

DATE FILED: April 14, 2016 5:25 PM

**SUPREME COURT, STATE OF COLORADO**  
**2 East 14<sup>th</sup> Avenue**  
**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 2015-  
2016 #98

**Petitioners: JEAN MARTELLE DANIELS AND  
BRANDI RENEE MEEK**

V.

**Respondents:** KELLY BROUGH and JOE BLAKE

and

Title Board: SUZANNE STAIERT; SHARON EUBANKS; and GLENN ROPER

▲ COURT USE ONLY ▲

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Case No.: 2016SA108

**OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF  
PROPOSED INITIATIVE 2015-2016 #98**

## 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). It contains 4,517 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

☒ It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. \_\_, p. \_\_), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

☐ It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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

By: s/Martha M. Tierney

## TABLE OF CONTENTS

	Page(s)
STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
STATEMENT OF THE CASE.....	2
I.    Nature Of Initiative #98 .....	2
II.   Procedural History of Proposed Initiative #98.....	4
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	7
I.    Initiative 2015-2016 #98 Violates The Single Subject Requirement ...	7
A.   Standard of Review and Preservation of the Issues on Appeal .....	7
B.   Initiative 2015-2016 #98 Contains Three Separate and Distinct Subjects in Violation of the Single Subject Requirement .....	8
1.   The Central Focus of Initiative #98 Is to Open Political Party Primaries to Unaffiliated Voters .....	8
2.   By Creating a New Process Allowing Political Parties to Opt-Out of Primary Elections and Nominate All Candidates by Assembly or Convention, Initiative #98 Contains a Separate Subject .....	10
3.   By Creating a New Process Allowing Minor Political Parties to Prohibit Unaffiliated Voters from Participating in Their Primary Elections, Initiative #98 Contains a Separate Subject.....	14
II.   The Title For Initiative 2015-2016 #98 Does Not Accurately And Fairly Inform Voters Of Important Aspects Of The Measure .....	16

A.	Standard of Review and Preservation of the Issues on Appeal .....	16
B.	Initiative #98’s Title Is Confusing and Misleading Because It Fails to Inform Voters that Initiative #98 Allows Minor Political Parties to Prohibit Unaffiliated Voters from Participating in Minor Political Party Primary Elections .....	17
C.	Initiative #98’s Title Is Confusing and Misleading Because It Fails to Inform Voters that Initiative #98 Creates a New Type of Combined Super Ballot Only for Unaffiliated Voters.....	18
D.	Initiative #98’s Title Is Confusing and Misleading Because It Fails to Inform Voters that Some Counties Will Instead Send Only to Unaffiliated Voters a Separate Primary Ballot for Each of the Major Political Parties .....	20
CONCLUSION .....		21

## TABLE OF AUTHORITIES

Page(s)

### CASES

<i>California Democratic Party v. Jones</i> , 530 U.S. 567 (2000).....	10
<i>In re Amend TABOR 25</i> , 900 P.2d 121 (Colo. 1995).....	11
<i>In re Ballot Title 1999-2000 #104</i> , 987 P.2d 249 (Colo. 1999).....	17
<i>In re Initiative "Public Rights in Waters II" ("Waters II")</i> , 898 P.2d 1076 (Colo. 1995).....	8, 11, 14
<i>In re Initiative 2001-2002 #43</i> , 46 P.3d 438 (Colo. 2002).....	passim
<i>In re Initiative 2007-2008 #62</i> , 184 P.3d 52 (Colo. 2008).....	7, 18, 19, 21
<i>In re Initiative for 1999-2000 #200 A</i> , 992 P.2d 27 (Colo. 2000).....	11
<i>In re Initiative for 1999-2000 #258(A)</i> , 4 P.3d 1094 (Colo. 2000).....	13, 16, 17
<i>In re Initiative for 1999-2000 No. 25</i> , 974 P.2d 458 (Colo. 1999).....	16
<i>In re Initiative for 1999-2000 No. 29</i> , 972 P.2d 257 (Colo. 1999).....	16
<i>In re Initiative for 2005-2006 #55</i> , 138 P.3d 273 (Colo. 2006).....	12

<i>In re Initiative for 2009-2010 #24,</i> 218 P.3d 350 (Colo. 2009).....	18
<i>In re Initiative for 2011-2012 #3,</i> 274 P.3d 562 (Colo. 2012).....	7
<i>In re Initiative for 2013-2014 #89,</i> 328 P.3d 172 (Colo. 2014).....	7, 11
<i>In re Initiative on Parental Notification of Abortions for Minors,</i> 794 P.2d 238 (Colo. 1990).....	18
<i>In re Limited Gaming IV,</i> 873 P.2d 733 (Colo. 1994).....	19
<i>In re Petition Procedures,</i> 900 P.2d 104 (Colo. 1995).....	12
<i>Matter of Proposed Election Reform Amendment,</i> 852 P.2d 28 (Colo. 1993).....	19, 20
<i>Tashjian v. Republic Party of Conn.,</i> 479 U.S. 208 (1986).....	10

## STATUTES

§ 1-40-106(3)(b), C.R.S. ....	4, 16
§ 1-40-106(3)(c), C.R.S. ....	4
§ 1-40-106.5(1)(a), C.R.S. (2015).....	7, 9
§ 1-40-106.5(1)(e)(II), C.R.S. (2015) .....	8
§ 1-40-106.5, C.R.S. ....	4
§ 1-40-107(1)(a), C.R.S. ....	4

## OTHER AUTHORITIES

<a href="http://www.sos.state.co.us/pubs/info_center/audioArchives.html">http://www.sos.state.co.us/pubs/info_center/audioArchives.html</a> , March 3 [sic], 2016, Part 3, 0.33:0.45 .....	9, 13, 14
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## **CONSTITUTIONAL PROVISIONS**

Colo. Const. article V, Section 1(5.5)..... passim

Jean Martelle Daniels and Brandi Renee Meek, (“Petitioners”), registered electors of the state of Colorado, through undersigned counsel, respectfully submit this Opening Brief in support of their petition for review of the title, ballot title and submission clause (jointly, the “Title”) that the Title Board set for Proposed Initiative 2015-2016 #98 (“Initiative #98”).

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Did the Title Board err by setting a title for Initiative #98 because it violates the single subject requirement by combining a statutory change allowing unaffiliated voters to vote in the primary elections of political parties, with a statutory change allowing major political parties to cancel their primary election and nominate all candidates by assembly or convention?
2. Did the Title Board err by setting a title for Initiative #98 because it violates the single subject requirement by combining a statutory change allowing unaffiliated voters to vote in the primary elections of political parties, with a statutory change allowing minor political parties to prohibit unaffiliated voters from voting in their primary elections?
3. Did the Title Board err by setting a title that is confusing and misleading because it fails to inform voters that Initiative #98 allows minor political



parties to prohibit unaffiliated voters from participating in minor political party primary elections?

