

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #144 (“Veterinary Telehealth”)</p> <p>Petitioners: Will French and Diane Matt,</p> <p>v.</p> <p>Respondents: Apryl Steele and Ali Mickelson,</p> <p>and</p> <p>Title Board: Theresa Conley, Christy Chase, and Kurt Morrison</p>	
<p>Attorneys for Petitioners:</p> <p>Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com; nate@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #144 (“VETERINARY TELEHEALTH”)</p>	

Will French, a registered elector of Douglas County and the State of Colorado, and Diane Matt, a registered elector of Denver County and the State of Colorado (“Petitioners”), through undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #144 (“Veterinary Telehealth”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #144.

Apryl Steele and Ali Mickelson (hereafter “Proponents”) proposed Initiative 2023-2024 #144 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on February 7, 2024, at which time titles were set for 2023-2024 #144. On February 14, 2024, Petitioners filed a Motion for Rehearing, alleging that Initiative #144 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), the Board lacks jurisdiction to set titles, and that the Title Board set titles which are misleading and incomplete as they do not fairly

communicate the true intent and meaning of the measure and will mislead voters.

The rehearing was held on February 21, 2024, at which time the Title Board denied the Motion for Rehearing.

B. Jurisdiction

Petitioners are entitled to review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because it lacked jurisdiction to set titles for the Initiative and the titles

set by the Board violate the “clear ballot title” requirement by omitting critical elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioners’ brief:

1. Whether the Title Board lacked jurisdiction to set titles on single subject grounds because Initiative #144, by its terms, authorizes unlicensed “veterinarians” to practice veterinary telehealth even though the initiative purports to limit such expanded forms of care only to veterinarians licensed in Colorado.

2. Whether the Title Board erred in setting titles that are misleading by describing the measure as authorizing a “veterinarian licensed in Colorado to use telehealth” when the measure authorizes any veterinarian regardless of his/her licensure status to practice veterinary telehealth on an animal located in Colorado.

3. Whether the Title Board erred in setting titles that are misleading and incomplete by incorrectly describing the meaning of “veterinary telehealth” under the Initiative.

4. Whether the Title Board erred in setting titles that are misleading and incomplete in that the titles do not adequately inform voters of the authority a veterinarian practicing veterinary telehealth will have to order, prescribe, or make available prescription drugs.

5. Whether the Title Board erred in setting titles that are misleading and incomplete in that the titles do not adequately inform voters of the limitations on a veterinarian practicing veterinary telehealth to prescribe controlled substances.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction or, in the alternative, to correct the title to address the deficiencies outlined in Petitioners' briefs.

Respectfully submitted this 28th day of February, 2024.

s/ Nathan Bruggeman

Mark G. Grueskin, #14621

Nathan Bruggeman, #39621

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #144 (“VETERINARY TELEHEALTH”)** was sent electronically via Colorado Courts E-Filing this day, February 28, 2024, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Kyle Holter
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:
Ed Ramey
Tierney Lawrence Stiles LLC
225 E 16th Avenue, Suite 350
Denver, CO 80203

/s Erin Mohr

DATE FILED: February 28, 2024 4:10 PM



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #144 'Veterinary Telehealth'"

.....

.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 22nd day of February, 2024.

Jena Griswold

SECRETARY OF STATE



Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-315-104, **amend** (19); and **add** (26), as follows:

12-315-104. Definitions. As used in this article 315, unless the context otherwise requires:

(19) "Veterinarian-client-patient relationship" means that relationship established when:

(a) The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the owner or other caretaker has agreed to follow the instruction of the veterinarian;

(b) There is sufficient knowledge of an animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of ~~an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept;~~ and ONE OF THE FOLLOWING:

(I) AN EXAMINATION OF THE ANIMAL IN PERSON;

