

SUPREME COURT OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. §1-40-107(2), (2023)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2023-
2024, #145 (“Establish Qualifications and
Registration for Veterinary Professional
Associate”)

Petitioners: WILL FRENCH and DIANE
MATT

v.

Respondents: APRYL STEELE and ALI
MICKELSON

and

Ballot Title Board: THERESA CONLEY,
CHRISTY CHASE, and KURT MORRISON

▲ COURT USE ONLY ▲

Attorneys for Respondents:

Edward T. Ramey, #6748
Tierney Lawrence Stiles LLC
225 East 16th Avenue, Suite 350
Denver, CO 80203
Telephone: 303-949-7676
Email: eramey@TLS.legal

Supreme Court Case No.
2024SA64

RESPONDENTS’ OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby 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:

The brief complies with the word limits set forth in C.A.R. 28(g).

The brief contains 1,052 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Edward T. Ramey
Edward T. Ramey, #6748

TABLE OF CONTENTS

	Page
Statement of the Issues Presented for Review.....	1
Statement of the Case.....	2
Summary of the Argument.....	2
Argument.....	3
A. Standard of Review and Preservation of Issues.....	3
B. The titles for Initiative 145 need not – and in fact should not consistent with statutory mandate and this Court’s guidance – delve into obvious or unsurprising implementational regulatory details of this proposed new professional position.....	4
Conclusion.....	6

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #315,</i> 2020 CO 61, ¶6, 500 P.3d 363, 366 (Colo. 2020).....	3
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #90,</i> 2014 CO 63, 328 P.3d 155 (Colo. 2014).....	3
<i>In re Title, Ballot Title & Submission Clause for 2009-2010 #45,</i> 234 P.3d 642 (Colo. 2010).....	3
<i>In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62,</i> 961 P.2d 1077, 1083 (Colo. 1998).....	6

Statutes:

§1-40-106(3)(b), C.R.S. (2023).....	3, 4
Title 12, Article 315, C.R.S. (2023) (Colorado Veterinary Practice Act)... <i>passim</i>	

Respondents Apryl Steele and Ali Mickelson, the designated representatives of the proponents of Proposed Initiative 2023-2024 #145 (“Establish Qualifications and Registration for Veterinary Professional Associate”), respectfully submit their Opening Brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The Petitioners have submitted the following advisory list of three issues for review:

1. Whether the Title Board erred in setting titles that are incomplete by failing to explain the accountability measures in the Initiative for a supervising veterinarian or veterinary professional associate who violates their duties.
2. Whether the Title Board erred in setting titles that are incomplete and misleading by omitting from the titles that a veterinary professional associate may only practice veterinary medicine within their education and experience.
3. Whether the Title Board erred in setting titles that are incomplete by failing to explain a supervising veterinarian may only delegate duties and actions to veterinary professional associate that are within the associate’s training and experience.

STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #145 (“Initiative 145”) would amend the Colorado Veterinary Practice Act, article 315 of Title 12 of the Colorado Revised Statutes, to establish the position, qualifications, and regulation of Veterinary Professional Associates in Colorado.

The Ballot Title Setting Board set a title and ballot title and submission clause for Initiative 145 on February 7, 2024. Petitioners timely filed a Motion for Rehearing, and a rehearing was held on February 21, 2024 – at which the Title Board granted the Motion only to the extent the Board made changes to the title. Petitioners timely filed their Petition for Review with this Court on February 28, 2024.

SUMMARY OF THE ARGUMENT

Petitioners pose three related objections to the titles set for Initiative 145. Though the titles accurately state that the initiative would create a new “veterinary associate” profession in Colorado – including establishing qualifications, requiring registration with the state board of veterinary medicine (a regulatory body) and supervision by a licensed veterinarian – Petitioners apparently submit that the titles must delve into the non-remarkable details of the applicable “accountability measures” and restrictions on scope of practice (to comport with education,

training, and experience) for these new professionals. Respondents respectfully submit that such implementation minutia – essential but secondary to the primary purpose of the measure – is neither required or helpful to the voters nor consistent with the “brief title” requirement.