4. Did the Title Board err by setting a title that is confusing and misleading because it fails to inform voters that the Proposed Initiative creates a new type of combined “super” ballot only for unaffiliated voters that will contain all primary candidates for all races on one ballot?
5. Did the Title Board err by setting a title that is confusing and misleading because it fails to inform voters that where it is not practicable for a county to send a combined “super” ballot to unaffiliated voters, counties will instead send only to unaffiliated voters a separate primary ballot for each of the major political parties.

## **STATEMENT OF THE CASE**

### **I. Nature Of Initiative #98**

Proponents of Initiative #98 seek to open up Colorado primary elections to allow unaffiliated voters to vote in the primary elections of political parties.

Section 1 of Initiative #98 contains a Declaration of the People of Colorado that focuses exclusively on opening up primary elections to unaffiliated voters, positing that “involving more voters can increase participation” in primary elections.

Exhibit A, Final Text, Section 1. The final declaration in Section 1 sums up the

motivation behind the measure: “all voters should be allowed to vote in state and local primary elections with the same ease as those voters affiliated with a major political party.” *Id.*

Yet, while the central focus of Initiative #98 is to open primary elections to unaffiliated voters, the measure also contains two incongruous provisions that do exactly the opposite. The first gives political parties a new statutory authority to cancel contested primary elections entirely, and to nominate all candidates through assembly or convention attended by affiliated political party members only.

Exhibit A, Final Text, Section 5. The second grants minor political parties alone the right to close their primary elections to unaffiliated voters. Exhibit A, Final Text, Section 7. Initiative #98 also contains unique, new balloting procedures applicable only to unaffiliated voters voting in primary elections.

The Title Board set the following title for Initiative #98 (“Title”):

A change to the Colorado Revised Statutes concerning the process of selecting candidates representing political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election.

## **II. Procedural History of Proposed Initiative #98**

Kelly Brough and Joe Blake (“Proponents”) are the designated proponents of Initiative #98. Proponents submitted a final version of Initiative #98 to the Secretary of State on February 19, 2016 for purposes of having the Title Board set title. The Title Board considered and set title for Initiative #98 at its March 2, 2016 meeting. On March 9, 2016, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that Initiative #98 violated the single subject requirement contained within article V, § 1(5.5) of the Colorado Constitution, and section 1-40-106.5 of the Colorado Revised Statutes. Petitioners also asserted that Initiative #98’s title did not accurately reflect the subject matter of the initiative as required by the Colorado Revised Statutes Section 1-40-106(3)(b) and (c), rendering the title unclear and misleading. Also on March 9, 2016, the Proponents filed their own Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Initiative #98’s title did not accurately reflect the subject matter of the initiative as required by the Colorado Revised Statutes Section 1-40-106(3)(b) and (c), also rendering the title misleading. The Title Board considered both Motions for Rehearing at its March 16, 2016 meeting. The Motions for Rehearing were granted to the extent that the Board made limited changes to the title and submission clause, but were denied in all other respects.

## **SUMMARY OF THE ARGUMENT**

Initiative #98 violates the single subject requirement for initiatives, and the title set by the Title Board is unfair, misleading, and does not fairly and correctly express the true meaning of the measure. The Proponents' goal with Initiative #98 is to open up Colorado primary elections to allow unaffiliated voters to vote in the primary elections of political parties without having to affiliate with a political party in advance. To achieve this end, and avoid a post-adoption First Amendment challenge based on violation of political parties' well settled right of association, the Proponents of Initiative #98 combined it with two incongruous provisions that are not directly connected to the central focus of the measure: (1) a new statutory provision allowing major political parties to cancel their primary elections and nominate all candidates by assembly or convention, and (2) another new provision giving minor political parties alone the option to expressly prohibit unaffiliated voters from voting in their primary elections.

Initiative #98 triggers both of the "dangers" attendant to omnibus measures. First, the Proponents combined unconnected subjects into one measure for the purpose of garnering support from groups with different, or even conflicting interests. Second, voters will be surprised by, or fraudulently led to vote for, these surreptitious provisions coiled up in the folds of a complex initiative. Proponents

cannot avoid a single subject violation simply by claiming that the primary opt-out provision and the minor party unaffiliated voter prohibition are necessary to ensure that Initiative #98 survives a post-adoption constitutional review, or by attempting to minimize the incongruous provisions by suggesting it is unlikely that anyone will ever use them.

The title for Initiative #98 is confusing and misleading because it contains no reference to the provision in Section 7 that allows a minor political party to prohibit unaffiliated electors from voting in the minor political party's primary election. The title for Initiative #98 is also confusing and misleading because it does not inform petition signers or voters that the measure creates an entirely new procedural mechanism for unaffiliated voters to participate in a primary election. In contrast to affiliated voters who receive a ballot containing the primary election races for each contested race only for the affiliated political party, unaffiliated voters under Initiative #98 will receive either one combined "super ballot" containing the names of the candidates for each contested race for every political party, or multiple ballots containing the primary election contests for each political party. Titles that contain material and significant omissions, misstatements, or misrepresentations cannot stand.

The Title for Initiative #98 should be returned to the Proponents or to the Title Board for the appropriate corrective action.

## **ARGUMENT**

### **I. Initiative 2015-2016 #98 Violates The Single Subject Requirement.**

#### **A. Standard of Review and Preservation of the Issues on Appeal.**

Article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5(1)(a), C.R.S. (2015), provide that a proposed initiative must be limited to “a single subject which shall be clearly expressed in its title.” “A proposed initiative violates this rule if its text relates to more than one subject, and has at least two distinct and separate purposes not dependent upon or connected with each other.”

*In re Initiative for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012). When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *In re Initiative for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014). Yet, while the right of initiative is to be liberally construed, “[i]t merits emphasis that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.” *In re Initiative 2007-2008 #62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

One purpose of the single subject requirement is to apprise voters of the subject of a measure, so that surreptitious measures that could result in voter surprise or fraud are not placed on the ballot. *In re Initiative 2001-2002 #43*, 46 P.3d 438, 441 (Colo. 2002); *see also* § 1-40-106.5(1)(e)(II), C.R.S. (2015). Similarly, the single subject requirement protects against proponents that might seek to secure an initiative's passage by joining together unrelated or even conflicting purposes and pushing voters into an all-or-nothing decision. *See In re Initiative "Public Rights in Waters II" ("Waters II")*, 898 P.2d 1076, 1079 (Colo. 1995).

