

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: April 8, 2024 4:56 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) 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><b>Petitioner:</b>  Will French and Diane Matt,  v.</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Respondents:</b>  Apryl Steele and Ali Mickelson  <b>and</b>  <b>Title Board:</b> Theresa Conley, Christy Chase, and Kurt Morrison.</p>	<p>Case No. 2024SA65</p>
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<p><b>THE TITLE BOARD’S ANSWER BRIEF</b></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) or C.A.R. 28.1(g).

It contains 1,421 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/ Haar Katta*

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## REPLY ARGUMENT

### I. Petitioners' Single Subject Arguments Fail.

French and Matt (“Petitioners”) purport that Initiative #144 contains two subjects: (1) authorizing the practice of veterinary telehealth by veterinarians licensed in Colorado; and (2) authorizing the practice of veterinary telehealth by any veterinarians, regardless of licensure status. Pet’rs Op. Br. 24. Petitioners further contend that “it was not possible for the Board to determine to which group the measure applies” and that the Board could not determine whether the measure applied to veterinarians or licensed veterinarians. *Id.* Both contentions are inaccurate.

In support of their single subject objection, Petitioners heavily cite *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 25*, 974 P.2d 458, 466 (Colo. 1999). However, the facts of *In re No. 25* reveal that this case does not support their argument. The Colorado Supreme Court in *In re No. 25* observed that although a proposed initiative concerned tax cuts, it also included a corresponding

transfer of funding responsibility from the local government to the state government that would necessarily result in a reduction in state spending on state programs and new criteria for voter approval of revenue and spending increases. *Id.* The Court noted that it had previously held that a “substantially similar” initiative contained multiple subjects concerning a tax cut that caused mandatory reductions in state spending. *Id.* 466 (citing *In re Proposed Initiative for 1997–98 No. 84*, 961 P.2d 456 (Colo.1998)). In light of this history, the Court determined that the relevant inquiry in discerning a second subject was whether the initiative amounted to a reduction in state spending – if so, the Court’s previous ruling in *In re Proposed Initiative No. 84* controlled. *Id.* at 467. The Court observed that the Title Board failed to consider whether the proposed initiative contained a second subject and held that the record demonstrated that the Board “was unable to ascertain the meaning of the initiatives well enough to address the question of whether the initiatives might have the consequence of reducing state spending on state programs.” *Id.*

Proposed initiative no. 25 contained a tax cut. Based on the very nature of government spending, a tax cut necessarily contemplates a reduction in state spending. *See id.* Here, however, authorizing veterinary telehealth to licensed Colorado veterinarians is not a subject that necessarily contemplates the second subject of authorizing veterinary telehealth to veterinarians without a Colorado license. And here, the Court has not previously ruled on a substantially similar initiative. Accordingly, Petitioners’ reliance on this case is misplaced – this is *not* the same scenario confronted by the Court as in proposed initiative no. 25.

The Board, despite Petitioners’ contention otherwise, was able to understand the measure’s single subject – authorizing veterinarians licensed in Colorado to practice veterinary telehealth. This is expressly stated in the first sentence of the ballot title and submission clause as designated and fixed by the Board: “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.*” Record, p. 5 (emphasis added).

And the Board has not, as in *In re No. 25*, acknowledged that it cannot comprehend the initiative well enough to state its single subject in the titles. *See In re No. 25*, 974 P.2d at 469. Petitioners claim that Board members recognized the potential shortcomings of the proposed initiatives. However, there is a vast difference between recognizing potential shortcomings and Petitioners’ contention that the Board acknowledged it could not comprehend the initiative. The Board did not make any such statement during the hearing. Instead, the Board was able to comprehend the measure as applying only to veterinarians licensed in Colorado.

Petitioners further contend that the Board engaged in speculation and interpretation in setting a title. Specifically, Petitioners contend that the Board speculated that a court might resolve any alleged ambiguity in the measure. This argument is unavailing, as the Board member’s statement does not amount to “predicting” a specific



application of the meaning of an initiative or determining any specific construction or future application. Accordingly, the Board did not engage in any speculation.

