

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2023-2024 #91

MOTION FOR REHEARING

On behalf of Dan Gates, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2023-2024 #91 pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

I. THE TRUE NATURE OF INITIATIVE #91 IS TO BAN LEGAL HUNTING OF MOUNTAIN LIONS AND BOBCATS FOR ANY PURPOSE.

Notwithstanding the Proponent's claims—and the setting of title itself—to the contrary, Initiative #91 does not alter Colorado law to prohibit trophy hunting of wild cats. For example, Colorado law already makes it unlawful to kill mountain lions and not harvest them for meat, and federal law prohibits the hunting of lynx altogether. But based on the measure's legislative declaration and language, the public would likely assume that it is currently legal to hunt mountain lions, bobcats, and lynx for trophies, and that the measure is simply prohibiting this existing practice. This simply is not true. The proponents' characterization of the measure as prohibiting trophy hunting is misleading and does not reflect the measure's true nature.

Colorado law heavily regulates the hunting of animals such as mountain lions and bobcats, *see* COLO. CODE REGS §§ 406-2:200–272; §§ 406-3:300–328, and strictly prohibits poaching. Under state law, it is unlawful to take an animal and abandon the carcass. C.R.S. § 33-6-117(1)(a).¹ Failure to follow this law is a class 2 misdemeanor. C.R.S. § 33-6-117(1)(b). Thus, so-called “trophy hunting” of mountain lions and bobcats is already illegal. Indeed, the meat from mountain lions must be processed for human consumption in order to make the kill otherwise lawful. *See People v. Gordon*, 160 P.3d 284, 285–86 (Colo. App. 2007) (recognizing that a hunter violated the law when they killed a big game animal but abandoned the edible meat). Further, the hunting of Lynx is already illegal as they are federally protected under the Endangered Species Act (ESA). So, rather than making this practice

¹ The statute specifically makes it unlawful to, for example, “hunt or take, or to solicit another person to hunt or take, wildlife and detach or remove, with the intent to abandon the carcass or body, only the head, hide, claws, teeth, antlers, horns, internal organs, or feathers or any or all of such parts.”

unlawful, what Initiative #91 actually does is prohibit the currently legal practice of hunting mountain lions and bobcats in totality because the measure does not provide an exception for hunting the animal for other purposes, such as for its meat and pelt.

Initiative #91 also ignores that the three “wild cats” it addresses—mountain lions, bobcats, and lynx—are classified separately under Colorado law and fall within distinct regulatory schemes. Mountain lions, along with other large mammals such as deer, sheep, and bears, are currently defined under Colorado statute as “big game.” C.R.S. § 33-1-102. Regulations strictly govern the hunting of mountain lions. *See, e.g.*, COLO. CODE REGS § 406-2:204 (setting bag limits for mountain lions); § 406-2:242 (limiting methods by which mountain lions can be hunted); § 406-2:271 (prescribing limited situations in which mountain lions can be hunted to prevent interference with private property). Bobcats and lynx, on the other hand, while also “wild cats,” are separately classified from mountains lions and are managed separately. Bobcats are classified as “furbearers” under “furbearers and small game.” COLO. CODE REGS § 406-3:300. Lynx, conversely, are federally protected and cannot be hunted for any reason. *See* Endangered and Threatened Wildlife and Plants, 65 Fed. Reg. 16052-01 (Mar. 24, 2000) (codified at 50 C.F.R. pt. 17).

Proponents argued at the initial Title Board hearing that trophy hunting is the *only* type of hunting that occurs of these animals. Based on that assumption, proponents argued that even though Initiative #91, on its face, outlaws all hunting, its *functional* reach is to outlaw only trophy hunting. The premise of that argument is flatly untrue. Contrary to proponents’ representation at the October 18, 2023 Title Board meeting, both mountain lion² and bobcat³ meat is eaten. By banning all hunting of these animals, Initiative #91 would ban more than just trophy hunting—it would ban hunting for meat, too. The proposed language and title, both of which rely on the phrase “Trophy Hunting,” do not accurately describe the scope of Initiative #91.