This issue was raised in the Motion for Rehearing filed by Petitioners Daniels and Meek with the Title Board. Exhibit B, Motion for Rehearing.

**B. Initiative 2015-2016 #98 Contains Three Separate and Distinct Subjects in Violation of the Single Subject Requirement.**

**1. The Central Focus of Initiative #98 Is to Open Political Party Primaries to Unaffiliated Voters.**

The Proponents' goal with Initiative #98 is to open up Colorado primary elections to allow unaffiliated voters to vote in the primary elections of political parties without having to affiliate with a political party in advance. In Section 1 of Initiative #98, Proponents lay out a four paragraph Declaration of the People of the State of Colorado that sets forth in some detail the reasons why, according to the

Proponents, unaffiliated voters should be allowed to participate in primary elections without affiliating with a political party. Exhibit A, Final Text, Section 1. At the Title Board hearing on March 2, 2016, counsel for the Proponents stated that the single subject of Initiative #98 is “simply to amend the primary election process in Colorado.”

[http://www.sos.state.co.us/pubs/info\\_center/audioArchives.html](http://www.sos.state.co.us/pubs/info_center/audioArchives.html), March 3 [sic], 2016, Part 3, 0.33:0.45.

In order to achieve this end, however, and in an attempt to survive a post-adoption First Amendment right of association challenge, the Proponents added to Initiative #98 the following entirely unrelated subjects: (1) creating a new process whereby a political party may choose to change from the nomination of candidates by primary election to the nomination of candidates by assembly or convention for all offices; Exhibit A, Final Text, Section 5; and (2) allowing minor political parties to prohibit unaffiliated electors from voting in the minor political party’s primary election. Exhibit A, Final Text, Section 7. As a result, Initiative #98 violates the single subject requirement. Colo. Const., art. V, §1(5.5); §1-40-106.5(1)(a), C.R.S. (2015).



2. By Creating a New Process Allowing Political Parties to Opt-Out of Primary Elections and Nominate All Candidates by Assembly or Convention, Initiative #98 Contains a Separate Subject.

Proponents seek to immunize Initiative #98 from a post-adoption First Amendment challenge by adding the newly created opt-out provision in Section 5 of Initiative #98 (allowing a political party to cancel its primary and nominate all candidates by assembly or convention), to the open primary provisions that are the central focus of the measure.

The United States Supreme Court in *California Democratic Party v. Jones*, 530 U.S. 567, 577-78 (2000), held that a political party's interest in excluding non-members trumps a non-member's interest in sharing in the party's nominating process. *See* 530 U.S. at 583 ("a 'nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications'" (*quoting Tashjian v. Republic Party of Conn.*, 479 U.S. 208, 215 n.6 (1986))). Because political parties have a strong associational right under the First Amendment to exclude non-members from their candidate nomination process, the Proponents added Section 5 to Initiative #98, creating an entirely new procedure allowing a political party to cancel its primary and nominate all candidates by assembly or convention. The common characteristic that the separate provisions of Initiative #98 all involve the primary

election process is too general and too broad to constitute a single subject. The Proponents' attempt to characterize Initiative #98 "under some overarching theme will not save an initiative containing separate and unconnected purposes." *In re Initiative for 1999-2000 #200 A*, 992 P.2d 27, 30 (Colo. 2000). "[B]ecause the Initiative seeks to accomplish more than one purpose, and the two purposes are not connected to each other, the Initiative violates the single subject provision of Article V, Section 1(5.5) of the Colorado Constitution."

Initiative #98 triggers both of the "dangers" attendant to omnibus measures. *See In re Initiative 2001-2002 #43*, 46 P.3d at 442-43. First, the Proponents combined unconnected subjects into one measure for the purpose of garnering support from groups with different, or even conflicting interests. *In re Initiative for 2013-2014 #89*, 328 P.3d at 177. The Proponents attempt to unite these separate subjects under the description "the process of selecting candidates representing political parties on a general election ballot" in the title and submission clause. This Court has previously found such umbrella proposals unconstitutional. For example, the Court has rejected attempts to pass disparate proposals with common themes such as "water," *Waters II*, 898 P.2d at 1080, or "revenue changes," *In re Amend TABOR 25*, 900 P.2d 121, 125-26 (Colo. 1995). Such initiatives combine proposals that voters might favor with those they would

otherwise oppose, in order to achieve passage. See *In re Initiative for 2005-2006* #55, 138 P.3d 273, 282 (Colo. 2006). “To avert such mischief, the single subject requirement limits the voters to answering ‘yes’ or ‘no’ to a straightforward, single subject proposal.” See *In re Petition Procedures*, 900 P.2d 104, 108 (Colo. 1995).

Here, in the case of Initiative #98, some voters might favor allowing unaffiliated voters to vote in primary elections, but not favor creating a new process allowing a political party the right to deny all voters the opportunity to vote in primary elections by cancelling its primary and nominating all candidates by assembly or convention, or visa-versa. Initiative #98 unconstitutionally combines the two subjects in an attempt to attract voters who might oppose one of these two subjects if it were standing alone.

Second, Initiative #98 also triggers the second "danger" of omnibus measures because voters will be surprised by, or fraudulently led to vote for, a "surreptitious provision ‘coiled up in the folds’ of a complex initiative." *In re Initiative 2001-2002* #43, 46 P.3d at 442-43. The Declaration contained in Section 1 is exclusively focused on the central focus of the measure – allowing unaffiliated voters to vote in primary elections. The plain language of the measure is concentrated on opening the political party primary process to unaffiliated voters. Voters would be surprised to learn that by voting to allow unaffiliated voters to

vote in primary elections, they also had given political parties the authority to cancel primary elections altogether and nominate candidates in a process closed to all who do not attend a particular assembly or convention. That type of hidden subject is not permitted under article V, section 1(5.5) of the Colorado Constitution. *See id.*

Finally, no necessary connection exists between these two separate subjects. The open primary subject is not connected to the “nominating all candidates by assembly or convention” subject. If the central focus of the measure is open primaries, the provision allowing political parties to opt out of a primary election and nominate all candidates by assembly or convention does not flow from that central focus. One subject is not an implementation provision directly tied to the other. *See In re Initiative for 1999-2000 #258(A)*, 4 P.3d 1094, 1097 (Colo. 2000).

