

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2023-2024 #101

MOTION FOR REHEARING

On behalf of Dan Gates, registered elector of the State of Colorado, the undersigned counsel hereby submit this Motion for Rehearing for Initiative 2023-2024 #101 pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

I. INTRODUCTION**a. The true nature of Initiative #101 is to essentially ban hunting of mountain lions and bobcats for any purpose.**

Notwithstanding the Proponents' claims—and the setting of title itself—to the contrary, Initiative #101's primary feature is not to alter Colorado law to prohibit trophy hunting of mountain lions, bobcats, and lynx. Colorado law already makes it unlawful to kill mountain lions, bobcats, or lynx without harvesting their meat. In fact, federal law prohibits the hunting of lynx altogether.

But based on the measure's legislative declaration and language, as well as the title adopted at the December 20, 2023, Title Board hearing, the public would likely assume that it is currently legal to hunt mountain lions, bobcats, and lynx solely for trophies, and that the measure is prohibiting this existing practice. As described during the rehearing for Proposed Initiative 2023-2024 #91, which is a similar measure, this is simply not true. The proponents' characterization of Initiative #101 as prohibiting trophy hunting is misleading and does not reflect the measure's true nature.

Rather, Initiative #101's true nature is to impose, for all intents and purposes, a virtual ban on the currently legal hunting of mountain lions and bobcats. Proponents will likely argue that the measure is something other than a total ban because it permits hunting during the last two weeks of the year, so long as the hunter does not use electronics. More specifically, the "exception" allows for the hunting of mountain lions and bobcats so long as:

- The hunting takes place between December 18th and December 30th;

- The hunters do not use traps, bait, dogs, and electronic devices (which are critical tools that allow hunters to keep track of their dogs to make sure they do not stray onto private property); and
- Body parts that could be mounted or displayed are turned over to Colorado Parks and Wildlife (“CPW”).

But few, if any, hunting occurs during those two weeks. And it is virtually impossible to hunt without the use of electronic equipment. This two-week “exception” was not designed to permit hunting; it was designed to obfuscate the true nature of Initiative #101: a total ban on the hunting of mountain lions, bobcats, and lynx.

An understanding of the measure’s true nature illuminates the various flaws that prevent the setting of a title. As described below, not only do the twin features of the measure (banning trophy hunting and banning hunting) and the measure’s decision to include three distinct animals constitute multiple subjects, but the title adopted at the Title Board hearing contains an impermissible catchphrase and does not logically describe to voters the measure’s true central features.

b. Relevant hunting statutes and regulations.

Colorado law heavily regulates the hunting of mountain lions and bobcats, *see* 2 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 only for the animals’ body parts is already illegal. Indeed, the meat from mountain lions must be processed for human consumption in order to make the kill 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. Thus, rather than making “trophy hunting” unlawful, what Initiative #101 actually does is impose a near-total prohibition on the currently legal practice of hunting mountain lions and bobcats, which from a practical standpoint, would eliminate hunting of them completely.

The three animals Initiative #101 addresses—mountain lions, bobcats, and lynx—are also classified separately under Colorado law and fall within distinct regulatory schemes. Mountain lions, along with other large mammals such as deer,

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.”

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.*, 2 COLO. CODE REGS § 406-2:205 (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.” 2 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).

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

Initiative #101’s relatively short length obscures that it is a perplexing measure that runs directly contrary to the long-standing practices and governing regulations in the hunting and wildlife industry. For example:

- Despite proponents’ attempts to lump mountain lions, bobcats, and lynx together as “wild cats,” they are distinct animals with unique taxonomies. Current regulations recognize and respect that distinction, offering different protections to the animals that are tailored to each animal’s unique needs. Initiative #101 would erase that nuanced approach and paint the animals with a broad brush, without consideration of the different challenges that are posed by each animal.
- The measure takes management of mountain lions, bobcats, and lynx away from science-based practices and instead permits hunting of mountain lions and bobcats solely for their meat for only a two-week span per year. It further limits how these animals can be hunted by prohibiting the means usually used (which are the same means employed by wildlife agencies).
- Colorado has traditionally adopted the North American Model of Wildlife Conservation, whereby fish and wildlife are managed through experts at CPW who follow the latest science. Initiative #101 would eliminate the deference granted to CPW.
- The measure fails to recognize that poaching mountain lions, bobcats, and lynx is currently unlawful, and thus trophy hunting of these three animals without harvesting the meat is already prohibited.
- Lynxes are a federally protected species with a different wildlife classification from mountain lions and bobcats. Federal law prohibits the hunting of lynx. Grouping lynx together with mountain lions and bobcats

is confusing and misleading at minimum and more likely to provide the wrong impression that lynxes are currently being hunted in Colorado.²

- 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.
- The measure implicates changes to Titles 33 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, the substance of Initiative #101 suffers from too many unresolved issues for the Title Board to set a title that reasonably describes the measure and its effects.

III. INITIATIVE #101 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The measure's true nature, as described above, highlights that there are several separate subjects improperly coiled in the folds that would lead to significant voter surprise and result in impermissible logrolling. 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.").

More specifically, Initiative #101 contains multiple separate subjects because it attempts to regulate three distinct animals, contains both a hunting ban and a so-called trophy hunting ban, and removes the management of these animals from the North American Model of Wildlife Conservation. These multiple subjects include at least the following:

1. Establishing a functional ban on the currently legal but highly regulated hunting of mountain lions;
2. Severely restricting the currently legal but highly regulated hunting of bobcats;
3. Prohibiting the already-illegal practice of hunting lynx;

² 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.

