Hammerich, and Joyce Kelly filed a Motion for Rehearing, alleging that Initiative #16 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), that the Title Board set titles

which were misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure, and that the Title Board impermissibly included political catchphrases in the titles. The rehearing was held on April 7, 2021, at which time the Title Board granted in part and denied in part the Motion for Rehearing.

B. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners 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 version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUNDS FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because the Initiative contains multiple subjects, in violation of Colo. Const. art. V, sec. 1(5.5), and because the Board violated the statutory “clear ballot title” requirement by including political catch phrases in the title. The following is an advisory list of issues to be addressed in Petitioners’ brief:

1. Whether Initiative #16 violated the constitutional single subject requirement by including, along with changes to animal treatment laws contained in Title 18:

- a. Specification of lifespans for different species of animals and a requirement that they not be slaughtered until they have lived at least one-quarter of those time periods; and
- b. A politically charged redefinition of “sexual act with an animal.”

2. Whether the Board violated the statutory “clear ballot title” requirement by including in the title these political catch phrases:

- a. Both “cruelty to animals” (two times) and “animal cruelty” (two times); and
- b. The unnecessarily graphic description of the elements of the redefined “sexual act with an animal.”

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or, the alternative, to correct the title to address the deficiencies outlined in Petitioners' briefs.

Respectfully submitted this 14th day of April, 2021.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621

RECHT KORNFELD, P.C.

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ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2020-2021 #16 (“LAWS CONCERNING CRUELTY TO ANIMALS”)** was sent electronically via Colorado Courts E-Filing this day, April 14, 2021, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

And via United States Mail to Proponents:

Alexander Sage
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Broomfield CO 80038

Brent Johannes
PO Box 81
Broomfield CO 80038

/s Erin Holweger _____

DATE FILED: April 14, 2021 11:58 AM



STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact summary, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2021-2022 #16 'Laws Concerning Cruelty to 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 7th day of April, 2021.

Jena Griswold

SECRETARY OF STATE



Ballot Initiative 2022

Colorado State Ballot Initiative

Protect Animals from Unnecessary Suffering and Exploitation

Be it enacted by the people of the state of Colorado:

Section 1. In Colorado Revised Statutes, 18-9-201, amend (2), (2.9), and (5); add (3.5) as follows:

18-9-201. Definitions

As used in this part 2, unless the context otherwise requires:

(2) "Animal" means any living ~~dumb~~-NON-HUMAN creature, including, BUT NOT LIMITED TO, A DOG, A CAT, A HORSE, LIVESTOCK, a certified police working dog, a police working horse, and a service animal as those terms are defined, respectively, in subsections (2.3), (2.9), (2.4), and (4.7) of this section.

(2.9) "Livestock" means bovine, camelids, caprine, equine, ovine, porcine, FISH and poultry.

(3.5) "NATURAL LIFESPAN" FOR THE FOLLOWING SPECIES SHALL BE EXPLICITLY DEFINED HERE BASED ON STATISTICAL ESTIMATES: A COW LIVES TO 20 YEARS, A CHICKEN LIVES TO 8 YEARS, A TURKEY LIVES TO 10 YEARS, A DUCK LIVES TO 6 YEARS, A PIG LIVES TO 15 YEARS, A SHEEP LIVES TO 15 YEARS, A RABBIT LIVES TO 6 YEARS.

(5) "Sexual act with an animal" means an act between a person and an animal involving either direct physical contact between the genitals of one and the mouth, anus, or genitals of the other. SEXUAL ACT WITH AN ANIMAL ALSO INCLUDES ANY INTRUSION OR PENETRATION, HOWEVER SLIGHT, WITH AN OBJECT OR PART OF A PERSON'S BODY INTO AN ANIMAL'S ANUS OR GENITALS. A sexual act with an animal may be proven without allegation or proof of penetration. Nothing in this subsection (5) shall be construed to prohibit ANY PERSON FROM DISPENSING CARE TO AN ANIMAL IN THE INTEREST OF IMPROVING THAT ANIMAL'S HEALTH ~~accepted animal husbandry practices~~.

Section 2. In Colorado Revised Statutes, 18-9-201.5, amend (1) and (3) 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.~~

(2) In case of any conflict between this part 2 or section 35-43-126, C.R.S., and the wildlife statutes of the state, said wildlife statutes shall control.