Rather, the only connection between the two subjects appears to be the Proponents’ desire to avoid a post-election constitutional challenge. Indeed, during the Title Board hearing on March 2, 2016, the Title Board inquired of the Proponents about whether the political party primary opt-out created a second subject. [http://www.sos.state.co.us/pubs/info\\_center/audioArchives.html](http://www.sos.state.co.us/pubs/info_center/audioArchives.html), March 3 [sic], 2016, Part 3, 1:16-4:05. Specifically, Deputy Secretary of State Suzanne Staiert asked that if the purpose of the measure was to open up primaries, would

the opt-out provision have the opposite effect of closing down primaries? *Id.* In response, counsel for the Proponents stated that the opt out provision was “merely a constitutional safety valve” and that it was “unlikely, but not impossible” that anyone would ever use it. *Id.* Proponents cannot avoid a single subject violation simply by claiming that the opt-out provision is necessary to ensure that Initiative #98 survives constitutional review, or by attempting to minimize the incongruous provision by suggesting it is unlikely that anyone will ever use it.

Although each of these incongruous provisions may be tangentially related to the nomination of candidates, there is no "necessary connection between them" and thus each "must be accomplished through separate initiatives." *Waters II*, 898 P.2d at 1080.

3. By Creating a New Process Allowing Minor Political Parties to Prohibit Unaffiliated Voters from Participating in Their Primary Elections, Initiative #98 Contains a Separate Subject.

For the same reasons outlined in subsection I.A.2 above, the provision in Section 7 of Initiative #98 that allows minor political parties to prohibit unaffiliated electors from voting in the minor political party’s primary election is a violation of the single subject requirement. Proponents also seek to immunize Initiative #98 from a post-adoption First Amendment challenge by adding the newly created prohibition provision for minor political parties in Section 7 of

Initiative #98 (allowing a minor political party to prohibit unaffiliated voters from participating in their primary elections), to the open primary provisions that are the central focus of the measure.

Voters will be surprised by, or fraudulently led to vote for, the surreptitious provision ‘coiled up in the folds’ of Initiative #98 that allows minor political parties to keep unaffiliated voters from voting in their primary elections. *See In re Initiative 2001-2002 #43*, 46 P.3d at 442-43. Again, the Declaration contained in Section 1 is exclusively focused on the central focus of the measure – allowing unaffiliated voters to vote in primary elections. The plain language of the measure is concentrated on opening the political party primary process to unaffiliated voters. Voters would be surprised to learn that by voting to allow unaffiliated voters to vote in primary elections, they also had given minor political parties the express authority to prohibit unaffiliated voters from participating in their elections. That type of hidden subject is not permitted under article V, section 1(5.5) of the Colorado Constitution. *See id.*

The Court should reverse the decision of the Title Board that Initiative #98 contains a single subject.

## **II. The Title For Initiative 2015-2016 #98 Does Not Accurately And Fairly Inform Voters Of Important Aspects Of The Measure.**

### **A. Standard of Review and Preservation of the Issues on Appeal.**

The Title Board is charged with setting a title that fully, fairly and accurately informs voters of the central elements of the measure, to enable them to make a thoughtful decision about its merits. C.R.S. § 1-40-106(3)(b); *see also See In re Initiative for 1999-2000 #258(A)*, 4 P.3d at 1098. The title must be sufficiently clear so voters “understand the principal features of what is being proposed” and because “a material omission can create misleading titles.” *Id.* The requirement of a fair and accurate title is intended to prevent “surreptitious measures,” and it tasks the Title Board with the duty to “apprise the people of the subject of each measure by the title” to prevent “surprise and fraud from being practiced upon voters.” *In re Initiative for 1999-2000 No. 29*, 972 P.2d 257, 260-61 (Colo. 1999). If the Title Board cannot comprehend a proposed initiative sufficiently enough to state its single subject clearly in the title, the initiative cannot be forwarded to the voters. *In re Initiative for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999).

This issue was raised in the Motion for Rehearing filed by Petitioners Daniels and Meek with the Title Board. Exhibit B, Motion for Rehearing.

**B. Initiative #98's Title Is Confusing and Misleading Because It Fails to Inform Voters that Initiative #98 Allows Minor Political Parties to Prohibit Unaffiliated Voters from Participating in Minor Political Party Primary Elections.**

The title for Initiative #98 is confusing and misleading because it contains no reference to the provision in Section 7 that allows a minor political party to prohibit unaffiliated electors from voting in the minor political party's primary election. This is a key provision of the measure, and is not captured in the single subject clause of the title, which states: "A change to the Colorado Revised Statutes concerning the process of selecting candidates representing political parties on a general election ballot." Nor is the minor political party prohibition captured in the trailer, which states, "and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election." Although a title "need not state every detail of an initiative or restate the obvious," it "must not mislead the voters or promote voter confusion." *In re Initiative for 1999-2000 #258(A)*, 4 P.3d at 1099. Titles that contain a material and significant omission, misstatement, or misrepresentation cannot stand. *See In re Ballot Title 1999-2000 #104*, 987 P.2d 249, 260 (Colo. 1999).



Nowhere is the voter advised that Initiative #98 will also allow a minor political party to prohibit unaffiliated voters from voting in the minor political party's primary election. As a result, voters could be misled into supporting or opposing the measure upon the belief that it allows unaffiliated voters the opportunity to vote in the primary for any political party. Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Initiative for 2009-2010* #24, 218 P.3d 350, 356 (Colo. 2009) (quoting *In re Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). The Title Board's duty is to ensure that the title "fairly reflect[s] the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board." *In re Initiative for 2007-2008* #62, 184 P.3d at 58. The Title of Initiative #98 fails this test.

**C. Initiative #98's Title Is Confusing and Misleading Because It Fails to Inform Voters that Initiative #98 Creates a New Type of Combined Super Ballot Only for Unaffiliated Voters.**

The title for Initiative #98 is confusing and misleading because it fails to inform voters that the measure creates an entirely new procedural mechanism for unaffiliated voters to participate in a primary election. In contrast to affiliated

voters who receive a ballot containing the primary election races for each contested race only for the affiliated political party, unaffiliated voters under Initiative #98 will receive one combined “super ballot” containing the names of the candidates for each contested race for every political party. Exhibit A, Final Text, Section 3. This is a substantial procedural change and should be referenced in the title. *See Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 33-35 (Colo. 1993) (finding the title for an election reform initiative insufficient, in part, because it identified that the initiative would revise procedural provisions of the initiative, referendum, and recall, but it failed to state that the initiative would revise substantive provisions of the same).

Affiliated voters who might otherwise support allowing unaffiliated voters to vote in primary elections may be surprised to learn that Initiative #98 will treat unaffiliated voters differently and, arguably preferentially, by providing them with the combined “super ballot” containing the contested primary races for all political parties, while the affiliated voters will continue to receive a ballot with only the contested races for their affiliated political party. *See In re Initiative for 2007-2008 #62*, 184 P.3d at 58; *see e.g., In re Limited Gaming IV*, 873 P.2d 733, 742 (Colo. 1994) (titles and summary of proposed initiative were misleading since voter quickly scanning initiative could be misled into believing that measure

concerned only one city, but initiative also changed provisions applicable to other areas of state where limited gaming was lawful).