In short, proponents’ argument that banning “trophy hunting” adequately describes the measure is false. Moreover, an understanding of the measure’s true makeup illuminates the various flaws that prevent the setting of a title. As described below, the Title Board lacks jurisdiction to set a title for two reasons, and, even if a title could be set, the title drafted at the October 18, 2023 Title Board hearing is misleading and violates Colorado’s clear title requirement.

² *See infra*, App’x A.

³ *See infra*, App’x B.

II. THE TITLE BOARD LACKS JURISDICTION BECAUSE CHANGES MADE AFTER THE REVIEW AND COMMENT HEARING ARE SO SUBSTANTIAL THAT THE FINAL DRAFT CONSTITUTES A NEW MEASURE.

Section 1-40-105(1) requires that the original draft of a proposed measure must be submitted for review and comment. Relevant to changes made after the Review and Comment hearing, the Colorado Supreme Court has interpreted this statutory section in *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d 963, 968 (Colo. 1992), to mean that when “the adoption of language in a subsequent draft of a proposal [] substantially alters the intent and meaning of central features of the initial proposal,” “the revised document in effect constitutes an entirely different proposal” and “must be submitted to the legislative offices for comment.” *See id.* The Court elaborated on the purpose behind this requirement:

The public’s right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices.

Id.

Like the subsequent draft in *In re Limited Gaming*, the final draft for Initiative #91 contains substantial alterations that fundamentally change the measure and thus require a new review and comment hearing.⁴ The final draft of Initiative #91 adds *five* exceptions to the measure’s definition of “trophy hunting” that were not in the original version submitted to Legislative Council:

1. Bona fide scientific research activities;
2. Actions authorized by the Commissioner of Agriculture to control depredating animals;

⁴ This requirement is different than the requirement in C.R.S. § 1-40-105(2), which states that “[i]f any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment in accordance with subsection (1) of this section.” Objector Gates is arguing here that the changes made to the measure’s final draft are so substantial that they constitute an entirely new measure that must be resubmitted to for review and comment. He is not arguing that these changes are not in direct response to comments made at the Review & Comment Hearing.

3. Euthanasia of ill animals for humane reasons by licensed veterinarians;
4. Actions authorized by the Division of Parks and Wildlife conducted by special license; and
5. Actions conducted by governmental employees or contractors for the purpose of protecting human health or safety.

Although the proponents made these changes in response to comments by Legislative Council at the Review & Comment Hearing, the changes fundamentally and drastically alter the measure by permitting numerous additional exceptions.

Even more concerning is that the proponents amended the measure to remove mountain lions from the definition of “big game” in Section 33-1-102. Although the change may appear at first glance to be a small change, it has further implications that have not been vetted by Legislative Council. These implications include that mountains lions would no longer be included under:

- Section 35-1-106(2) (“[T]he parks and wildlife commission may propose rules to the commission designed to protect native big game wildlife.”); and
- Section 42-4-118(6) (“wildlife” means “big game” for establishing wildlife crossing zones).

These substantial change requires that the measure be returned for additional review and comment.

III. THE TITLE BOARD LACKS JURISDICTION TO SET A TITLE BECAUSE THE PROPOSED MEASURE IS SO VAGUE AND CONFUSING THAT IT CANNOT BE UNDERSTOOD.

Initiative #91’s relatively short length obscures that it has baffled and confused those in the hunting and wildlife industry since it was submitted to Legislative Council. For example:

- The measure fails to grasp that poaching mountain lions, bobcats, and lynx is currently unlawful, and thus trophy hunting of these wild cats is already prohibited.
- The way the initiative defines trophy hunting makes no distinction between “trophy hunting” and any other type of hunting. Indeed, the measure broadly defines “trophy hunting” as “killing, wounding, pursuing, or entrapping a mountain lion, bobcat, or lynx,” as well as “discharging or releasing any deadly weapon” at these animals.
- Lynx are a federally protected species with a different wildlife classification from mountain lions and bobcats. Federal law prohibits the hunting of lynx. The inclusion of lynx with mountain lions and bobcats is

confusing and misleading at minimum and more likely to provide the wrong impression that these animals are currently being hunted in Colorado.⁵