(3) IN CASE OF ANY CONFLICT BETWEEN ANIMAL CARE OTHERWISE AUTHORIZED BY LAW, THIS PART 2 SHALL CONTROL. ~~Nothing in this part 2 shall affect animal care otherwise authorized by law.~~

Section 3. In Colorado Revised Statutes, 18-9-202, amend (1)(b), (2)(a.5)(VII), and (4); add (1.9) and (2)(a.5)(VIII) as follows:

18-9-202. Cruelty to animals - aggravated cruelty to animals

(1) (a) A person commits cruelty to animals if he or she knowingly, recklessly, or with criminal negligence overdrives, overloads, overworks, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, allows to be housed in a manner that results in chronic or repeated serious physical harm, carries or confines in or upon any vehicles in a cruel or reckless manner, engages in a sexual act with an animal, or otherwise mistreats or neglects any animal, or causes or procures it to be done, or, having the charge or custody of any animal, fails to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved, or abandons an animal.

(b) Any person who intentionally abandons AN ANIMAL ~~a dog or cat~~ commits the offense of cruelty to animals.

(1.9) ANY PERSON WHO SLAUGHTERS LIVESTOCK IN ACCORDANCE WITH ACCEPTED AGRICULTURAL ANIMAL HUSBANDRY PRACTICES DOES NOT VIOLATE THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SO LONG AS THE ANIMAL HAS LIVED ONE QUARTER OF THEIR NATURAL LIFESPAN BASED ON SPECIES, BREED, AND TYPE OF ANIMAL AND THE ANIMAL IS SLAUGHTERED IN SUCH A WAY THAT THE ANIMAL DOES NOT NEEDLESSLY SUFFER.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, cruelty to animals, or cruelty to a service animal or certified police working dog or police working horse pursuant to subsection (1.5)(c) of this section, is a class 1 misdemeanor.

(a.5)

(VII) This subsection (2)(a.5) does not apply to the treatment of pack or draft animals by negligently overdriving, overloading, or overworking them, or the treatment of livestock and other animals used in the farm or ranch production of food, fiber, or other agricultural products ~~when~~ REGARDLESS OF WHETHER the treatment is in accordance with accepted agricultural animal husbandry practices, the treatment of animals involved in activities regulated pursuant to article 32 of title 44, ~~the treatment of animals involved in research if the research facility is operating under rules set forth by the state or federal government,~~ the treatment of animals involved in rodeos, OR the treatment of dogs used for legal hunting activities. ~~; wildlife nuisances, or to statutes regulating activities concerning wildlife and predator control in the state, including trapping.~~

(VIII) THIS SUBSECTION (2)(a.5) DOES NOT APPLY TO THE TREATMENT OF ANY ANIMAL INVOLVED IN RESEARCH IF THE RESEARCH FACILITY IS OPERATING UNDER RULES SET FORTH BY THE STATE OR FEDERAL GOVERNMENT, WILDLIFE NUISANCES, OR TO STATUTES REGULATING ACTIVITIES CONCERNING WILDLIFE AND PREDATOR CONTROL IN THE STATE, INCLUDING TRAPPING.

(4) The short title of this section is "Punky's WILBUR's Law".

Section 4. Effective Date:

This act takes effect April 1st 2023, and applies to offenses committed on or after said date.

Section 5. Severability:

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #16¹

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

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 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 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?

Hearing March 17, 2021:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:38 p.m.

¹ Unofficially captioned “**Laws Concerning Cruelty to Animals**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE BOARD

In the Matter of:

TITLE, BALLOT TITLE & SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2021-2022 #16: “LAWS CONCERNING CRUELTY TO ANIMALS”

MOTION FOR REHEARING

In accordance with C.R.S. § 1-40-107(1)(a)(I), the Colorado registered electors signed below hereby request a rehearing before the Colorado Title Board (the “**Board**”) with respect to Proposed Initiative 2021-2022 #16, regarding “Laws Concerning Cruelty to Animals” (the “**Initiative**”). As set forth below, Movants respectfully object to the title, ballot title and submission clause approved by the board based on the following:

I. BACKGROUND

Following a hearing held March 17, 2021, the Board designated and fixed the following title for the Initiative:

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.

Likewise, 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 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?

Shall there be 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 **and veterinary practices such as spaying, neutering, artificial insemination, and breeding**; 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?