(II) AN ELECTRONIC EXAMINATION USING AN AUDIO-VIDEO BASED COMMUNICATION MEDIUM; OR

(III) MEDICALLY APPROPRIATE AND TIMELY VISITS TO THE PREMISES WHERE THE ANIMAL IS KEPT; AND

(c) The practicing veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

(26) "VETERINARY TELEHEALTH" MEANS THE PRACTICE OF VETERINARY MEDICINE THROUGH TELECOMMUNICATION SYSTEMS, INCLUDING INFORMATION, ELECTRONIC, AND COMMUNICATION TECHNOLOGIES, TO FACILITATE THE ASSESSMENT, DIAGNOSIS, OR TREATMENT OF A PATIENT WHILE THE PATIENT IS AT ONE SITE AND THE VETERINARIAN IS AT A DIFFERENT SITE, AS SPECIFIED IN SECTION 12-315-127.

SECTION 2. In Colorado Revised Statutes, **add** 12-315-127 as follows:

12-315-127. Veterinary telehealth. (1) A VETERINARIAN HOLDING AN ACTIVE COLORADO LICENSE MAY PRACTICE VETERINARY TELEHEALTH ON A PATIENT LOCATED IN COLORADO.

(2) THE PRACTICE OF VETERINARY TELEHEALTH IS DEEMED TO OCCUR AT THE PREMISES WHERE THE PATIENT IS LOCATED AT THE TIME THE VETERINARIAN PRACTICES TELEHEALTH.

(3) THE BOARD HAS JURISDICTION OVER A VETERINARIAN PRACTICING VETERINARY TELEHEALTH ON A PATIENT IN COLORADO, REGARDLESS OF WHERE THE VETERINARIAN'S PHYSICAL OFFICE IS LOCATED.

(4) BEFORE DELIVERING VETERINARY MEDICINE VIA TELEHEALTH, THE VETERINARIAN SHALL INFORM THE OWNER OR OTHER CARETAKER ABOUT THE USE OF TELEHEALTH AND OBTAIN THEIR CONSENT TO USE TELEHEALTH, INCLUDING ACKNOWLEDGMENT OF BOTH OF THE FOLLOWING:

(a) THE SAME STANDARDS OF CARE APPLY TO VETERINARY MEDICINE SERVICES VIA TELEHEALTH AND IN-PERSON VETERINARY MEDICAL SERVICES; AND

(b) THE OWNER OR OTHER CARETAKER HAS THE OPTION TO CHOOSE AN IN-PERSON VISIT FROM A VETERINARIAN AT ANY TIME.

(5) A VETERINARIAN PRACTICING TELEHEALTH SHALL:

(a) TAKE APPROPRIATE STEPS TO ESTABLISH THE VETERINARIAN-CLIENT-PATIENT RELATIONSHIP AND CONDUCT ALL APPROPRIATE EVALUATIONS AND HISTORY OF THE PATIENT CONSISTENT WITH THE PREVAILING QUALITY OF VETERINARY MEDICAL CARE FOR THE PARTICULAR PATIENT PRESENTATION;

(b) PROVIDE THE OWNER OR OTHER CARETAKER WITH THE IDENTITY, LICENSE NUMBER, AND CONTACT INFORMATION OF THE VETERINARIAN PROVIDING THE VETERINARY TELEHEALTH SERVICE;

(c) EMPLOY SOUND PROFESSIONAL JUDGMENT TO DETERMINE WHETHER USING VETERINARY TELEHEALTH IS AN APPROPRIATE METHOD FOR ASSESSMENT, DIAGNOSIS, AND DELIVERING MEDICAL TREATMENT TO THE PATIENT; AND

(d) BE ABLE TO REFER THE OWNER OR OTHER CARETAKER TO A VETERINARIAN WHO MAY BE ABLE TO SEE THE PATIENT IN PERSON UPON REQUEST.

(6) THE PRACTICE OF VETERINARY TELEHEALTH IN COMPLIANCE WITH THIS SECTION IS NOT A QUALITY-OF-CARE VIOLATION, AND A VETERINARIAN MAY NOT BE DISCIPLINED SOLELY FOR PRACTICING VETERINARY TELEHEALTH.