- The measure does not provide clarity to the public regarding when a mountain lion, bobcat, or lynx is a threat to human life, livestock, real or personal property, or a motor vehicle.
- There is an inherent conflict between (a) subsection 2(a)(II)(A), which provides an exception to the prohibition against trophy hunting for “the defense of human life, livestock, real or personal property, or a motor vehicle.”, and (b) Section 3, which removes bobcats from the list of animals that may be hunted, trapped, or taken if the animal is “causing damage to crops, real or personal property, or livestock.” The public therefore would be left paralyzed as to what to do if a bobcat was threatening health, safety, and property.⁶
- The measure implicates changes to Titles 32 and 35, which are administered by different agencies, and the measure does not sufficiently delineate each agency’s respective responsibility in administering these changes.

Ultimately, there remains too many unresolved issues for the Title Board to set a title that reasonably describes the measure and its effects.

IV. INITIATIVE #91 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The proponents represented at the October 18, 2023 Title Board hearing that Initiative #91’s single subject is to prohibit trophy hunting of wild cats (mountain lions, bobcats, and lynx). But, as described above in Section 1, the measure actually prohibits all hunting of those animals generally, not the already illegal practice of trophy hunting (*i.e.*, poaching) of these animals. The measure’s true nature highlights that there are several separate subjects improperly coiled in the folds that would lead to significant voter surprise. The single-subject requirement is designed to prevent just that. *In re Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative”); *In re Title, Ballot Title & Submission Clause, for 2007–2008, #17*, 172 P.3d 871, 875 (Colo. 2007) (“We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.”).

⁵ In addition, including of Lynx as a prohibited species does nothing more than elicit public support for the measure, which is akin to a prohibited catch phrase.

⁶ Indeed, Legislative Council raised this very issue in Question 7 of the Review & Comment Memorandum. The proponents left the question unanswered.

More specifically, Initiative #91 contains multiple separate subjects, including at least the following:

1. Prohibiting the already unlawful practice of poaching mountain lions, bobcats, and lynx is duplicative of existing state and federal statutes and regulations;
2. Prohibiting the currently legal but highly regulated hunting of mountain lions as “big game”;
3. Prohibiting the currently legal but highly regulated hunting of bobcats as small game, including prohibiting the currently legal practices of hunting, trapping, and taking of a bobcat without a license if the bobcat is causing damage to crops, real or personal property, or livestock, by removing bobcats from Section 33-6-107(9); and
4. Removing mountain lions from the category of “big game.”

These separate subjects, which voters would be surprised to learn are included among the measure’s features, deprive the Title Board of jurisdiction to set a title.

V. THE TITLE FAILS TO ACCURATELY DESCRIBE THE MOST IMPORTANT ASPECT OF THE MEASURE, INCLUDES MISLEADING STATEMENTS, AND RELIES UPON AN IMPERMISSIBLE CATCHPHRASE.

Finally, setting a title for Initiative #91 is problematic for at least two reasons. First, an accurate title cannot be set because, as described above, the measure is so vague and confusing that it cannot be adequately understood or described. This motion can be granted and the measure returned to the Proponents on this basis alone.

Second, should Title Board decide that it has jurisdiction to set a title and that a title can be set, the draft title approved at the October 18, 2023 hearing must be radically altered so that the title adequately reflects the actual impact of the measure on currently Colorado law as best it can be understood. At least the following changes must be made:

1. As noted by Title Board at the October 18, 2023 hearing, Initiative #91 would prohibit the hunting of mountain lions, bobcats, and lynx regardless of whether they are hunted for trophies, meat, or otherwise. But this aspect is reflected nowhere in the title. The title’s single-subject clause should not include the word “trophy” because the measure’s impact is not limited to trophy hunting. In fact, because trophy hunting is

currently unlawful, at least as to mountain lions and lynx, the measure's actual impact would be prohibiting the hunting of mountain lions and bobcats for any purpose (it is already unlawful to hunt lynx).

