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SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #91 ("Prohibit Trophy Hunting") **Petitioner: Dan Gates** **v.** **Respondents: Mark Surls and Carol Monaco** **and** **Title Board: Theresa Conley, Jeremiah Barry, and Kurt Morrison**	▲ COURT USE ONLY ▲
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RESPONDENTS' ANSWER BRIEF ON PROPOSED INITIATIVE 2023-2024 #91 ("PROHIBIT TROPHY HUNTING")

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, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

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/s Mark G. Grueskin
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SUMMARY OF ARGUMENT

In his Opening Brief ("Pet. Op. Br."),[1] Petitioner argues the Title Board had no jurisdiction to set a title for Initiative #91 because: (a) the measure was too vague; (b) Proponents incorporated too many of the changes suggested by Legislative Staff to their initial draft; and (c) the measure violated the single subject rule.

There is no legal authority that a measure's vagueness is a jurisdictional matter. And this Court has clearly decided that there are only limited situations where an initiative's vagueness is even at issue. Neither is alleged to be, and neither is, at issue here.

As to the Proponents' choice to make a number of the changes suggested during the Review and Comment process, Proponents were statutorily authorized to make those changes, and Petitioner does not suggest otherwise. Based on Petitioner's concerns, there is no cognizable test for how many of the staff's suggested changes convert a measure into a new initiative, leaving initiative proponents in a quandary about how to improve their measure without derailing it. This result is at odds with the exercise of the fundamental right of initiative.

[1] Proponents of Initiative #91 did not contest preservation of these issues in their Opening Brief and do not do so here. Each is addressed only on the merits.

The Title Board determined Initiative #91 comprises a single subject—a ban on hunting mountain lions, bobcats, and lynx. Petitioner's other issues represent the unwarranted "parsing" of an initiative that falls far short of a single subject violation.

Finally, the title is accurate, and Petitioner's side concerns are not "central features" of the measure. They represent speculation about possible effects of the measure and do not belong in a ballot title.

LEGAL ARGUMENT

I. Initiative #91's text is not so vague that the resulting title is misleading or confusing to voters.

Petitioner alleges that the Title Board lacked jurisdiction to set a ballot title for this measure because "the substance of Proposed Initiative #91 is so vague, confusing, and redundant that it is simply impossible to set a title that accurately reflects the measure's true effect on Colorado law." Pet. Op. Br. at 7.

A. There is no legal support for the contention that the Title Board lacked jurisdiction to set this title on the grounds asserted.

Petitioner cites no legal authority that the Title Board might lose jurisdiction to set titles if the Board understands a measure, but Petitioner insists he is confounded by it. In the one decision Petitioner does cite in this section of his Opening Brief, the Court found the Board **did** have jurisdiction to set titles. *See* Pet.

Op. Br. at 7-8; *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 369 P.3d 565, 570-71 (Colo. 2016) (Board had jurisdiction to set a title; title overturned only because it did not address certain changes to recall election procedures).

There are two situations where title setting is problematic if the initiative itself has an underlying vagueness. Neither is even alleged to be in evidence here.

First, if the Board acknowledges that it cannot understand the measure, it cannot set titles. "Before a clear title can be written, the Board must reach a definitive conclusion as to whether the initiatives encompass multiple subjects. Absent a resolution of whether the initiatives contain a single subject, it is axiomatic that the title cannot clearly express a single subject." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25*, 974 P.2d, 468-69 (Colo. 1999). In *#25*, the Board failed to "work[] through its confusion as to whether this issue constituted a separate subject" and "simply left this question unresolved for appellate review." *Id.* at 468.

Such was not the case in title setting for Initiative #91. Instead, the Board found a single subject to exist—"a prohibition on the hunting of mountain lions, lynx, and bobcats"—and set a brief, accurate ballot title.

Second, the Title Board errs where it incorporates "muddled" language from the measure in the titles, and that title language will confuse voters. *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶¶ 14-16; 413 P.3d 151, 153-54 (title set "causes confusion and does not help voters understand the effect of a 'yes' or 'no' vote even though it uses the initiative's own language"). But the Court did not hold that an initiative's vagueness was a jurisdictional issue. Vagueness was only a concern as a matter of setting a clear title. *Id.* Here, the Board evaluated Initiative #91 and, using key wording of the Board's own choosing rather than from the measure itself, drafted a ballot title that informs voters of this measure's central features.

