

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2), (2023) 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>Ballot Title Board: THERESA CONLEY, CHRISTY CHASE, and KURT MORRISON</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Respondents:</p> <p>Edward T. Ramey, #6748 Tierney Lawrence Stiles LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 303-949-7676 Email: eramey@TLS.legal</p>	<p>Supreme Court Case No. 2024SA65</p>
<p>RESPONDENTS’ OPENING BRIEF</p>	

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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g).

The brief contains 1,316 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Edward T. Ramey
Edward T. Ramey, #6748

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Respondents Apryl Steele and Ali Mickelson, the designated representatives of the proponents of Proposed Initiative 2023-2024 #144 (“Veterinary Telehealth”), respectfully submit their Opening Brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The Petitioners have submitted the following advisory list of five issues for review:

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.

STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #144 (“Initiative 144”) would amend the Colorado Veterinary Practice Act, article 315 of Title 12 of the Colorado Revised Statutes, to establish standards and requirements for the use of telecommunications systems to facilitate the assessment, diagnosis, and treatment of patients (“veterinary telehealth”) by Colorado licensed veterinarians.

The Ballot Title Setting Board set a title and ballot title and submission clause for Initiative 144 on February 7, 2024. Petitioners timely filed a Motion for Rehearing, and a rehearing was held on February 21, 2024 – at which the Title Board unanimously denied the Motion in its entirety. Petitioners timely filed their Petition for Review with this Court on February 28, 2024.

SUMMARY OF THE ARGUMENT

The five issues presented by the Petitioners for review are grounded in three misconstructions of Initiative 144 – none of which are supported by the text of the

measure and none of which were accepted by the Title Board. First, Petitioners suggest that the Initiative would authorize unlicensed veterinarians to practice veterinary telehealth in Colorado and that the Title Board failed to so advise the voters in the title (Issues 1 and 2). Second, Petitioners broadly suggest that the Title Board incorrectly describes the meaning of “telehealth” (Issue 3). Finally, Petitioners take issue with the Title Board’s summary of the medication prescription authority of veterinarians who would utilize telehealth technology (Issues 4 and 5).

ARGUMENT

A. Standard of Review and Preservation of Issues.

“‘The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause,’ and we will reverse the Board's decision only when a title is insufficient, unfair, or misleading.” *In re Title, Ballot Title & Submission Clause for 2019-2020* #315, 2020 CO 61, ¶6, 500 P.3d 363, 366 (Colo. 2020), quoting *In re Title, Ballot Title & Submission Clause for 2013-2014* #90, 2014 CO 63, ¶8, 328 P.3d 155, 159 (Colo. 2014). “In reviewing Title Board title settings, ‘we employ all legitimate presumptions in favor of the propriety of the Board's actions.’” *Id.* at ¶7, quoting *In re Title, Ballot Title & Submission Clause for 2009-2010* #45, 234 P.3d 642, 645 (Colo. 2010).

“When setting a title, the Title Board ‘shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear.” *Id.* at ¶25, quoting §1-40-106(3)(b), C.R.S. (2023).

Respondents do not contest issue preservation.

B. The Initiative does not authorize veterinarians who are not licensed in Colorado to utilize veterinary telehealth on patients located in Colorado. [Petitioners’ 1st and 2nd “advisory issues”]

Initiative 144 cannot reasonably be read to authorize veterinarians – or anyone else – who are not licensed to practice veterinary medicine in Colorado to utilize veterinary telehealth on patients in Colorado.

Current §12-315-105(1), C.R.S. (2023), of the Colorado Veterinary Practice Act states specifically that “A person shall not practice veterinary medicine in this state if the person is not a licensed veterinarian” (emphasis added). “Licensed veterinarian” is defined in current §12-315-104(11), C.R.S. (2023), as “a person licensed pursuant to this part 1” – *i.e.*, licensed in Colorado.

Proposed new §12-315-104(26), C.R.S. (2023), specifically defines “veterinary telehealth” as “the practice of veterinary medicine” (emphasis added) – thus restricted, per current §12-315-105(1), C.R.S. (2023), to veterinarians licensed in Colorado. For additional clarity, proposed new §12-315-127(1), C.R.S. (2023),

states “A veterinarian holding an active Colorado license may practice veterinary telehealth on a patient located in Colorado” (emphasis added).

C. The titles are not “misleading and incomplete” in their description of “veterinary telehealth.” [Petitioners’ 3rd “advisory issue”]

Respondents are at something of a loss to address this issue pending submission of Petitioners’ opening brief. The term “veterinary telehealth” is defined in the Initiative as “the practice of veterinary medicine through telecommunication systems . . . 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.” The titles accurately describe the “use of 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.” While this Court may be able to craft a better title, there is nothing “misleading” or “incomplete” or materially deficient about the present titles.¹

¹ The only indication Respondents can presently discern regarding Petitioners’ concerns derive from the eight bullets in section II of their Motion for Rehearing. Of these, the first, second, third, and seventh are patently incorrect; the fourth objects to the accuracy of language drawn precisely from the measure; and the fifth, sixth, and eighth address detail rarely required or appropriate in a title; *cf.*, *In re Title, Ballot Title & Submission Clause, and Summary for 1999-2000 #255*, 4 P.3d 485, 496-99 (Colo. 2000).

D. The titles are not “misleading and incomplete” in their description of the authority of a veterinarian practicing veterinary telehealth to order, prescribe, or make available prescription drugs and controlled substances. [Petitioners’ 4th and 5th “advisory issues”]

The titles state clearly that the Initiative contains provisions “establishing parameters on prescribing controlled substances” in the context of the practice of veterinary telehealth. The Initiative indeed does so in new §12-315-127(7), C.R.S. (2023) – allowing a veterinarian practicing telehealth to “order, prescribe, or make available prescription drugs in accordance with all relevant federal and state laws” as long as it is “in the course of a veterinarian-client-patient relationship” and in specified emergency situations; and prohibiting prescription or provision of federally defined “controlled substances” unless the veterinarian has performed an in-person physical examination of the patient or made a medically appropriate and timely visit to the premises where the patient is kept. All of this detail could have been spelled out in the title, though that would have contravened the General Assembly’s admonition that “Ballot titles shall be brief.” §1-40-106(3)(b), C.R.S. (2023). As this Court has noted, “[t]he Title Board is given discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause.” *In re Title, Ballot Title & Submission*

Clause for 2019–2020 #315, 2020 CO 61, P26, 500 P.3d 363, 369 (Colo. 2020).

This is particularly the case with implementation details such as this.

CONCLUSION

For the reasons set forth above, Respondents respectfully request the Court to affirm the actions of the Title Board in this case.

Respectfully submitted this 19th day of March, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I electronically filed this Opening Brief with this Court via the Colorado Courts E-Filing system and electronically served a copy upon Counsel for the Petitioners and Counsel for the Ballot Title Board at:

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