2. Similarly, the title should clarify in the single-subject clause that the measure is prohibiting the current legal practice of hunting of mountain lions and bobcats, including for meat.
3. "Trophy hunting," which the proponents broadly define beyond its typically understood meaning, is an impermissible catchphrase. "Catch phrases' are words that work to a proposal's favor without contributing to voter understanding." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). Such words appeal to emotion without shedding light on the substance of the measure. *Id.* "It is well established that the use of catch phrases or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board." *In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo. 1995). Here, "trophy hunting" appeals to the emotions of potential constituents without accurately describing the conduct that will be outlawed by this measure. Because the inflammatory nature outweighs its explanatory value, "trophy hunting" is an impermissible catch phrase.
4. The title should address other features of the measure, including that it: (i) would remove mountain lions from the definition of "big game"; and (ii) would prohibit the currently legal practices of hunting, trapping, and taking of a bobcat without a license if the bobcat is causing damage to crops, real or personal property, or livestock, by removing bobcats from Section 33-6-107(9)

CONCLUSION

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 25th day of October, 2023.

/s/ Jason R. Dunn
Jason R. Dunn
David B. Meschke
Neil S. Sandhu
Brownstein Hyatt Farber Schreck LLP
675 15th Street, Suite 2900

Denver, Colorado 80202
(303) 223-1100
jdunn@bhfs.com; dmeschke@bhfs.com;
nsandhu@bhfs.com

Attorneys for Dan Gates

Address of Objector:
P.O. Box 128
Canon City, Colorado 81215

APPENDIX A

A sampling of mountain lion recipes can be found at:

- <https://news.sportsmans.com/recipes/the-other-white-meat> (mountain lion steaks);
- <https://miaanstine.com/2017/09/29/savory-green-chile-mountain-lion-calabacitas-recipe/> Green Chile Mountain Lion Calabacitas);
- <https://miaanstine.com/2022/02/08/wild-game-pork-and-vegetable-stir-fry/> (Mountain Lion Stir Fry);
- <https://www.facebook.com/StevenRinellaMeatEater/videos/cals-favorite-mountain-lion-recipe/360231661557256/> (Meateater Mountain Lion Recipe);
- <https://www.tiktok.com/@kendrick.bbq/video/7052764283238616326?lang=en> (Smoked Mountain Lion);
- <https://www.facebook.com/fredeichlerpage/videos/mountain-lion-appetizer-recipe/1084027745462238/> (Mountain Lion Appetizers);
- <https://www.youtube.com/watch?v=P8p5ze4nXJA> (Mountain Lion Stew);
- <https://www.youtube.com/watch?v=gn4aInn2bek> (Mountain Lion Backstrap);
- <https://www.montanaoutdoor.com/2022/01/pulled-mountain-lion-meat-tacos/> (Pulled Mountain Lion Tacos);
- <https://www.youtube.com/watch?v=XzWMRFJpAyy> (Mountain Lion sandwiches);
- <https://www.youtube.com/watch?v=esDP8fntBOE> (BBQ Mountain Lion Sandwiches);
- <https://www.youtube.com/watch?v=6cB1mDM15gA> (Mountain Lion Recipe);
- <https://www.youtube.com/watch?v=ILabvL9BNpw> (Mountain Lion Recipe);
- <https://www.youtube.com/watch?v=m96GFUPOkXE> (Mountain Lion Recipe);
- <https://www.youtube.com/watch?v=DUSVqSACiGQ> (Mountain Lion Backstrap);
- <https://forums.bowsite.com/tf/bgforums/thread.cfm?threadid=482568&forum=16> (forum discussing eating mountain lion);
- <https://pitmaster.amazingribs.com/forum/recipes-technique-food-cooking/wild-game-recipes/1057428-mountain-lion> (Mountain Lion Ribs);
- <https://www.gameandfishmag.com/editorial/mountain-lion-burgers-recipe/385943> (Mountain Lion Burgers);
- <https://www.montanaoutdoor.com/2017/02/montana-mountain-lion-hunters-recipe/> (Mountain Lion Recipe);
- <https://reelcamogirl.com/blog/2018/5/9/lj15wcm8mutgefhhqs1b54kcyysrn5> (Mountain Lion Nuggets);
- <https://huntingtipsandtricks.com/cougar-meat-recipes/> (Mountain Lion stuffed meatballs);
- <https://gocarnivore.wordpress.com/2013/01/24/mountain-lion-recipes/> (Mountain Lion Recipe);