**D. Initiative #98's Title Is Confusing and Misleading Because It Fails to Inform Voters that Some Counties Will Instead Send Only to Unaffiliated Voters a Separate Primary Ballot for Each of the Major Political Parties.**

Similarly, the title for Initiative #98 is confusing and misleading because it fails to inform voters that some counties, for whom it is impracticable to use the combined "super ballot," will instead send to each unaffiliated voter a separate primary ballot for each of the major political party primary contests. Exhibit A, Final Text, Section 3. Again, this is a substantial procedural change and should be referenced in the title. *See Matter of Proposed Election Reform Amendment*, 852 P.2d at 33-35.

Affiliated voters who might otherwise support allowing unaffiliated voters to vote in primary elections may be surprised to learn that Initiative #98 will treat unaffiliated voters differently and, arguably preferentially, by providing unaffiliated voters in some counties with primary ballots for all political party primary contests and allow them to select which ballot to cast. A title must fairly reflect the features of a proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words used by the Title Board in setting the title. *See In re Initiative for 2007-2008 #62*, 184

P.3d at 58. Initiative #98 creates an entirely new process whereby unaffiliated voters receive a different primary ballot, or ballots, than do affiliated voters. Yet the Title is silent on the issue. That silence should be corrected by adding to the Title a short description of these substantial changes to primary election contests.

### **CONCLUSION**

WHEREFORE, Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that Initiative #98 violates the single subject requirement and that the Title Board be instructed to return the measure to the proponents, or, in the alternative, the title set for Initiative #98 is neither fair nor accurate and remand Initiative #98 to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the proposed initiative.

Respectfully submitted this 14<sup>th</sup> day of April 2016.

### **TIERNEY LAWRENCE LLC**

By: s/Martha M. Tierney  
Martha M. Tierney, No. 27521  
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Attorneys for Petitioners

## CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of April, 2016 a true and correct copy of the foregoing **OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF PROPOSED INITIATIVE 2015-2016 #98** was filed and served via the Integrated Colorado Courts E-Filing System to the following:

Jason Dunn, Esq.  
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410 Seventeenth Street  
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*Attorneys for Designated Representatives Kelly Brough and Joe Blake*

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*Attorneys for Title Board*

s/Martha M. Tierney

*In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.*

DATE FILED: April 14, 2016 5:25 PM

# STATE OF COLORADO

## DEPARTMENT OF STATE CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #98 "Primary Elections"" .....

.....

..... **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 18<sup>th</sup> day of March, 2016.

*Wayne W. Williams*  
\_\_\_\_\_  
SECRETARY OF STATE



RECEIVED

S. WARD

#98 FINAL DRAFT

FEB 19 2016

2:51 PM

## PRIMARY ELECTIONS

Colorado Secretary of State

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

### SECTION 1. Declaration of the People of Colorado

BECAUSE PRIMARY ELECTIONS ARE PAID FOR BY TAXPAYERS, ALL ELIGIBLE VOTERS WHO WANT THEIR VOICES TO BE HEARD SHOULD BE ABLE TO VOTE IN THOSE ELECTIONS.

CURRENTLY, THE 35% OF COLORADO VOTERS WHO ARE INDEPENDENT OF A POLITICAL PARTY MUST JOIN A PARTY IF THEY WANT TO PARTICIPATE IN THE SELECTION OF OUR GENERAL ELECTION CANDIDATES. IN FACT, COLORADO IS IN THE MINORITY OF STATES THAT LIMIT PARTICIPATION IN PRIMARY ELECTIONS TO ONLY THOSE AFFILIATED WITH A MAJOR POLITICAL PARTY.

BECAUSE PRIMARY ELECTION TURNOUT IS DECLINING, INVOLVING MORE VOTERS CAN INCREASE PARTICIPATION AND ENCOURAGE CANDIDATES WHO ARE RESPONSIVE TO THE VIEWPOINTS OF MORE COLORADANS.

ACCORDINGLY, ALL VOTERS SHOULD BE ALLOWED TO VOTE IN STATE AND LOCAL PRIMARY ELECTIONS WITH THE SAME EASE AS THOSE VOTERS AFFILIATED WITH A MAJOR POLITICAL PARTY.

### SECTION 2. In Colorado Revised Statutes, 1-2-218.5, **amend** (2) as follows:

**1-2-218.5. Declaration of affiliation.** (2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may, BUT IS NOT REQUIRED TO, declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201 (2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, ~~either~~ by mail, ~~or~~ in person, OR ONLINE IN ACCORDANCE WITH SECTION 1-2-202.5.

### SECTION 3. In Colorado Revised Statutes, 1-4-101, **amend** (2) as follows:

**1-4-101. Primary elections - when - nominations - expenses.** (2) Each political party that is entitled to participate in the primary election shall have a separate party ballot FOR USE BY ELECTORS AFFILIATED WITH THAT POLITICAL PARTY. IN ADDITION, ALL POLITICAL PARTIES THAT ARE ENTITLED TO PARTICIPATE IN THE PRIMARY ELECTION SHALL HAVE THEIR CANDIDATES PLACED ON A SINGLE COMBINED BALLOT TO BE USED BY UNAFFILIATED ELECTORS THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES AND THAT ARE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE NAMES OF THE CANDIDATES OF ANY OTHER POLITICAL PARTY. ALL CANDIDATES OF A POLITICAL PARTY SHALL BE GROUPED TOGETHER AND SEPARATED BY THE OFFICE EACH CANDIDATE IS SEEKING. SUCH BALLOTS SHALL CLEARLY ADVISE THAT AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE MAJOR POLITICAL PARTY AND THAT ANY BALLOT IN WHICH VOTES HAVE BEEN CAST IN THE PRIMARY OF MORE THAN ONE PARTY SHALL BE VOID AND NOT COUNTED. HOWEVER, AN ELECTOR IS NOT REQUIRED TO VOTE IN THE SAME PARTY PRIMARY AS THE ELECTOR VOTED IN AS PART OF A PRESIDENTIAL PRIMARY ELECTION OCCURRING IN THAT SAME YEAR, IF SUCH AN ELECTION IS HELD;