(7) (a) EXCEPT AS PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, A VETERINARIAN PRACTICING VETERINARY TELEHEALTH MAY ORDER, PRESCRIBE, OR MAKE AVAILABLE PRESCRIPTION DRUGS IN ACCORDANCE WITH ALL RELEVANT FEDERAL AND STATE LAWS AND SO LONG AS THE VETERINARIAN IS NOT IN VIOLATION OF SECTION 12-315-112 (1)(y).

(b) A VETERINARIAN PRACTICING VETERINARY TELEHEALTH SHALL NOT ORDER, PRESCRIBE, OR MAKE AVAILABLE A PRESCRIPTION DRUG THAT IS A CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5), UNLESS THE VETERINARIAN HAS PREVIOUSLY PERFORMED AN IN-PERSON PHYSICAL EXAMINATION OF THE PATIENT OR MADE MEDICALLY APPROPRIATE AND TIMELY VISITS TO THE PREMISES WHERE THE PATIENT IS KEPT.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #144¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient located in Colorado; allowing a veterinarian to establish a relationship with an animal patient and the owner or caretaker through the use of audio-video communication; and establishing parameters on prescribing controlled substances.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient located in Colorado; allowing a veterinarian to establish a relationship with an animal patient and the owner or caretaker through the use of audio-video communication; and establishing parameters on prescribing controlled substances?

Hearing February 7, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 12:31 P.M.

¹ Unofficially captioned “**Veterinary Telehealth**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #144¹

The title as designated and fixed by the Board is as follows:

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Hearing February 7, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 12:31 P.M.

Rehearing February 21, 2024:

Motion for rehearing was denied in its entirety.

Board members: Theresa Conley, Christy Chase, Kurt Morrison

Hearing adjourned 9:55 A.M.

¹ Unofficially captioned “**Veterinary Telehealth**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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 #144.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #144**

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 #144.

On February 7, 2024, the Title Setting Board set the following ballot title and submission clause for Initiative 2023-2024 #144:

Shall there be a change to the Colorado Revised Statutes concerning veterinary telehealth, and, in connection therewith, allowing a veterinarian licensed in Colorado to use telehealth to assess, diagnose, or treat an animal patient located in Colorado; allowing a veterinarian to establish a relationship with an animal patient and the owner or caretaker through the use of audio-video communication; and establishing parameters on prescribing controlled substances?

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

I. The Board lacked jurisdiction to set a title for #144.

A. Initiative #144 is so confusingly written that it is inherently contradictory, and, therefore, the Board cannot set a title.

Initiative #144 suffers from a fundamental problem: on the one hand, it suggests that the authorization to practice veterinary telehealth applies to Colorado-licensed veterinarians, while on the other, as drafted, its authorization to practice veterinary telehealth extends to any “veterinarian” regardless of whether they hold a Colorado license.

Proposed C.R.S. § 12-315-127(1) provides that a “veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado.” The measure, however, does not limit its reach to a Colorado-licensed veterinarian as its substantive provisions apply to “veterinarians” and not “*licensed* veterinarians.”¹

This was a significant choice by the Proponents because “veterinarian” and “licensed veterinarian” are defined terms under Colorado’s Veterinary Practice Act, with the former meaning only someone who has a doctor’s degree in veterinary medicine and the latter as someone licensed in Colorado.

“Veterinarian”	“Licensed Veterinarian”
<p>“(18) ‘Veterinarian’ means a person who has received a doctor’s degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.”</p> <p>C.R.S. § 12-315-104(18)</p>	<p>“(11) ‘Licensed veterinarian’ means a person licensed pursuant to this part 1 [of the Colorado Veterinary Practice Act].”</p> <p>C.R.S. § 12-315-104(11)</p>

There is no way to reconcile, based on the Proponents’ use of a defined term, the limited authorization in proposed C.R.S. § 12-315-127(1) for a Colorado-licensed veterinarian with the remainder of the measure’s language that authorizes *any* veterinarian to practice “veterinary telehealth” on an animal in Colorado.

