

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: April 8, 2024 4:16 PM</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 #145 (“Establish Qualifications and Registration for Veterinary Professional Associate”)</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>▲ COURT USE ONLY ▲</p>
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<p>PETITIONERS’ ANSWER 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, the undersigned certifies that:

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

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/s Nathan Bruggeman _____

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Petitioners Diane Matt and Will French respectfully submit their Answer Brief.

SUMMARY OF ARGUMENT

Initiative #145 authorizes a new category of people—veterinary professional associates—to “practice veterinary medicine.” In other words, to do what, as of now, only a *licensed veterinarian* can do. Broad as this authorization is, the measure’s guardrails on this practice—there are two—are comparatively minimal. Voters need to know what those two guardrails are so they can determine whether to expand the “practice of veterinary medicine” as this Initiative proposes. The Title Board recognized this by including *one* guardrail in the titles, but it inexplicably excluded the other and then did not inform voters of the Initiative’s accountability measures. Voters are thus left with an incomplete understanding of the essential features of Initiative #145, and the Court should remand to the Board to correct these deficiencies.

LEGAL ARGUMENT

I. Proponents’ attempts to minimize the omitted material from the titles are unpersuasive.

Proponents argue that describing the limitations on a veterinary professional associate’s (“VPA”) practice of veterinary medicine is an implementation detail,

the inclusion of which would violate the requirement that titles be brief.

(Proponents' Opening Br. at 4-6.)

A. There is no reason to explain only one of the two limitations on VPA's practice of veterinary medicine.

While Proponents are right that their measure creates a new occupation, their brief does not address what this new profession will be allowed to do: practice veterinary medicine, that is, provide the care that a licensed veterinarian provides. VPAs are not simply helpers to licensed veterinarians; they step into the shoes of the veterinarian to provide the same type of care as a veterinarian subject to only two conditions. Proponents nowhere explain how the two conditions are different such that the Board appropriately explained one limitation (veterinarian supervision) in the titles but was free to omit the second limitation (practice must be within a VPA's education and experience) from the titles as an implementation detail. And that is because there is no meaningful difference that explains why the Board did that. Indeed, as the measure itself recognizes, the omitted limitation regarding the VPA education and experience is fundamentally tied to ensuring that a VPA can "meet generally accepted standards of veterinary care." (CF p. 9, Proposed C.R.S. § 12-315-209.7(2).)

B. Substance cannot be sacrificed to brevity.

Proponents urge that, in the pursuit of brevity, the Board properly omitted the second limitation and accountability measures from the titles. Brevity is a goal in title setting, but, as this Court has explained, it is not the primary goal. Rather brevity gives way to the imperative of adequately informing voters of a measure's essential features. *See In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993).

And here, there was no need to tradeoff completeness for brevity. Describing the second limitation on a VPA's practice of veterinary medicine requires only a handful of additional words:

“allowing a registered veterinary professional associate to practice veterinary medicine that is within their education and experience and under the supervision of a licensed veterinarian”

Nor would it have taken a significant number of words to describe the measure's accountability provisions:

“providing that a registered veterinary professional associate and supervising veterinarian can be subject to professional discipline and/or civil damages for exceeding the limitations on an associate's practice”

In approximately 35 words, the Board could have addressed the issues raised by Petitioners, which were changes Proponents did not object to during the rehearing (Feb. 21, 2024, Title Bd. Hr'g at 58:54-59:40¹).

C. Proponents' attempts to minimize the issues raised by Petitioners are not persuasive.

Proponents address each specific omission from the titles raised by Petitioners. (Proponents' Opening Br. at 5.) Their attempts to dismiss these aspects of their measure are unpersuasive.

1. Voters will have no idea what, if any, accountability measures VPAs and veterinarians are subject to.

Proponents describe their measure as “somewhat detailed” as to the scheme being created for VPAs. (Proponents' Opening Br. at 4.) While the measure is of modest length, the actual substantive boundaries for this new profession are limited. The qualifications for VPAs are minimal (18 years of age and some advanced education), and there are only two limitations on their practice of veterinary medicine (supervision and within education and experience). Within this scheme, the accountability measures for enforcing these requirements play an

¹ The hearing recording is available at <https://tinyurl.com/2687e63a>.

outsized role—yet there is nothing in the titles indicating that they exist. While the titles tell voters that a VPA must “register” with the state board of veterinary medicine, that does not imply the board has disciplinary authority and certainly does not clue voters into the measure’s *civil liability* provisions. Given the scope of what a VPA will be able to do—practice veterinary medicine—voters should know how VPAs will be held to account if they violate the strictures on their practice.

2. Proponents confuse a VPA’s “qualifications” with the “limitations” on their practice.

Qualifications establish who can register to *become* a VPA. *See* Merriam-Webster Online Dictionary (qualification: “a condition or standard that must be complied with (as for the attainment of a privilege,” “a qualification for membership”). Not only is that the common meaning of qualification, that is plainly how the measure uses the concept of qualification:

(2) Qualifications. To be qualified for registration as a veterinary professional associate, an individual must:

(a) be at least eighteen years of age; and

(b) hold a master’s degree in veterinary clinical care or the equivalent as determined by the board.