(a) IF IT IS NOT PRACTICABLE FOR A COUNTY TO USE A SINGLE COMBINED BALLOT THAT CONTAINS THE NAMES OF THE CANDIDATES OF EACH OF THE POLITICAL PARTIES, THE COUNTY CLERK AND RECORDER SHALL SEND TO ALL ACTIVE ELECTORS IN THE COUNTY WHO HAVE NOT DECLARED AN AFFILIATION WITH A POLITICAL PARTY A MAILING THAT CONTAINS THE BALLOTS OF ALL OF THE MAJOR POLITICAL PARTIES. IN THIS MAILING, THE CLERK SHALL ALSO PROVIDE WRITTEN INSTRUCTIONS ADVISING THE ELECTOR OF THE MANNER IN WHICH THE ELECTOR WILL BE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CODE IN SELECTING AND CASTING THE BALLOT OF A MAJOR POLITICAL PARTY. AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE MAJOR POLITICAL PARTY. AFTER SELECTING AND CASTING A BALLOT OF A SINGLE MAJOR POLITICAL PARTY, THE ELECTOR SHALL RETURN THE BALLOT TO THE CLERK. IF AN ELECTOR CASTS AND RETURNS TO THE CLERK THE BALLOT OF MORE THAN ONE MAJOR POLITICAL PARTY, ALL SUCH BALLOTS RETURNED WILL BE VOID AND WILL NOT BE COUNTED.

(b) THE SECRETARY OF STATE MAY BY RULE ADOPT ADDITIONAL BALLOT REQUIREMENTS NECESSARY TO AVOID VOTER CONFUSION IN VOTING IN PRIMARY ELECTIONS.

(c) The primary election of all political parties shall be held at the same time and shall be conducted by the same election officials.

**SECTION 4.** In Colorado Revised Statutes, 1-4-502, **amend** (1) as follows:

**1-4-502. Methods of nomination for partisan candidates.** (1) Except as otherwise provided in paragraphs (b) and (c) of subsection (3) of this section, nominations for United States senator, representative in congress, governor, lieutenant



governor, secretary of state, state treasurer, attorney general, member of the state board of education, regent of the university of Colorado, member of the general assembly, district attorney, and all county officers to be elected at the general election may be made by primary election UNDER SECTION 1-4-101 OR BY ASSEMBLY OR CONVENTION UNDER SECTION 1-4-702 by major political parties, by petition for nomination as provided in section 1-4-802, or by a minor political party as provided in section 1-4-1304.

**SECTION 5.** In Colorado Revised Statutes, **add** 1-4-702 as follows:

**1-4-702. Nominations of candidates for general election by convention.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A POLITICAL PARTY MAY CHOOSE TO CHANGE FROM THE NOMINATION OF CANDIDATES BY PRIMARY ELECTION TO THE NOMINATION OF CANDIDATES BY ASSEMBLY OR CONVENTION FOR ALL OFFICES INCLUDING, BUT NOT LIMITED TO, UNITED STATES SENATOR, REPRESENTATIVE IN CONGRESS, ALL ELECTIVE STATE, DISTRICT, AND COUNTY OFFICERS, AND MEMBERS OF THE GENERAL ASSEMBLY IF AT LEAST THREE-FOURTHS OF THE TOTAL MEMBERSHIP OF THE PARTY'S STATE CENTRAL COMMITTEE VOTES TO USE THE ASSEMBLY OR CONVENTION NOMINATION PROCESS; EXCEPT THAT NOMINATIONS BY MAJOR POLITICAL PARTIES FOR CANDIDATES FOR LIEUTENANT GOVERNOR SHALL BE MADE BY THE PARTY'S CANDIDATE FOR GOVERNOR PURSUANT TO SECTION 1-4-502 (3). SUCH VOTE OF THE PARTY CENTRAL COMMITTEE SHALL OCCUR NO LATER THAN OCTOBER 1 OF THE YEAR PRECEDING THE YEAR IN WHICH AN ASSEMBLY OR CONVENTION NOMINATING PROCESS IS TO BE USED.

(2) A POLITICAL PARTY NOMINATING CANDIDATES BY PARTY ASSEMBLY OR CONVENTION SHALL NOMINATE THE CANDIDATES OF THE PARTY AND MAKE SUCH NOMINATIONS PUBLIC NOT LATER THAN SEVENTY-FIVE DAYS BEFORE THE GENERAL ELECTION.

(3) WHICHEVER METHOD OF CANDIDATE SELECTION IS CHOSEN BY A MAJOR POLITICAL PARTY AS BETWEEN PRIMARY ELECTION, ASSEMBLY OR CONVENTION, ALL OF THE CANDIDATES FOR THAT PARTY AT ANY LEVEL OF OFFICE IN THAT ELECTION YEAR MUST BE SELECTED BY SUCH METHOD, EXCEPT THAT THE REQUIREMENTS OF THIS PROVISION SHALL NOT APPLY TO A PRIMARY FOR PRESIDENT OF THE UNITED STATES IF SUCH AN ELECTION IS HELD.

**SECTION 6.** In Colorado Revised Statutes, 1-4-1002, **amend** (2.3)(a) as follows:

**1-4-1002. Vacancies in designation or nomination.** (2.3)(a) A vacancy in a party nomination, other than a vacancy for a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs after the day of the primary election or AFTER NOMINATION BY ASSEMBLY OR CONVENTION UNDER SECTION 1-4-702 and more than eighteen days before the general election may be filled by the respective party assembly vacancy committee of the district, county, or state, as appropriate, depending upon the office for which the vacancy in nomination has occurred in

accordance with the provisions of subsection (9) of this section. A vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, shall be filled by a replacement candidate for lieutenant governor nominated by the party's candidate for governor. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person nominated at the primary election or by the declination, death, disqualification, resignation, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party nomination unless the person meets all of the requirements of candidacy as of the date of the primary election. When a vacancy is filled pursuant to this paragraph (a), the designated election official shall provide notice by publication of the replacement nomination in the same manner as the notice required by section 1-5-205.

**SECTION 7.** In Colorado Revised Statutes, 1-4-1304, **amend** (1.5)(c) as follows:

**1-4-1304. Nomination of candidates.** (1.5) (c) If an assembly designates more than one candidate for an office, or if an assembly designates one or more candidates and one or more candidates qualifies by petition, the candidate of the minor political party for that office shall be nominated at a primary election held in accordance with this code. A MINOR POLITICAL PARTY MAY PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN THE PARTY'S PRIMARY ELECTION SO LONG AS THE PROHIBITION IS IN ACCORDANCE WITH THE PARTY'S CONSTITUTION, BYLAWS, OR OTHER APPLICABLE RULES. ANY MINOR PARTY CHOOSING TO PROHIBIT UNAFFILIATED ELECTORS FROM VOTING IN ITS PRIMARY ELECTION MUST NOTIFY THE SECRETARY OF STATE OF THE PROHIBITION NOT LESS THAN SEVENTY-FIVE DAYS PRIOR TO THE PRIMARY ELECTION.