Since the measure’s language is internally contradictory—it applies to Colorado-licensed veterinarians but also to any veterinarian—the Board cannot set a title. As the Supreme Court has recognized, 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).

B. Initiative #144 has multiple subjects.

If the Board determines that it can understand #144, it still lacks jurisdiction because the measure contains multiple subjects in violation of the Constitution’s single subject requirement.

¹ See, e.g., Proposed C.R.S. § 12-315-104(26) (defining “veterinary telehealth” as involving a “veterinarian”); *id.* § 12-315-127(2) (“... at the time the veterinarian practices telehealth...”); *id.* § 12-315-127(3) (“... jurisdiction over a veterinarian practicing veterinary telehealth...”); *id.* § 12-315-127(4) (“...the veterinarian shall inform the owner...”); *id.* § 12-315-127(5) (“A veterinarian practicing telehealth shall...”); *id.* § 12-315-127(6) (“... a veterinarian may not be disciplined...”); *id.* 12-315-127(7)(a) & (b) (“...a veterinarian practicing veterinary telehealth...”).

1. *The initiative's first subject: authorizing Colorado-licensed veterinarians to provide care through veterinary telehealth.*

The Initiative grants a new licensing privilege to veterinarians licensed in Colorado: the ability to provide care through “veterinary telehealth”:

A veterinarian holding an active Colorado License may practice veterinary telehealth on a patient located in Colorado.

Proposed C.R.S. § 12-315-127(1). That is a straightforward and simple change to the Colorado Veterinary Practice Act. However, as explained above, through the Proponents’ decision to use the defined word “veterinarian” in the measure, its reach exceeds that limited purpose.

2. *The initiative's second subject: authorizing unlicensed veterinarians to provide care to animals in Colorado through “telehealth.”*

If Proponents intended to limit their measure to simply extending the privileges of veterinarians licensed in Colorado, they would have drafted their measure using the defined term “licensed veterinarian.” But they did not, as explained above, choosing instead to use the term, “veterinarian.” A “veterinarian” does not need to hold a Colorado license (or any state license), and instead means a person with a doctor’s degree in veterinary medicine. *Compare* C.R.S. § 12-315-104(11) *with id.* § 12-315-104(18).

The defined term “licensed veterinarian” appears nowhere in Initiative #144.² Instead, Proponents used the term “veterinarian” exclusively in their measure. In doing so, they have authorized veterinarians who do not have a Colorado license to practice veterinary telehealth on Colorado animals. The measure accomplishes this by:

- Giving the board jurisdiction over a “veterinarian” practicing telehealth, *see* proposed C.R.S. § 12-315-127(3);
- Allowing any “veterinarian” to provide disclosures to clients, *id.* § 12-315-127(4);
- Establishing the standards for a “veterinarian” to practice telehealth, including allowing any “veterinarian” to establish a “veterinary-client-patient-relationship” through telehealth; *id.* § 12-315-127(5);
- Immunizing a “veterinarian” from discipline for practicing telehealth, *id.* § 12-315-127(6); and,
- Authorizing a “veterinarian,” under certain limitations, to order prescription drugs, *id.* § 12-315-127(8).

² Alternatively, Proponents could have written the measure using limiting language: “**Only** a veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado” or “**Only** a licensed veterinarian may practice veterinary telehealth on a patient located in Colorado.”

The Proponents' decision to use the word "veterinarian" instead of "licensed veterinarian" was intentional. This issue was brought to Proponents' attention during the review and comment process with legislative staff:

5. The proponents use the term "veterinarian" throughout the proposed initiative. Does the reference to "veterinarian" in the proposed initiative means a veterinarian licensed in this state? If so, the proponents should consider adding "licensed" before "veterinarian" in the proposed initiative to match the defined term "licensed veterinarian."