ARGUMENT

A. Standard of Review and Preservation of Issues.

“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause,’ and we will reverse the Board's decision only when a title is insufficient, unfair, or misleading.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶6, 500 P.3d 363, 366 (Colo. 2020), quoting *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶8, 328 P.3d 155, 159 (Colo. 2014). “In reviewing Title Board title settings, ‘we employ all legitimate presumptions in favor of the propriety of the Board's actions.’” *Id.* at ¶7, quoting *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645 (Colo. 2010).

“When 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.’” *Id.* at ¶25, quoting §1-40-106(3)(b), C.R.S. (2023). The

General Assembly has also mandated, for the sake of voter consumption and understanding, that “Ballot titles shall be brief.” §1-40-106(3)(b), C.R.S. (2023).

Respondents do not contest issue preservation.

B. The titles for Initiative 145 need not – and in fact should not consistent with statutory mandate and this Court’s guidance – delve into obvious or unsurprising implementational regulatory details of this proposed new professional position.

The uncontested purpose and single subject of Initiative 145 is to recognize a new mid-level professional position – for “veterinary professional associates” – under the Colorado Veterinary Practice Act, article 315 of title 12 of the Colorado Revised Statutes. The measure is somewhat detailed as to education, licensing requirements, regulatory and disciplinary authority of the Board of Veterinary Medicine regarding both veterinary professional associates (“VPAs”) and their supervising licensed veterinarians, and anticipated rulemaking by the Board. The titles adopted by the Title Board quite adequately – and briefly as mandated – capture the essential points of the lengthy measure. These include the creation of the new VPA profession, the educational requirement of a masters degree or equivalent, registration with (and thus regulation by) the state Board of Veterinary Medicine, the requirement that a VPA be supervised by a licensed veterinarian, and making it a misdemeanor to practice without an active registration.

Petitioners' first complaint appears to be that the "accountability measures" for both VPAs and their supervising veterinarians are not elaborated upon in the titles. In addition to comprising implementation detail, the only material change to the current statutory provisions regarding regulation and discipline is the incorporation of the new VPA position into their scope. *See, e.g.*, the amendments to §§12-315-112, 12-315-201, 12-315-206, 12-315-207, 12-315-208, 12-315-209.7, 12-315-210, 12-315-404, 12-315-407, and 12-315-408, C.R.S. (2023).

Petitioners' second complaint is that the titles omit "that a veterinary professional associate may only practice veterinary medicine within their education and experience." Though this point would only be notable were it the other way around, the titles clearly state that the measure "establish[es] qualifications" (including educational and supervisory) for VPAs.

Finally, Petitioners' third complaint is that the titles fail to explain that a supervising veterinarian "may only delegate duties and actions to veterinary professional associate [*sic*] that are within the associate's training and experience." Again, this is hardly notable information, especially when the titles explicitly state that the VPAs' practice will be "under the supervision" of a licensed veterinarian.

This Court has long admonished that “The [Title] Board is not required in the titles . . . to restate the obvious or set forth every detail. The aim is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice in pursuit of the initiative rights of Colorado citizens.” *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1083 (Colo. 1998).*

CONCLUSION

For the reasons set forth above, Respondents respectfully request the Court to affirm the actions of the Title Board in this case.

Respectfully submitted this 19th day of March, 2024.

/s/ Edward T. Ramey
Edward T. Ramey #6748
Tierney Lawrence Stiles LLC
225 E. 16th Avenue, Suite 350
Denver, CO 80203
eramey@TLS.legal
303-949-7676

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I electronically filed this Opening Brief with this Court via the Colorado Courts E-Filing system and electronically served a copy upon Counsel for the Petitioners and Counsel for the Ballot Title Board at:

Mark G. Grueskin, #14621
Nathan Bruggeman, #39621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
mark@rklawpc.com
nate@rklawpc.com

ATTORNEYS FOR PETITIONERS

Philip J. Weiser
Emily Olive Monnett
Public Officials Unit
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
emily.monnett@coag.gov

ATTORNEYS FOR THE TITLE BOARD

/s/ Edward T. Ramey