**SECTION 8.** In Colorado Revised Statutes, 1.5.402, **add** (2) as follows:

**1-5-402. Primary election ballots.** (2) NO LATER THAN FORTY-FIVE DAYS BEFORE THE PRIMARY ELECTION, THE COUNTY CLERK AND RECORDER SHALL PREPARE A COMBINED PRIMARY ELECTION BALLOT TO BE USED BY UNAFFILIATED ELECTORS. THE BALLOT MUST BE PRINTED IN THE FOLLOWING MANNER:

(a) ALL OFFICIAL BALLOTS MUST BE PRINTED ACCORDING TO THE PROVISIONS OF SECTIONS 1-4-101, 1-5-407, AND 1-5-408. ACROSS THE TOP OF EACH BALLOT THE WORDS "PRIMARY ELECTION BALLOT FOR UNAFFILIATED VOTERS" SHALL BE PRINTED.

(b) THE POSITIONS OF CANDIDATES ON THE BALLOTS TO BE USED BY UNAFFILIATED ELECTORS MUST BE ARRANGED IN THE ORDER SPECIFIED IN PARAGRAPH (B) OF SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THE CANDIDATES OF EACH POLITICAL PARTY MUST BE CLEARLY AND CONSPICUOUSLY SEGREGATED FROM THE CANDIDATES OF ANY OTHER POLITICAL PARTY AND GROUPED TOGETHER ACCORDING TO SECTION 1-4-101(2).



**SECTION 9.** In Colorado Revised Statutes, 1-7-201, **amend** (2); and add (2.3) as follows:

**1-7-201. Voting at primary election.** (2) If the name is found on the registration list, the election judge having charge of the list shall likewise repeat the elector's name and present the elector with the party ballot of the political party affiliation last recorded. ~~If unaffiliated, the eligible elector shall openly declare to the election judges the name of the political party with which the elector wishes to affiliate, complete the approved form for voter registration information changes, and initial the registration list in the space provided. Declaration of affiliation with a political party shall be separately dated and signed or dated and initialed by the eligible elector in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector. Eligible electors who decline to state an affiliation with a political party that is participating in the primary shall not be entitled to vote at the primary election.~~

(2.3) AN ELIGIBLE UNAFFILIATED ELECTOR IS ENTITLED TO VOTE IN THE PRIMARY ELECTION OF A MAJOR POLITICAL PARTY WITHOUT AFFILIATING WITH THAT POLITICAL PARTY. TO VOTE IN A POLITICAL PARTY'S PRIMARY ELECTION WITHOUT DECLARING AN AFFILIATION WITH THE POLITICAL PARTY, ANY ELIGIBLE UNAFFILIATED ELECTOR SHALL BE GIVEN A COMBINED BALLOT, IF APPLICABLE. IF A COMBINED BALLOT IS NOT AVAILABLE, THE ELECTOR SHALL DECLARE TO THE ELECTION JUDGES THE NAME OF THE POLITICAL PARTY IN WHOSE PRIMARY ELECTION THE ELECTOR WISHES TO VOTE. THEREUPON, THE ELECTION JUDGES SHALL DELIVER THE APPROPRIATE PARTY BALLOT TO THE ELECTOR. IN ADDITION, ANY ELIGIBLE UNAFFILIATED ELECTOR MAY OPENLY DECLARE TO THE ELECTION JUDGES THE NAME OF THE POLITICAL PARTY WITH WHICH THE ELECTOR WISHES TO AFFILIATE AND COMPLETE THE NECESSARY FORMS. AN ELIGIBLE ELECTOR MUST SEPARATELY DATE AND SIGN OR DATE AND INITIAL A DECLARATION OF AFFILIATION WITH A POLITICAL PARTY FORM IN SUCH MANNER THAT THE ELECTOR CLEARLY ACKNOWLEDGES THAT THE AFFILIATION HAS BEEN PROPERLY RECORDED. THEREUPON, THE ELECTION JUDGES SHALL DELIVER THE APPROPRIATE PARTY BALLOT TO THE ELIGIBLE ELECTOR.

**SECTION 10.** In Colorado Revised Statutes, 1-7.5-107, delete (2.3); and amend (2.5)(a)(II) as follows:

**1-7.5-107. Procedures for conducting mail ballot election -primary elections - first-time voters casting a mail ballot after having registered by mail to vote - in-person request for ballot - repeal.**

~~(2.3) (a) Not less than thirty days nor more than forty-five days before a primary election, the county clerk and recorder shall mail a notice by forwardable mail to each unaffiliated active registered eligible elector.~~

~~(b) The notice shall indicate that the unaffiliated elector has the ability to and must affiliate with a political party in order to vote in the primary election.~~

~~(c) The notice shall have a returnable portion that allows the elector to request affiliation with a political party.~~

~~(d) The notice may be included with any other communication by mail from the county clerk and recorder to electors within the county.~~

(2.5) (a) (II) For a primary mail ballot election, in addition to the items described in the notice required by subparagraph (I) of this paragraph (a), such notice shall advise eligible electors who are not affiliated with a political party of the ability to ~~declare an affiliation with a political party and vote in the primary election~~ VOTE IN THE PRIMARY ELECTION OF ANY POLITICAL PARTY. THE NOTICE MUST CLEARLY AND CONSPICUOUSLY ADVISE ELECTORS THAT ANY PRIMARY BALLOT CONTAINING VOTES FOR A CANDIDATE OF MORE THAN ONE POLITICAL PARTY SHALL NOT BE COUNTED.

**SECTION 11.** In Colorado Revised Statutes, 1-7.5-116, **amend** (1)(b) as follows:

**1-7.5-116. Applications for absentee ballot.** (1) (b) If the application is made for a primary election ballot, the application shall name the political party with which the applicant is affiliated ~~or wishes to affiliate~~, OR, IF THE APPLICANT IS UNAFFILIATED, THE APPLICATION MUST EITHER NAME THE POLITICAL PARTY WITH WHICH THE APPLICANT WISHES TO AFFILIATE OR MUST STATE THAT THE APPLICANT WISHES TO REMAIN UNAFFILIATED AND RECEIVE AN UNAFFILIATED PRIMARY ELECTION BALLOT, OR IF SUCH COMBINED BALLOT IS NOT AVAILABLE, THE BALLOTS FOR EACH PARTY PRIMARY ALONG WITH NOTICE THAT THE ELECTOR SHALL VOTE IN ONLY ONE PRIMARY.