...

15. Under the proposed initiative, is an individual who is not a licensed veterinarian able to deliver any veterinary health-care services through veterinary telehealth? If so, which services and under what conditions? If veterinary technicians are able to do so, part 2 of article 315 of title 12, C.R.S., should be amended as well.

Jan. 22, 2024, Mem. to Proponents at 2 ¶ 5 & 4 ¶ 15.³ During the hearing with legislative staff, the Proponents said they would "consider doing that" with respect to using "licensed veterinarian," and they were "considering what to do with" the question regarding provision of veterinary telehealth by someone who is not a licensed veterinarian. Jan. 25, 2024, Review and Comment Hr'g at 10:05:23 and 10:13-10.⁴ But after considering these issues, the Proponents *chose* to use the term "veterinarian" instead of "licensed veterinarian." In other words, they chose for their measure to apply to any veterinarian.

Whether to grant a limited license privilege to Colorado-licensed veterinarians stands wholly apart from whether any veterinarian—whether in Colorado, Alabama, or a foreign country—should be able to provide veterinary care to Colorado animals. Permitting unlicensed veterinarians, including those out of state, to provide care to Colorado animals is not connected to whether Colorado should take the modest step of allowing a licensed-Colorado veterinarian to provide telehealth.

Not only is there a facial disconnect between these subjects, this is the type of issue that is coiled into the folds of a measure and which would surprise a voter. One of the primary objectives of the single subject requirement is to "prevent surreptitious measures" and "prevent surprise and fraud from being practiced upon voters." C.R.S. 1-40-106.5(1)(e)(II). A voter would not understand that, in allowing licensed Colorado veterinarians to provide telehealth, the measure also authorizes telehealth by unlicensed veterinarians.

3. *The measure alters the standard of care for veterinary practice.*

The measure states that veterinarians providing telehealth must inform clients that the "*same* standards of care apply to veterinary medicine services via telehealth and in-person veterinary medical services." Proposed C.R.S. § 12-315-127(4)(a) (emphasis added). The measure defines

³ Available at <http://tinyurl.com/mr2n65x6>.

⁴ Available at <http://tinyurl.com/bdhxn3zx>.

the standard of care as the “prevailing quality of veterinary care for the particular patient presentation.” *Id.* § 12-315-127(5)(a). That, however, is not the standard that currently applies.

Under the current statute, a licensed veterinarian is required to meet the “generally accepted standards of veterinary practice.” C.R.S. § 12-315-112(1)(z) (providing for discipline by a licensed veterinarian for an “act or omission that fails to meet generally accepted standards of veterinary practice”). To make the standards the “same,” as Initiative #144 requires, would require the state board of veterinary medicine to now apply the new “prevailing quality of veterinary care for the particular patient presentation” standard from the measure.

Altering the standard that generally applies to veterinary care is a change that extends beyond what is necessary to authorize “veterinary telehealth.” As the Supreme Court has recently explained in an analogous case involving animal care standards, a measure violates the single subject requirement where, under the guise of making a discrete change, it in fact alters or creates a broadly applicable standard. *See In re Title, Ballot Title & Submission Clause for 2021-2022 #1*, 2021 CO 55 ¶¶ 39-41 (holding that, in a measure meant to include livestock in the animal cruelty statute, creating a new definition of “sexual assault on an animal” that applies to all animals violated the single subject requirement).

This is, again, an intentional decision by the Proponents. The difference between the standard of care articulated in the measure and current law was raised during the review and comment process. *See* Jan. 22 Mem. at 3 ¶ 10. The Proponents said they would consider “clarifying that” in their measure. Jan. 25 Hr’g at 10:08:26. They chose not to, and in doing so, their measure violates the constitutional single subject requirement.