The Board understood this relatively simple measure. Further, it substituted its own language for terms used in the initiative to foster voter understanding of the key elements of Initiative #91 (e.g., "hunting" rather than "trophy hunting"). Thus, this argument does not present grounds for reversal of the Board's decision.

B. Petitioner misconstrues the Title Board's obligations in setting titles.

A measure's vagueness does not doom its prospects for title setting. An opponent's assertion that it could have been more definite on one or more issues is not a basis for the Title Board to refuse to set a title.

Evaluating the drafting decisions of proponents goes beyond the Board's title setting authority. "We can only consider whether the title, ballot title and submission clause, and summary reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the proposed language." *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Confidentiality of Adoption Records*, 831 P.2d 229, 232 (Colo. 1992).

In fact, this Court has upheld titles where an initiative's proponent actually stated *on the record* that he drafted the measure so one of its provisions was vague and would be left up to the courts to resolve. There, the title was adequate even though proponents chose not to clarify whether the measure applied to public sector employers as well as to private sector employers. *In re Title, Ballot Title and Submission Clause, and Summary for Proposed Amendment Concerning Unsafe Workplace Environment,* 830 P.2d 1031, 1034 (Colo. 1992). The Board only determines, and this Court only reviews, whether "the title reflects the intent and central features of the amendment despite the lack of language" in an initiative that would resolve the initiative's alleged vagueness. *Id.* Because the titles set for Initiative #91 do reflect Proponents' intent and accurately capture the central features of this measure, the Court must affirm the Board's decision.

Finally, Petitioner contends the measure's provisions are so vague that "it is simply impossible to set a title that accurately reflects the measure's **true effect on Colorado law.**" Pet. Op. Br. at 7 (emphasis added). He reiterates this point throughout his brief. *See id*. at 8 (Initiative's single subject "does not accurately describe the effect of the measure"), 11 ("Initiative's impact on (current law) remains unclear"), 13 (it "is impossible… to understand the effect of the Initiative" on agency powers).

Evaluating a measure's effects is irrelevant to the Title Board's jurisdiction to set a title. For instance, in considering if a measure comprises a single subject, the Court "may not opine on the merits of [an initiative] nor may we suggest how the initiative might be applied if enacted…. The effects this measure could have… if adopted by voters are irrelevant to our review" of the Board's jurisdiction. *In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶20, 284 P.2d 562 (evaluating whether a measure's effects were a single subject issue). Instead, any questions about the "efficacy, construction, or future application of an initiative… are more appropriately addressed in a proper case if the voters approve the initiative." *In re Title, Ballot Title & Submission Clause for 1999-2000 #235(a),* 3 P.3d 1219, 1225 (Colo. 2000).

Thus, Petitioner improperly asks this Court to consider matters the Court routinely refuses to entertain at this stage of the election process, and it should be rejected.

C. Petitioner's specific examples of #91's vagueness are without merit.

1. Whether the measure addresses "hunting" or "trophy hunting"

Petitioner contrasts the measure's use of "trophy hunting" as opposed to the title's use of "hunting." Pet. Op. Br. at 9. To bring this argument into focus, Petitioner states, "Either Respondents do not understand how their proposed revisions to statute would actually operate or they are intending to mislead voters." *Id.*

His hyperbole aside, Petitioner does not complain that the title improperly referred to "hunting" of mountain lion, bobcats, or lynx. In fact, he argued that the title should use of "hunting" at the Title Board. "The true nature of Initiative #91 is to ban legal hunting of mountain lions and bobcats for any purpose." R. at 11; Gates Motion for Rehearing at 1. Thus, this aspect of the title reflects exactly the language Petitioner wanted at hearing.

In the same vein, Petitioner does not argue that the primary purpose of hunting these animals is for any reason other than to garner trophies. Nor could he. The

guiding industry in Colorado holds itself out as providing hunts for these trophies. For example, one Colorado company says it is

> proud to offer the finest hunting for mountain lions you will find. Your quest for your lion will be based out of either Kremmling or Eagle/Vail/Avon, Colorado and will include access to thousands of acres of both private and public lands in pursuit of **your trophy**…. These hunts are very unique and are a must for the **serious trophy hunter**.[2]

Another company that is headquartered in Colorado unabashedly displays its "Mountain Lion Trophy Gallery" online, providing photos of more than 50 mountain lions killed for trophy purposes during its guided hunts.[3] Given the documented health risks of using such animals as a food source[4] and the commercial emphasis on getting customers their trophies, the principal reason for pursuing and killing these animals is clearly trophy hunting.