Finally, Petitioners purport that the Board improperly deferred to Proponents' intent in determining that the measure only applies to "licensed veterinarians." Specifically, Petitioners contend that the Board resolved all ambiguities in favor of the proponents by, according to Petitioners, concluding that a court would not apply the measure's plain language. This is, at its core, an argument about how to properly interpret the measure, a matter which is beyond the Board's purview. As this Court has said, "[a]ny problems in the interpretation of the measure . . . are beyond the functions assigned to the title board . . . and outside the scope of [this Court's] review of the title board's actions." *In re Title, Ballot Title & Submission Clause for 1997-1998 #10*, 943 P.2d 897, 901 (Colo. 1997).

## II. Petitioners' Clear Title Arguments are Unavailing.

Petitioners largely replicate the clear title arguments previously made in their Motion for Rehearing.

First, Petitioners argue that the Title Board set a misleading title by describing the measure as authorizing “a veterinarian licensed in Colorado to use telehealth” because, according to Petitioners, the measure actually authorizes any veterinarian to practice veterinary telehealth on an animal located in Colorado. This clear title objection largely mirrors Petitioners’ single subject objection addressed above. And just as above, neither the Board nor this Court may “speculate as to [a] measure’s efficacy, or its practical or legal effects.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52 (Colo. 2008). While Petitioners may believe that another phrase might better describe the measure, the Board need not “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57. The title’s use of the phrase “a veterinarian licensed in Colorado to use telehealth” accurately describes both the purpose and effect of the

measure, the title is not “insufficient, unfair, or misleading” and should be affirmed. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 8.

Next, Petitioners argue that the Title Board set a misleading title by describing the measure as authorizing “veterinary telehealth” and that the Board should have instead included a more detailed and broad description of veterinary telehealth. This again amounts to an argument that the Board failed to set the best possible title, which cannot support a clear title objection. *In re 2019-2020 #3*, 2019 CO 107, ¶ 17.

In a similar vein, Petitioners contend that while the Board’s title informs voters that veterinarians will be able to prescribe controlled substances under certain conditions, it fails to inform voters that a veterinarian has a general, unlimited prescribing authority. Once again, this amounts to a “best title argument” and Petitioners’ objection is unavailing. *In re 2019-2020 #3*, 2019 CO 107, ¶ 17.

Finally, Petitioners object that the Board's title fails to describe in sufficient detail the "parameters" on the ability to prescribe controlled substances via veterinary telehealth. Pet'rs Op. Br. 37. While Petitioners acknowledge that "this level of detail is not required in other circumstances," they argue that in this case, there is a significant public interest associated with the availability of controlled substances. *Id.* Petitioners cite no case law for their contention that a greater level of detail is required in titles establishing parameters that touch on controlled substances. And that is because such detail is not required by this Court. "An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title." *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). And "[t]here is no requirement that the title clearly express the act's provisions or the details by which its object is to be accomplished." *People v. Sa'ra*, 117 P.3d 51, 58 (Colo. App. 2004). Instead, the title set by the Board must only reflect the measure's "essential concept." *See In re Title, Ballot Title & Submission*

*Clause, & Summary for 1999-2000 No. 255*, 4 P.3d 485, 497 (Colo. 2000). The title’s use of the phrase “establishing parameters on prescribing controlled substances” in this instance accurately describes this provision’s essential concept – including a limitation on the ability to prescribe controlled substances.

The Board’s title fairly reflects proposed initiative #144 and is not insufficient, unfair, or misleading and, therefore, should be affirmed.

## CONCLUSION

The Court should affirm the title set by the Title Board.

Respectfully submitted on this 8th day of April, 2024.

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*/s/ Haar Katta*

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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 8th day of April, 2024, addressed as follows:

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