- <http://foodbreeze.blogspot.com/2020/05/MountainLion.html> (Chicken Fried Mountain Lion);
- <https://montana-wild.com/wildgame-wednesday-mountain-lion-pizza/> (Mountain Lion Pizza);
- <https://realtree.com/timber-2-table-wild-game-recipes> (Crispy Mountain Lion Backstrap Milanese);
- https://www.ylazysranch.com/alekas_favorite_venison_recipes (Mountain Lion Roast);
- <https://hunting-washington.com/smf/index.php?topic=204536.0> (Mountain Lion Jerky);
- <https://www.hunttalk.com/threads/smoked-mountain-lion-shoulder.295982/> (Smoked Mountain Lion Shoulder);
- <https://ediblerenotahoe.com/recipes/mountain-lion-tacos/> (Mountain Lion Tacos);
- <https://www.24hourcampfire.com/ubbthreads/ubbthreads.php/ubb/printthread/Board/36/main/366751/type/thread> (Mountain Lion Recipe);
- <https://www.utahwildlife.net/threads/mountain-lion-steaks.2290/> (Mountain Lion Recipe).

APPENDIX B

A sampling of bobcat recipes can be found at:

- <https://fromfieldtoplate.com/2017/02/16/bobcat-barbacoa/> (Bobcat Barbacoa);
- <https://www.petersenshunting.com/editorial/cured-smoked-bobcat-ham-recipe/365090> (Smoked Bobcat Ham);
- https://www.youtube.com/watch?v=WKIFIS_w7b8 (Bobcat Nuggets);
- <https://www.youtube.com/watch?v=2klQ10ltisU> (Bobcat Tacos);
- <https://miaanstine.com/2022/04/04/savory-bobcat-chorizo-field-to-table-cooking/> (Savory Bobcat Chorizo);
- <https://www.youtube.com/watch?v=87p5K3s7pkM> (Bobcat Backstrap);
- https://youtu.be/nW2PmRli6_k?si=sKQ_vAUrOe35Acoi (Bobcat Meal);
- <https://harvestingnature.com/2023/05/22/red-curry-braised-bobcat-2/> (Red Curry Braised Bobcat);
- <http://cannundrum.blogspot.com/2013/02/fried-bobcat-stew-meat.html> (Bobcat Stew);
- <https://www.ftc.net/recipes/bobcat-stew-rice-and-string-beans/> (Bobcat Stew);
- <https://www.arizonahuntingforums.com/threads/bobcat-recipe.10602/> (Bobcat Stew);
- https://www.themeateater.com/shows/pardon-my-plate/season-2/pmp_203_master_1712 (Meateater Bobcat);
- <https://www.dcurbanmom.com/jforum/posts/list/462239.page> (Poached Bobcat);
- <https://www.denverpost.com/2023/08/30/colorado-wild-game-chef-hunter-rikki-folger/> (Denver Chef - Rikki Folger - Bobcat Curry);
- <https://www.whitehalledger.com/story/2022/02/23/opinion/recipe-of-the-week-cousin-cleavons-bobcat-jerky/4518.html> (Bobcat Jerky);
- <https://forum.nosler.com/threads/grilled-bobcat-with-memphis-style-barbecue-rub.35279/> (Memphis Style BBQ Bobcat).