Because the Title Board complied with Petitioner's request to pose the single subject as dealing with "hunting," the measure was not overly vague, and there is no ground for objection to the title set or the Board's ability to set it.

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[2] https://tinyurl.com/9zjfp96x (last viewed Dec. 18, 2023) (emphasis added).

[3] https://tinyurl.com/2t6fh685 (last viewed Dec. 18, 2023).

[4] https://gf.nd.gov/widlife/disease/trichinosis (last viewed Dec. 18, 2023) (according to the North Dakota Game and Fish Department, a person should "always assume mountain lion… meat is infected," and if that meat is undercooked, it "**can be fatal**") (emphasis in original).

2. Whether the measure's "exceptions" are really "exceptions"

Petitioner argues that "Acts taken 'in the defense of human life, livestock, real or personal property, or a motor vehicle,' cannot be properly characterized as 'hunting,' much less 'trophy hunting.'" Pet. Op. Br. at 10. He contends the title's portrayal of the initiative's provision to exempt these acts from liability was error.

Petitioner does not acknowledge that these acts result in "killing [or] wounding" of a mountain lion, bobcat, or lynx and thus are within the definition of "trophy hunting" contained in the Initiative. R. at 7 (Proposed Section 33-1-101.4(2)(a)(I)(A)). Because the Proponents do not intend to criminalize certain acts, the Board appropriately described those acts as "exceptions." *See #256, supra,* 12 P.3d 254-55 (Board had jurisdiction to set titles where "exceptions from the definition" of a key term were related to the purpose of the initiative and thus did not violate the single subject requirement); *cf. In re Title, Ballot Title, & Submission Clause 2007-2008 # 61*, 184 P.3d 747, 750 (Colo. 2008) ("the unclear scope of the limitation and the inherent tension caused by implicitly subjecting a provision to a limitation does not violate the single subject requirement. If it did, no provision would satisfy that requirement").

3. Whether bobcats are covered by an exception to "trophy hunting."

Petitioner complains that Initiative #91 removes the existing exception, allowing a person to "hunt, trap, or take" bobcats that are "causing damage to crops, real or personal property, or livestock," C.R.S. §33-6-107(9), but creates an expanded exception for the "killing, wounding, pursuing, or entrapping" of bobcats "in the defense of human life, livestock, real or personal property, or a motor vehicle." Pet. Op. Br. at 10-11; *see* R. at 7-8 (Proposed Section 33-1-101.4(2)(a)(II)(A) and proposed amendment to C.R.S. 33-6-107(9)).

It is immediately obvious that the two provisions do not use the same wording or cover the same acts. Initiative #91's added language clarifies and expands the protections afforded where bobcats are involved (e.g., "hunt, trap, or take" vs. "killing, wounding, pursuing, or entrapping"). Petitioner's failure to even acknowledge the difference between the current provision relating to bobcats that is being amended and the broader exemption being proposed suggests a misunderstanding of these two provisions. In fact, there is nothing confusing or unusual about a change such as this, and the Title Board properly reflected the new provision as a new "exception" because that is what it is.

4. Whether agencies' jurisdiction over mountain lions is unclear

Finally, Petitioner complains "the Initiative is unclear about its impact on the

Department of Agriculture's ability to regulate mountain lions." Pet. Op. Br. at 12. Petitioner argues this is a "gray area potentially outside the regulatory reach of both Colorado Parks and Wildlife and the Department of Agriculture." *Id.* at 13.

In other words, even Petitioner isn't sure that his worst-case scenario is anything more than a "gray area" that only potentially would present a jurisdictional impact. Vague hypothesizing about a measure's possible effects is no reason the Board could not assume jurisdiction here and set the title it did.

Regardless, this asserted effect of the measure is not cause for the Title Board to fail to meet its statutory duty to set a title here. *See* C.R.S. §1-40-106(1) ("The title board, by majority vote, shall proceed to designate and fix a proper title for each proposed law or constitutional amendment…."). This claim should be rejected by the Court.

