

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Will French and Diane Matt,
Objectors,

v.

Apryl Steele and Ali Mickelson,
Designated Representatives of Initiative 2023-2024 #145.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #145**

Through their legal counsel, Will French, a registered elector of Douglas County, and Diane Matt, a registered elector of Denver County, hereby file this motion for rehearing on Initiative 2023-2024 #145.

On February 7, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #145:

Shall there be a change to the Colorado Revised Statutes creating a new veterinary professional associate profession, and, in connection therewith, establishing qualifications including a master’s degree to be a veterinary professional associate; requiring registration with the state board of veterinary medicine; allowing a registered veterinary professional associate to practice veterinary medicine under the supervision of a licensed veterinarian; and making it a misdemeanor to practice as a veterinary professional associate without an active registration?

In setting this title, the Board erred in the ways set forth below.

I. The Board lacks jurisdiction to set a title for Initiative 145.

A. The measure is so internally inconsistent that a title cannot be set.

A central component of a licensing scheme is the credentialing a professional must obtain to qualify for a license. Initiative #145 acknowledges the role of credentialing by requiring the board of veterinary medicine to “approve a nationally recognized veterinary professional associate credentialing organization,” which organization would ensure that a veterinary professional associate graduates from a university-approved program and passes a national examination. Proposed C.R.S. § 12-315-106(5)(j).

Obtaining a credential from the board-approved program is not, however, an actual qualification to become a veterinary professional associate. Rather, to qualify for registration, an applicant need only be at least 18 years of age and hold a “master’s degree in veterinary clinical care or the equivalent as determined by the board.” Proposed C.R.S. § 12-315-203.7(2). The Title Board cannot set a title that explains to voters the requirement that the board of veterinary medicine select a credentialing organization (which is responsible for ensuring registrants have graduated from qualifying programs and pass a credentialing test) and, at the same time, a credential from the credentialing organization plays no role in whether a prospective registrant qualifies for registration to be a veterinary professional associate. Indeed, these provisions establish *different* educational requirements:

Credentialing Organization	Qualifications for Registration
“Require completion of a university-approved program for veterinary professional associates” Proposed C.R.S. § 12-315-106(5)(j)(I)	“Hold a master’s degree in veterinary care or the equivalent as determined by the board.” Proposed C.R.S. § 12-315-203.7(2)(b)

Nor can the Board explain the role of the national credentialing organization and its credentials with respect to registration renewal or reinstatement. The measure provides that a veterinary professional associate must “demonstrate” that (s)he “maintains active credentialing with the credentialing organization *or* the veterinary professional associate continues to meet the requirements for registration under this Part 2.” Proposed C.R.S. § 12-315-206(3) (emphasis added); *see also id.* § 12-315-206(4)(a). Once the qualifications for registration are met initially (the person is 18 or older and has a qualifying degree), the registrant will always meet those qualifications. It is not possible to explain what role an “active credential” thus plays in renewal or registration. In such circumstances, where the Board cannot identify how a measure’s key features will operate, it is unable to identify the measure’s single subject and lacks jurisdiction over the initiative. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468-49 (Colo. 1999).

In fact, even though appointment of the credentialing organization and its credentialing requirements are a key component of the initiative, the Board cannot include those matters in the title, because, if it did, the titles will be inherently misleading to voters by leading them to believe national credentialing standards will apply to Colorado veterinary practice associates. As it is not possible to set a title that is not misleading, the Board is unable to set a title for the measure.

B. The credentialing scheme constitutes a separate subject because it is not “necessarily and properly connected” to the measure’s single subject.

Moreover, because the national credentialing organization and its credentialing do not implement the veterinary professional associate—by the measure’s terms, it is not a qualification for registration or needed for renewal—it is a separate subject because it is not “necessarily and properly connected” with measure’s purpose of creating a veterinary professional associate registration. *See In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55 ¶ 13.

The Proponents were advised of the disconnect between the requirement to have a national credentialing organization and the qualifications for a registration during the review and comment process, and possible ways to address this disconnect. *See* Jan. 22, 2024, Mem. to Proponents at 4 ¶ 9.¹ During the hearing, they acknowledged the comment and that they were considering it. *See* Jan. 25, 2024, Review and Comment Hr’g at 10:22:59.² However, the Proponents left the credentialing organization provision disconnected from the measure’s purpose of creating the registration for the veterinary professional associate occupation.

Not only is the national credentialing provision “disconnected” from the measure’s single subject, it creates the dangers the single subject requirement is intended to avoid: enlisting support from those who would not otherwise support the measure. *See In re 2021-2022 #1, supra*, 2021 CO 55 ¶ 12. The national credentialing provision creates the illusion for voters that there are accepted industry standards applicable to (1) the educational requirements for veterinary professional associate and (2) any person in the profession will have passed a national test. Voters’ pets, livestock, and other animals are, in other words, going to be in the safe hands of a veterinary professional associate because the associate will have met these standards. But under the measure, the credential plays no role in whether a person is qualified to be or will be registered as a veterinary professional associate—it is a sweetener to the measure that will be used to “secur[e] the enactment of [a] measure[] that could not be carried upon [its] merits.” *Id.* (quoting C.R.S. § 1-40-106.5(1)(e)(I)). As such, it is a second subject.

II. The titles set are incomplete and misleading.

The titles set by the Board are incomplete and misleading for the following reasons:

- The titles are misleading because they state that a registrant must have a master’s degree. This is untrue, as the measure states that a registrant must have a “master’s degree in veterinary care *or the equivalent as determined by the board.*” Proposed C.R.S. § 12-315-203.7(2)(b) (emphasis added). The measure does not define an equivalent degree as a “master’s degree,” and instead leaves the decision of what would be an “equivalent” degree to the board.
- The titles are misleading because they state that, to practice veterinary medicine, a veterinary professional associate need only be supervised by a veterinarian. Under the measure, in addition to supervision, the veterinary medicine must be within the associate’s “advanced education and experience.” Proposed C.R.S. § 12-315-105(1)(r).
- The titles are incomplete because they do not inform voters of the board of veterinary medicine’s disciplinary authority with respect to veterinary professional associate registrations.
- The titles are incomplete because they do not inform voters of the duties of licensed veterinarians who supervise veterinary professional associates and the penalties and/or

¹ Available at <http://tinyurl.com/mr3d97k2>.

² Available at <http://tinyurl.com/bdhxn3zx>.

consequences supervising veterinarians may face for improperly supervising a veterinary professional associate.

- The titles are incomplete because they do not inform voters of the penalties and/or consequences that a veterinary professional associate may face for performing in violation of his/her duties under the measure.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #145 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution, or correction of the misleading and incomplete ballot title that has been set.

Respectfully submitted this 14th day of February, 2024.

RECHT KORNFELD, P.C.

s/ Nathan Bruggeman

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #145** was sent this day, February 14, 2024, via first-class mail, postage paid and via email to:

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s/ Erin Mohr