(CF p. 5, Proposed C.R.S. § 12-315-203.7(2).) Thus, contrary to Proponents’ argument, informing voters that the measure “establish[es] qualifications” to be a

VPA does not provide any information to voters as to what a person can do once they are a VPA or the limitations on their practice.

3. The measure imposes two separate limitations on a VPA’s practice of veterinary medicine.

Finally, Proponents conflate the limitations on a VPA’s practice, arguing the requirement that a VPA’s practice be within their education and experience is “hardly notable information” given the titles state that their practice is “under the supervision” of a veterinarian. (Proponents’ Opening Br. at 5.) This argument overlooks the fact that these are two different limitations, and one does not imply the other. In fact, by emphasizing that a VPA’s practice is under a licensed veterinarian’s supervision, the titles may mislead voters into believing no other limitation exists—if the VPA is “supervised” why would there be a separate limitation on what the VPA can do? Supervision, after all, means “a critical watching and directing.” Merriam-Webster Online Dictionary (defining supervision).

II. Nor do the Board’s attempts to characterize the omissions as “inconsequential” succeed.

The Board’s arguments thematically track the arguments made by Proponents, namely, the practice limitation and accountability measures are

implementation details, and the titles should be brief. For the reasons given above, those arguments fail. There are several specific arguments that Petitioners will address.

A. Voters will not understand that professional discipline “flows naturally” from a VPA’s registration.

The Board argues the titles “summarize the qualifications and licensure pathway” for a VPA, and, as a “new type of license,” “it is natural” there would be accountability measures. (Bd.’s Opening Br. at 7.) The Board’s argument vastly overstates the titles’ description of the registration “pathway.” In total, the titles state: “requiring registration with the state board.” As written, the language implies an aspiring VPA simply files a form with the state board. This accords with the common understanding of registration as filing paperwork. *See* Merriam-Webster Online Dictionary (registration: “the act of registering”). There is nothing in the titles’ language to suggest that the state board has authority over a registration, can approve or deny it, can promulgate rules or regulations, or can take disciplinary action. The Board’s argument would have merit if the titles stated something to the effect of “providing the state board with regulatory authority over a registrant,” but that is not what the titles say. (And as noted above, any regulatory authority of the board does not hint at civil liability, which the measure authorizes.)

B. The titles do not imply that there is an additional limitation on a VPA's practice of veterinary medicine.

The Board argues that it “follows from the education and licensure requirements that a veterinary professional associate would only be able to practice veterinary medicine within the scope of their training and experience.” (Bd.’s Opening Br. at 8.) There are a few problems with this argument.

First, the titles do not describe the “licensure requirements” for a VPA. Rather, as explained above, they state only that registration is required. *Second*, the registration requirements do not establish the limitations on a VPA’s practice. *Third*, as explained *supra*, the education requirement is a qualification to become a VPA; it does not by its terms dictate what a VPA can do. *Finally*, and perhaps most importantly, there is an obvious incongruence between the education requirement and scope of a VPA’s practice. VPAs are only required to obtain a master’s degree in veterinary clinical care, (CF p. 5, Proposed C.R.S. § 12-315-203.7(2)(b)), yet they are allowed to practice veterinary medicine which typically requires a doctor’s degree in veterinary medicine. *See* C.R.S. § 12-315-104(18) (defining veterinarian). When the titles tell voters that a VPA can practice veterinary medicine (as they do here), it appears that a VPA is allowed to provide care beyond their education. But that is not true, as, even though authorized to

practice veterinary medicine, ultimately the care still must be within the VPA's education and experience. (CF p. 4, Proposed C.R.S. § 12-315-105(1)(r)(I).)

C. A veterinarian's supervision does not imply that the veterinarian is limited in the duties they can delegate.

Finally, the Board argues that, by telling voters a VPA's practice of veterinary medicine is supervised by a veterinarian, it is "natural" a veterinarian would not delegate duties beyond a VPA's education and experience. (Bd. Opening Br. at 9.) The Board (like Proponents) does not explain this logic. Rather than implying a constraint on delegation, supervision implies that the veterinarian is involved in the provision of the care—"a critical watching and directing" of the care. Merriam-Webster Online Dictionary (defining supervision). The implication is not, as the Board urges, that there is a substantive limitation on the VPA's practice of veterinary medicine (that it be within the VPA's education and experience) but rather there is *not* a substantive limitation because the veterinarian is "critical[ly] watching and directing" the care.

CONCLUSION

For the reasons given in Petitioners' opening brief and above, they respectfully request that this Court determine that the titles are legally flawed and

direct the Title Board to correct the titles to address the deficiencies outlined in
Petitioners' briefs.

Respectfully submitted this 8th day of April, 2024.

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CERTIFICATE OF SERVICE

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