II. Proponents were not required to resubmit their initiative to the Legislative Offices when all parties agree they only made changes that stemmed from the Offices' Review and Comment process.

Petitioner contends the Title Board erred by setting titles for Initiative #91 because it "excused Respondents from resubmitting any change to Legislative Council, no matter how substantial, so long as the change was in response to comments from Legislative Council." Pet. Op. Br. at 15.

Petitioner does not argue that changes were made beyond those raised in the Review and Comment process with the Legislative Offices. Instead, it is *because* Proponents limited their changes to those springing from the Review and Comment memo and hearing that Petitioner argues Proponents had to resubmit a new draft initiative.

This position is contrary to the express wording of the relevant statute.

> After the review and comment meeting but before submission to the secretary of state for title setting, **the proponents may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services**, or their designees. **If 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.

C.R.S. § 1-40-105(2). The General Assembly has expressly authorized initiative proponents to make changes that spring from their interactions with the Legislative Offices' staff.

Petitioner proposes a different test that is sure to confuse initiative proponents (and result in a proliferation of ballot title appeals to this Court). Even if proponents limit their changes to the Legislative Offices' suggestions, how many such changes can proponents accept without resubmitting their measure? Is there a raw number? Is there a percentage? Does it depend on the length of the measure? Or the length of

the staff memo? Or perhaps it is akin to Justice Potter Stewart's oft-quoted test in a different realm: the Title Board must simply know it when it sees it. *See Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). The remedy sought is plainly unworkable and, as far as the statute is concerned, unwarranted.

Further, the point of the Review and Comment process is to assist citizens in the drafting of ballot measures. The very purpose of the Review and Comment hearing is to allow non-partisan staff to conduct "a public meeting at which they may raise questions and make editorial comments regarding the proposed measure." *In re Title, Ballot Title, & Submission Clause for 2007-2008 #57,* 185 P.3d 142, 148 (Colo. 2008). The Legislative Offices can share their expertise so that, if adopted, constitutional and statutory amendments have the desired effect and don't create unintended problems.

If Petitioner's argument succeeds, the benefit of conferring with experienced staff to improve proposed initiatives will be lost. Proponents would have a disincentive to take many, much less all, of the staff's suggestions about necessary changes. That is an absurd result and cannot have been the intention of the voters in creating the Review and Comment process, Colo. Const., art. V, § 1(5), or the General Assembly in adopting C.R.S. §1-40-105(2).

Finally, Petitioner's position means that a narrow memo from the Legislative Offices would almost ensure that the revisions were appropriate and did not require resubmission of the draft initiative. In contrast, a thorough memo and a comprehensive hearing about a novel or complex measure would, if proponents incorporated all of the staff feedback, always require proponents to resubmit. As it is the staff that determines how in-depth any memo about an initiative will be, Petitioner's contention would give the staff of the Legislative Offices undue leverage over whether an initiative stays on schedule or has to start anew. This Court has rejected interpretations that would have this result. *See Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #255,* 4 P.3d 485, 492 (Colo. 2000) (statute requiring Office of State Planning and Budget to file fiscal information with the Title Board by noon not jurisdictional; if it was, staff could delay their submissions and stall an initiative's progress, which "would be inconsistent with the exercise of the constitutional right of initiative").

Therefore, Petitioner's argument that the Board lacked jurisdiction to set titles must be rejected.

III. The Title Board correctly found that Initiative #91 comprises only one subject.

Petitioner alleges three single subject violations: (1) the protections of this measure are extended to three feline families – mountain lions, bobcats, and lynx;

(2) the removal of mountain lions from the definition of "big game" will change the regulatory scheme for those animals; and (3) the measure may affect the way in which two regulatory agencies—Colorado Parks and Wildlife and the Department of Agriculture—relate to one another. None of these are "subjects" of the initiative, much less disconnected topics that will confuse voters or be used to get support from unrelated electoral factions.

A. Protecting three wildcats in Colorado is a single subject.

According to Petitioner, mountain lions, bobcats, and lynx cannot "be understood as a single subject" because "Colorado law elsewhere recognizes that these species are distinct animals in need of distinct treatment." Pet. Op. Br. at 22.