4. Preventing hunters of mountain lions and bobcats from using traps, bait, dogs, and electronic devices;
5. Banning “trophy hunting,” and requiring hunters of mountain lions and bobcats to turn over body parts other than the animals’ meat to CPW; and
6. Eliminating the long-standing deference granted to CPW to manage these animals.

These separate subjects, many of which voters would be surprised to learn are included among the measure’s features, deprive the Title Board of jurisdiction to set a title. Coiled up in the folds of this measure are the various hunting prohibitions in #1-4 of the above list. Given the measure’s heavy focus on banning trophy hunting, which include two purpose and intent sections, voters would be surprised to learn that by voting to prohibit trophy hunting of mountain lions, bobcats, and lynx, they also would be severely limiting the hunting of these animals to the point that very little, if any, hunting would ever take place or removing the management of these animals from the purview of CPW under the North American model. The measure also engages in logrolling by attempting to garner votes from those opposed to trophy hunting, those who favor banning all hunting of these animals, and those who oppose use of traps, bait, dogs, and electronic devices.

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

Finally, assuming Title Board even has jurisdiction to set a title, setting a title for Initiative #101 is problematic for at least three 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 December 20, 2023, hearing must be amended so that the title adequately reflects the actual impact of the measure on currently Colorado law. At least the following changes must be made:

1. The measure’s single subject clause, as remarked by Title Board member Jeremiah Berry during the December 20, 2023, hearing, should read “prohibitions on the hunting” rather than “limits on hunting.” (Title Board

Hearing Audio, 2:59:20.)³ As described above, Initiative #101 would effectively prohibit the hunting of mountain lions and bobcats by limiting the season to two weeks during the winter holidays and prohibiting the use of traps, bait, dogs, and electronic devices commonly relied on to hunt these animals.

2. After the single subject clause, the title should note the measure’s central features regarding the hunting ban in the following logical order:
 - a. “establishing a functional ban on the hunting or killing of a mountain lion, bobcat, or lynx; ”
 - b. “prohibiting the use of traps, bait, dogs, and electronic devices in the hunting or killing of these animals”; and
 - c. “prohibiting the keeping or transferring of body parts which could be mounted or displayed and requiring the relinquishment of these body parts to the Colorado division of parks and wildlife.”
3. Put differently, the title’s first clause after the single-subject clause should not include the word “trophy” or “trophy hunting” because the measure’s full impact is not limited to a ban on trophy hunting.
4. The phrase in the title “creating exceptions to these restrictions, including for the protection of human life, livestock, or property” is inaccurate and misleading for several reasons.
 - a. The phrase inaccurately characterizes the carve-outs as “exceptions.” An “exception” is a case to which a rule does not apply. As a result, the word “exception” gives the false impression that these activities would otherwise be banned by the hunting prohibition. But the excepted activities—such as self-defense, euthanasia by veterinarians, or capturing for scientific research—are themselves not hunting. At most, some of the so-call “exceptions” are exceptions to “killing,” but not hunting. The title should clarify accordingly.
 - b. Further, the title represents that the proposal is “creating exceptions” to the prohibition. Based on the title, then, a voter might believe that unless Proposed Initiative #101 passes,

³ The Title Board Hearing Audio can be accessed at https://csos.granicus.com/player/clip/421?view_id=1&redirect=true&h=d143ffff2f6ca129d4457ab2200173de.

killing these animals for the protection of human life, property, and livestock would remain unlawful. But the activities listed in Proposed Initiative #101's Section 2 are already protected by law. Thus, it is misleading to characterize the law as "creating exceptions" to protect the right of people to protect themselves, their property, and their livestock from mountain lions, bobcats, and lynx because that activity is already lawful.

- c. The title also does not accurately summarize the "exceptions" for voters. The title indicates that the proposal would create "exceptions" for "the protection of human life, property, and livestock," among other exceptions. Because the title specifically mentions exceptions related to the protection of life and property, and refers to the other exceptions in general terms, a reader would believe that the other exceptions fall within the scope of protections for life and property. *See Winter v. People*, 126 P.3d 192, 195 (Colo. 2006) (employing the interpretive canon of *ejusdem generis*). But the unnamed exceptions cover subjects entirely unrelated to the protection of life and property, such as authorized government actions, accidents, scientific research, depredation, and euthanasia by a veterinarian. A reasonable reader of the title would be surprised to learn that the measure would permit the killing of these animals for purposes that are not related to the protection of life or property.

Finally, the phrase "trophy hunting" must be removed from the title because it 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 full extent of the conduct that will be outlawed by this measure. This is the second attempt to inject the phrase "trophy hunting" into the title of a measure in order to garner support. Proposed Initiative 2023-2024 #91 is another measure that is designed to prohibit *all* hunting of mountain lions, bobcats, and lynx. The proponents of Initiative #91 attempted to characterize that measure as a ban on trophy hunting. But because "trophy hunting" did not accurately describe the measure, and had the possibility of inflaming voters' emotions, Title Board removed the phrase "trophy hunting" from the title of Proposed Initiative 2023-2024 #91 (*See Title Board Hearing Audio, 2:55:00* (acknowledging the nature of Proposed Initiative #91 was a ban on all hunting, not

trophy hunting).) Because the inflammatory nature outweighs its explanatory value, “trophy hunting” is an impermissible catch phrase and Title Board should once again remove any reference to “trophy hunting” in the title.

* * *

Therefore, the title must be amended to make these changes because otherwise the title would not “correctly and fairly express the true intent and meaning” of the measure. *See* C.R.S. § 1-40-106(3)(b). Indeed, Title Board’s “duty is to ensure that the title, ballot title and submission clause, and summary 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 Ballot Title 1997–1998 # 62*, 961 P.2d 1077, 1082 (Colo. 1998).

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 27th day of December 2023.

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