II. The titles set are incomplete and misleading.

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

- If the Board determines that it has jurisdiction, then at a minimum the titles must inform voters that the Initiative authorizes telehealth not only by Colorado-licensed veterinarians but all “veterinarians” can practice it on a Colorado animal.
- If the Board determines that it has jurisdiction, then at a minimum the titles must inform voters that the Initiative creates a new standard of care for veterinary medicines that applies to both telehealth and all other veterinary care.
- The titles are misleading because it states that “a veterinarian licensed in Colorado” may use telehealth without informing voters that other, unlicensed veterinarians can use telehealth to treat an animal in Colorado.
- The titles are incomplete and misleading because it provides only a partial definition of “veterinary telehealth,” which is a substantial and controversial new standard, by omitting from the titles that, under the measure’s definition, “veterinary telehealth” is “the practice of veterinary medicine.” Instead of informing voters that “veterinary telehealth” is the

practice of veterinary *medicine*, the titles state only that those using “veterinary telehealth” may “assess, diagnose, or treat an animal.”

It is particularly important to explain the scope of the definition because, under general terminology, “telehealth” means the broad set of services related to healthcare whereas “telemedicine” means the provision of clinical care. *See, e.g.*, Office of the National Coordinator for Health Information Technology, last visited Feb. 13, 2024, <https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine> (explaining that telehealth refers “to a broader scope of remote healthcare services . . . including remote non-clinical services, such as providing training, administrative meetings, and continuing medical education,” telemedicine “refers specifically to remote clinical services). Colorado law recognizes this distinction in the medical context, as the “practice of medicine” includes “telemedicine,” which is distinct from the concept of providing “telehealth.” *See* C.R.S. § 12-240-107(1)(a) & (1)(g).

- The titles are incomplete and misleading because they state that a veterinarian may establish a “relationship” with an animal and owner. “Relationship” describes the reach of the measure in a vague manner. The measure in fact allows a veterinarian to establish a full “veterinarian-client-patient relationship,” which is the foundational relationship between a veterinarian and an animal and its owner.
- The titles are incomplete because they do not explain that the board of veterinary medicine is being granted some authority over “veterinarians” practicing telehealth.
- The titles are incomplete because they do not inform voters that a veterinarian practicing veterinary telehealth cannot be disciplined for providing telehealth.
- The titles are incomplete and misleading due to the description of the prescribing authority of a veterinarian. *First*, the titles are misleading because it states only that a veterinarian can prescribe “controlled substances,” which refers to and most voters would understand as meaning a small subset of drugs such as opioids. However, under the measure, the prescribing authority extends to prescribing any “prescription drug” in accordance with any applicable law. *See* Proposed C.R.S. § 12-315-127(7)(a).

Second, the titles are incomplete because it vaguely refers to some parameters on the veterinarian’s ability to prescribe “controlled substances” without explaining what the parameters are. Controlled substance abuse is a significant public policy issue, and, for voters to understand whether such drugs should be allowed to be prescribed *remotely*, they need to be informed what specific restrictions are being placed on this authority.

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #144 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 #144** was sent this day, February 14, 2024, via first-class mail, postage paid and via email to:

Ed Ramey (counsel for proponents)
Tierney Lawrence Stiles LLC
225 E 16th Avenue, Suite 350
Denver, CO 80203
eramey@tls.legal

s/ Erin Mohr



Initiative 144

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: January 31, 2024 **Fiscal Analyst:** Clayton Mayfield (303-866-5851)

LCS TITLE: VETERINARY TELEHEALTH

Fiscal Summary of Initiative 144

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State spending. By changing the scope of practice for veterinarians to allow for telehealth delivery, the measure will minimally increase workload and expenditures in the Department of Regulatory Agencies to update rules and conduct outreach and education. There may be additional state expenditures to the extent licensed veterinarians do not comply with the provisions of the measure and disciplinary actions are taken.

Economic impacts. The measure may shift where veterinary services are provided in some cases. However, any overall impact to the state economy is expected to be minimal.