Petitioner's forced parsing of concepts is the type of approach that has been rejected by the Court on multiple occasions.

> Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.

In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #74, 962 P.2d 927, 929 (Colo. 1998).

Petitioner relies on different bodies of law affecting these three animals as proof they cannot all be subject to the same hunting ban. Under Initiative #91,

though, all three animals are subject to exactly the same protection, and persons violating this law are subject to exactly the same penalties. Voters would understand that it is the protection of these three animals that is the subject of this initiative.[5]

Further, Petitioner does not allege that the new protection of these animals will somehow interfere with their treatment under existing law. And even if he did, "speculat[ion] about the effects of the measure, postulating that if the measure is interpreted in a way that fits his conclusions" and any resulting "multiple effects" is not a valid single subject violation. *In re Title, Ballot Title, & Submission Clause 2007-2008 # 62*, 184 P.3d 52, 59 (Colo. 2008).

Importantly, the Court has "never held that [it is deprived of jurisdiction] just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #256,* 12 P.3d 246, 254 (Colo. 2000). That is exactly what Petitioner asks of the Court here without expressly saying so. In essence, Petitioner argues that related policy choices must also be inevitably (even genetically)

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[5] Even the fact that the lynx is currently deemed an endangered species, *see* Pet. Op. Br. at 22, is not a reason why Colorado cannot add more protection for the lynx. After all, that high level of protection is vulnerable to a president who is motivated to remove it. *See, e.g.*, "Trump Administration orders the removal of 30 species from the endangered species list," May 17, 2019 (https://www.ucsusa.org/resources/attacks-on-science/trump-administration-orders-removal-30-species-endangered-species-list (last viewed Dec. 17, 2023)).

connected. There is no legal precedent for doing so and no solid analytical reason for taking this position.

Therefore, the Court should reject this argument.

B. Removing "mountain lions" from the "big game" definition is not a different subject.

Petitioner contends changing the "big game" definition in statute so that mountain lions are excluded is a "seemingly small change [that] would produce an avalanche of **effects extending well-beyond hunting**." Pet. Op. Br. at 25 (emphasis added).

As noted above, speculation about a measure's effects and even an acknowledgement of such effects is not required by the single subject mandate. *#62 supra*, 184 P.3d at 59; *#256, supra*, 12 P.3d at 254. Therefore, this title was properly limited to a summary of the initiative itself.

Furthermore, existing law permits the hunting of all big game, and big game licenses are made available by Colorado Parks and Wildlife.[6] Statutes extend this prerogative to hunt big game under certain specified circumstances. *See, e.g.*, C.R.S. §33-4-102(1.9)(b) (allowing Parks and Wildlife to reduce or eliminate big game

[6] *See* Colo. Parks and Wildlife, "Big Game License Options," (https://cpw.state.co.us/learn/Pages/BigGameLicenseOptions.aspx (last viewed Dec. 18, 2023)).

license fees and establish a big game hunting license preference for members of the U.S. armed services wounded warrior programs). Existing law also provides penalties for persons who hunt big game but do so in a closed area or without exercising reasonable care. *See* C.R.S. §§33-6-120(1)(b), -122(2)(b). These provisions were deemed to be inconsistent with the initiative's outright ban on hunting mountain lions and the new penalties created by this initiative.

For these reasons, this argument also fails as a substantive objection to the Title Board's single subject finding.

C. Future agency interaction is not a separate subject.

Petitioner complains that the Department of Agriculture and Colorado Parks and Wildlife will not have a clear regulatory channel for certain purposes if the Initiative is adopted. "One of the **effects** of the Initiative, then, is to sever the collaborative relationship between the Department of Agriculture and Colorado Parks and Wildlife as to mountain lions." Pet. Op. Br. at 27-28 (emphasis added).

Again, Petitioner is focused on the measure's effects as subjects. But they aren't. And the Court has been clear about this, as noted above. *See # 62, supra*, 184 P.3d 52, 59.

Regardless, the possibility that a bureaucratic turf dispute will be a major issue for voters or is a primary aspect of Initiative #91 is far-flung. While the Department

of Agriculture and Colorado Parks and Wildlife each must have their advocates and their detractors, it strains credulity to think that this speculative effect of the measure on their relative powers will be a lightning rod issue for either group. This invented controversy is the product of unwarranted parsing of this measure, not a substantial argument that Initiative #91 comprises multiple subjects. It, too, should be rejected.