B. The Initiative impermissibly addresses multiple subjects.

The Initiative addresses at least two separate and distinct subjects. It is therefore prohibited by article V, section 5 of the Colorado Constitution and the Board should decline to fix a title for it.

Each initiative that proposes an amendment to the State Constitution shall contain only one subject, clearly expressed in the title set for that initiative. See Cob. Const. Art. V., § 1(5.5) (the “Single Subject Rule”); see also C.R.S. § 1-40-106.5 (single-subject requirements for initiated measures); In re Title, Ballot Title, Submission Clause, 974 P.2d 458, 463 (Cob. 1999) (proposed initiative violates single subject rule where it “has at least two distinct and separate purposes which are not dependent upon or connected with each other.”).

In the February 15, 2021 Memorandum from the Legislative Council staff and Office of Legislative Legal Services under “Purposes,” it is stated:

The *major purposes* of the [Initiative] appear to be:

1. Update language in the criminal cruelty to animal statutes (sections 18-9-201, 18-9-201.5, and 18-9-202, Colorado Revised Statutes) to create greater protections for animals from suffering and exploitation by raising the standard of care; and
2. Extending certain portions of the criminal cruelty to animal statutes to include, in certain instances, livestock, and criminalizing actions that are currently considered legal animal husbandry practices.

Movants would agree that the two stated purposes are contained in the Initiative but would assert that there are two more purposes; the first of which would amend the language and requirements contained in Chapter 12 of Colorado Revised Statutes known as the Colorado Veterinary Practice Act. The Initiative seeks to amend what constitutes cruelty to animals and to prohibit individuals from performing certain practices. What it also does by inference is to prohibit current practices by licensed veterinarians which will result in potential criminal violations for practices which are currently allowed for and regulated through the Colorado Veterinary Practice Act. The second purpose is that it creates a new statutory criterion describing the lifespan of certain animals without any scientific basis which is arbitrary and capricious standards and could potentially be in violation of the interstate commerce doctrines.

Finally, the Initiative would override and contradict all the existing laws and regulations regarding fisheries and practices. This must be considered as a separate and distinct subject.

The Single Subject Rule prohibits attempts to roll together multiple subjects in order to attract the votes of those who would favor one of those subjects but would oppose the others. *See, e.g., In re Proposed Initiative for 2005-2006 #74, 136 P.3d 237, 242 (Colo. 2006); In re Proposed Initiative for 1997-1998 #84, 961 P.2d 456, 458 (Colo. 1998).* The Initiative combines the two subjects identified in the Memorandum with the additional purposes listed above, potentially attracting voters who might support changing what constitutes cruelty to animals but would not support limiting what is allowed by licensed veterinarians and livestock stewards for the care of all animals. Therefore, the Board should determine that the Initiative violates the Single Subject Rule and that a title cannot be set for it.

Respectfully submitted this 24th day of March, 2021 by the Movants indicated below. (Signature pages provided in counterparts.)

By the following MOVANTS:

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By the following MOVANTS:

David C. Peters

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Name:
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~~Dale Ruggles~~

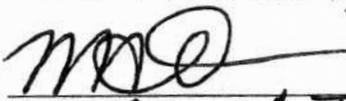
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BAYFIELD, CO 81122

Name:
Address:

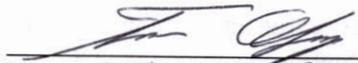
By the following MOVANTS:

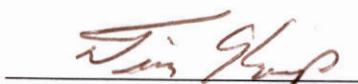
Name:
Address:


Name: Heather Riley
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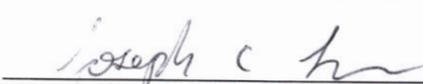

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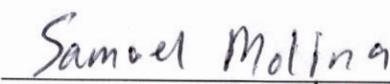
By the following MOVANTS:

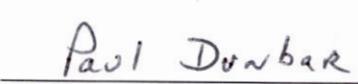

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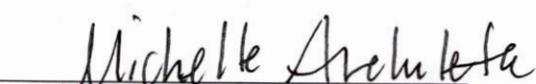

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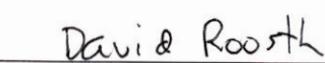

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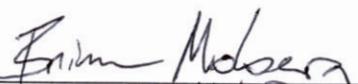