**SECTION 12.** In Colorado Revised Statutes, 1-8.5-101, amend (5) as follows:

**1-8.5-101. Provisional ballot - entitlement to vote.** (5) ANY UNAFFILIATED ELECTOR AT A PRIMARY ELECTION MAY CAST A REGULAR PARTY BALLOT UPON REQUESTING SUCH BALLOT FROM AN ELECTION JUDGE IN ACCORDANCE WITH SECTION 1-7-201 (2.3). Any unaffiliated elector at a primary election may ALSO cast a regular party ballot upon openly declaring to the election judge the name of the political party with which the elector wishes to affiliate pursuant to section 1-2-218.5 or 1-7-201. NOTHING IN THIS SECTION REQUIRES A MINOR POLITICAL PARTY TO ALLOW AN UNAFFILIATED ELECTOR TO VOTE IN THE PRIMARY ELECTION OF SUCH POLITICAL PARTY.

**SECTION 13. Effective date - applicability.** This measure applies to any primary election conducted after the effective date of this measure as declared by proclamation of the governor.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD Colorado Secretary of State

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2015-2016 #98

DATE FILED: April 14, 2016 5:25 PM

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**MOTION FOR REHEARING**

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Registered electors, Jean Martelle Daniels and Brandi Renee Meek, through their legal counsel, Tierney Lawrence LLC, object to the Title Board's ballot title and submission clause for Initiative 2015-2016 #98, and request a rehearing pursuant to C.R.S. §1-40-107.

**I. The Title Board set a title for Initiative 2015-16 #98 on March 2, 2016.**

At the hearing held in connection with this proposed initiative, the Board designated and fixed the following title:

A change to the Colorado Revised Statutes concerning the process of selecting candidates representing major political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a major political party without declaring an affiliation with that political party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election.

**II. Initiative #98 contains multiple subjects, contrary to Colo. Const., art. V, sec. 1(5.5).**

Initiative #98 has at least two distinct and separate purposes. First, it allows voters unaffiliated with a major political party to vote in a primary election for major political parties. Second, it allows major political parties to change from the nomination of candidates by primary election to the nomination of all candidates by assembly or convention.

These two discrete subjects violate the single subject requirement when paired together in Initiative #98. First, the proposal puts together in one measure two subjects having no necessary or proper connection, arguably for the purpose of enlisting in support of the measure the advocates of each separate subject (open primaries on the one hand, and a change from the nomination of candidates by primary to the nomination of all candidates by assembly or convention, on the other), and thus securing the enactment of both subjects contained within Initiative #98 that could not be carried upon their merits independently.

Second, the separate subject allowing political parties to choose to eliminate the primary and nominate all candidates by assembly or convention alone is precisely the type of surreptitious subject coiled in the folds of the measure that will surprise voters who are urged to



vote yes to create open primary elections in Colorado. The extensive declarations contained in Section 1 of the measure contain no mention of the separate and incongruous subject allowing political parties to choose to nominate all candidates by assembly or convention alone; indeed, the heading of the measure affirms that its subject is "Primary Elections."

This voter surprise is evidenced further by proponents' counsel's statement before the Title Board that the primary purpose of the measure is to allow unaffiliated voters to participate in primary elections. The assertion by counsel that the provision allowing political parties to nominate all candidates by assembly or convention is "merely a constitutional safety valve" and not likely to be used, does not save this proposal from violating the single subject requirement. Similarly, including this alternate subject in the title does not cure the violation of Colo. Const., art. V, sec. 1(5.5), because the measure still contains two separate and distinct subjects.

To survive a single subject analysis, an initiative must be necessarily and properly connected rather than disconnected or incongruous. Initiative #98 fails this test.

### **III. The title set for #98 is misleading and prejudicial.**

The title and submission clause of a ballot measure should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010). The title shall correctly and fairly express the true intent and meaning of the initiative. *Id.* The title and submission clause for Initiative #98 falls short of this directive, and by leaving out critical features of the measure, will mislead voters.

#### **A. The title's omission of the exemption for minor political parties is misleading.**

Initiative #98 specifically allows minor political parties to prohibit unaffiliated voters from participating in minor political party primary elections. This distinction exempting minor political parties from the requirement on major political parties to allow unaffiliated voters to participate in primary elections is a critical component of the measure and its omission will mislead voters.

#### **B. The title fails to alert voters of the creation and use of a combined ballot containing all candidates for all major political party primary elections for unaffiliated voters alone.**

Initiative #98 creates a new type of combined "super" ballot for unaffiliated voters that will contain all candidates for all major political parties for all races on one ballot, that only unaffiliated voters will receive. Unaffiliated voters who receive the "super" ballot will be required to vote for only one political party's candidates, and if the voter votes for more than one

political party's candidates, the ballot will be void. These features of the measure are central, and their absence from the title renders the title inaccurate, incomplete and misleading.

**C. The title fails to alert voters that if a combined ballot is not practicable, unaffiliated voters will receive ballots for all the major political parties.**

Initiative #98 also provides that if a combined "super" ballot is not practicable for a county, then unaffiliated voters in that county will receive primary ballots for all the major political parties and be instructed to return just one of those ballots. This is a substantial change to existing law and failure to advise voters of this central feature of the measure is misleading.

WHEREFORE, Objectors respectfully request that the Title Board withdraw the title set on March 2, 2016 because it contains more than a single subject, or in the alternative, the Title Board should modify the title to account for the concerns raised in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2016

TIERNEY LAWRENCE LLC



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Martha M. Tierney  
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303-356-4870  
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**Objectors' Addresses:**

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2024 Freedom Court  
Grand Junction, Colorado 81507

Brandi Renee Meek  
738 Exmoor Road  
Craig, Colorado 81625



### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of March, 2016 a true and correct copy of the foregoing MOTION FOR REHEARING was filed with the Secretary of State and served via Email to the following:

Jason Dunn, Esq.  
Brownstein Hyatt Farber Schreck LLP  
410 Seventeenth Street  
Denver, Colorado 80202-4432  
Email: [jdunn@bhfs.com](mailto:jdunn@bhfs.com)

Attorneys for Designated Representatives Kelly Brough and Joe Blake



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## **Ballot Title Setting Board**

### **Proposed Initiative 2015-2016 #98<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning the process of selecting candidates representing political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election.

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 the process of selecting candidates representing political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election?

*Hearing March 2, 2016:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 12:15 p.m.*

*Rehearing March 16, 2016:*

*Motions for Rehearing denied except to the extent that the Board made changes to the titles.*

*Hearing adjourned 10:38 a.m.*

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<sup>1</sup> Unofficially captioned “**Primary Elections**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.