IV. The titles set for Initiative #91 are fair, informative, and accurate.

Petitioner alleges that the titles misstate the exceptions to the hunting ban and also fail to describe the removal of mountain lions from the definition of "big game." Neither of these matters rise to the level of invalidating the ballot title set.

A. The titles are sufficiently descriptive of the exceptions to the hunting ban.

The titles state that Initiative #91 "creat[es] eight exceptions to this prohibition including for the protection of human life, property, and livestock." R. at 5. Petitioner argues that Initiative #91 does not "create" these exceptions and that not all the exceptions relate to the protection of human life, property, and livestock.

As to the first contention, Initiative #91 does reference existing law and the protections there that apply to crimes other than those that would qualify as "trophy hunting." But the definition of "trophy hunting" would criminalize the killing or wounding of mountain lions, bobcats, and lynx, among other related acts. As noted earlier in this brief, that is new phrasing for those illegal acts. Thus, to the newly

created crime, there are newly created exceptions. Petitioner glosses over this fact, but the Title Board correctly did not. The title is accurate in this respect.

As to the second contention that the title will make voters think all the exceptions relate to protection of human life, property, or livestock, this flies in the face of the express language used. The Title Board said there are eight exceptions "including the protection of human life, property, and livestock." R. at 5. The word "including" was used in the title because it is a non-exclusive term. "A statutory definition of a term as 'including' certain things does not restrict the meaning to those items included." *Cherry Creek Sch. Dist. #5 v. Voelker*, 859 P.2d 805, 813 (Colo. 1993). To this point, "the word 'include' is ordinarily used as a word of extension or enlargement…. To hold otherwise would transmogrify the word 'include' into the word 'mean.'" *Lyman v. Bow Mar*, 533 P.2d 1129, 1133 (Colo. 1975). Petitioner's argument is just such a transmogrification, but it is inaccurate as a matter of law and should not be used to invalidate these titles.

As to a longer discussion of the eight exceptions, Petitioner loses sight of a central tenet for ballot title setting. "[W]e also disagree with Petitioners' claim that the Titles omit key terms. The Titles need not contain every feature of the proposed measure." *In re Title, Ballot Title and Submission Clause for 2013-2014 #89*, 2014

CO 66, ¶25. The expanded discussion of exceptions is not critical to voter understanding of this measure through the ballot title.

Therefore, the titles were legally sufficient by referencing the exceptions to the hunting ban with the wording approved by the Board.

B. The titles did not need to state that mountain lions would no longer be defined as "big game."

Petitioner argues that the change in definition of "big game" has the potential to change regulatory authority for mountain lions away from Colorado Parks and Wildlife. Or to quote Petitioner: "this removal **may** substantially limit the ability of the Department of Agriculture to collaborate with Colorado Parks and Wildlife on depredation issues." Pet. Op. Br. at 37 (emphasis added).

As Petitioner thus concedes, it also may not. Titles are no place for speculation. In fact, the Board cannot engage in such guesswork. As this Court has held, "the Title Board may not speculate on the potential effects of the initiative if enacted." *#89, supra*, 2014 CO 66, ¶24.

Regardless, Petitioner's conjecture about administrative process unrelated to the hunting ban is hardly a "central feature" of Initiative #91. Only the key aspects of an initiative need be related in the titles. "The Board's duty is merely to summarize the central features" of an initiative. *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiated Constitutional Amendment Concerning*

Suits Against Nongovernmental Emp'rs Who Knowingly & Recklessly Maintain an Unsafe Work Env't, 898 P.2d 1071, 1073 (Colo. 1995). This regulatory interplay is far from qualifying as a central feature of Initiative #91.

Thus, the titles were accurate and informative as set by the Board.

CONCLUSION

The Title Board's decision in setting the titles for Initiative #91 should be affirmed.

Respectfully submitted this 18th day of December, 2023.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **RESPONDENTS' ANSWER BRIEF ON PROPOSED INITIATIVE 2023-2024 #91** was sent electronically via Colo. Courts E-Filing System this day, December 18, 2023, to the following:

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