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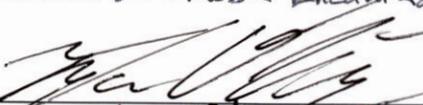

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By the following MOVANTS:

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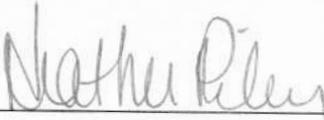
Name:
Address:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of March, 2021, a true and correct copy of the MOTION FOR REHEARING was filed with the Colorado Secretary of State and served via U.S. Mail, postage prepaid, to the following:

Alexander Sage
P. O. Box 81
Broomfield, CO 80038

Brent Johannes
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Broomfield, CO 80038



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.

s/ Mark G. Grueskin
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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:

Alexander Sage
PO Box 81
Broomfield CO 80038

Brent Johannes
PO Box 81
Broomfield CO 80038

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.





Drive Change

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Ballot Title Setting Board

Proposed Initiative 2021-2022 #16¹

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

A change to the Colorado Revised Statutes concerning expanding crimes relating to 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, however slight, into an animal’s anus or genitals with an object or part of a person’s body and removing the existing exception for animal husbandry practices and creating an exception for care to improve the animal’s health; defining the “natural lifespan” for certain species of livestock and providing that slaughtering those animals is not criminal animal cruelty if done according to accepted animal husbandry practices after the animal has lived 1/4 of the natural lifespan; removing the exception to the animal cruelty statutes for animal husbandry practices used in the care of companion or livestock animals; eliminating some exceptions to certain sentencing requirements; and providing that, in case of a conflict with animal care otherwise authorized by law, the criminal cruelty to animals statutes control.

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 expanding crimes relating to 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, however slight, into an animal’s anus or genitals with an object or part of a person’s body and removing the existing exception for animal husbandry practices and creating an exception for care to improve the animal’s health; defining the “natural lifespan” for certain species of livestock and providing that slaughtering those animals is not criminal animal cruelty if done according to accepted animal husbandry practices after the animal has lived 1/4 of the natural lifespan; removing the exception to the animal cruelty statutes for animal husbandry practices used in the care of companion or livestock animals; eliminating some exceptions to certain sentencing requirements; and providing that, in case of a conflict with animal care otherwise authorized by law, the criminal cruelty to animals statutes control?

¹ Unofficially captioned “**Laws Concerning Cruelty to Animals**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Hearing March 17, 2021:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:38 p.m.

Rehearing April 7, 2021:

Motion for Rehearing (Riley, et al.) granted only to the extent that the Board made changes to the title; denied in all other respects.

Motion for Rehearing (VanWinkle, et al.) granted only to the extent that the Board made changes to the titles; denied in all other respects.

Board Members: Theresa Conley, Julie Pelegrin, LeeAnn Morrill

Hearing adjourned: 12:07 p.m.



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 16

Fiscal Summary

Date:	March 16, 2021	Fiscal Analyst:	Clare Pramuk ((303-866-2677))
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LCS TITLE: LAWS CONCERNING CRUELTY TO ANIMALS

Fiscal Summary of Initiative 16

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.ColoradoBlueBook.com. This fiscal summary identifies the following impact.

State revenue. This initiative will increase revenue from fine penalties by an indeterminate amount if persons are convicted of the new and modified criminal offenses created by the measure. In addition, fee revenue from brand inspections by the Department of Agriculture may decrease to the extent that more time will elapse before livestock can be slaughtered. These revenue impacts have not been quantified.

State expenditures. The initiative will require additional staffing at the Department of Agriculture to assist in the investigation of animal cruelty investigations. This is expected to cost approximately \$200,000 per year.

Local government impact. Local law enforcement will have increased workload to investigate and prosecute more cases involving animal cruelty. Persons convicted of the new and modified offenses under the initiative may potentially be incarcerated in a county jail, which would increase costs for counties.

Economic impact. By significantly extending the period of time that livestock must be raised and cared for prior to slaughter, the initiative will increase costs for meat producers and increase the price of meat products paid by consumers. Longer periods of livestock care will also increase demand and prices for other commodities such as grain and feed. Higher prices for meat producers and consumers will decrease the amount of money that they have to spend or save elsewhere in the economy. The initiative may shift consumer demand or production activity to other areas of the economy as a result of higher production costs.