

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2015-
2016 #98

V.

and

▲ COURT USE ONLY ▲

Case No.:

**PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE
SETTING BOARD CONCERNING PROPOSED
INITIATIVE 2015-2016 # 98**

Jean Martelle Daniels and Brandi Renee Meek, (“Petitioners”), registered electors of the state of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set by the Ballot Title Setting Board (the “Title Board”) for Proposed Initiative 2015-2016 #98 “Primary Elections” (the “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #98

Kelly Brough and Joe Blake (“Proponents”) are the designated proponents of the Proposed Initiative. Proponents submitted a final version of the Proposed Initiative 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 the Proposed Initiative 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 the Proposed Initiative violated the single subject requirement contained within the Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, and that the Proposed Initiative’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) which rendered the title 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 Proposed Initiative'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) which rendered 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.

B. Jurisdiction

Petitioners submit this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed their Motion for Rehearing with the Title Board pursuant to C.R.S. § 1-40-107(1) and timely filed this Petition for Review within seven days from the date of rehearing as required by C.R.S. § 1-40-107(2).

Consistent with the requirement set forth in section 1-40-107(2), Petitioners have attached the following documents certified by the Secretary of State: (1) the original version of the Proposed Initiative filed by the Proponents; (2) the redlined version of the Proposed Initiative showing changes made after the Review and Comment Hearing; (3) the final version of the Proposed Initiative original and amended ballot title set for this measure; (4) Proponents' Motions for Rehearing;

(5) Petitioners' Motion for Rehearing; and (6) the Title Board's ruling on the Motions for Rehearing. Petitioners respectfully submit that the Title Board erred in denying their Motion for Rehearing. This matter is properly before this Court.

GROUND FOR APPEAL

In violation of Article V, section 1(5.5) of the Colorado Constitution and C.R.S. §§ 1-40-106, -107, the Proposed Initiative violates the single subject requirement for initiatives, and the title set by the Title Board is unfair, misleading, does not fairly and correctly express the true meaning of the Proposed Initiative. The following is an advisory list of issues to be addressed in Petitioners' briefs:

1. The Proposed Initiative violates the constitutional single subject requirement by combining a statutory change allowing voters unaffiliated with a political party to vote in a political party's primary election, with a statutory change allowing political parties to change from the nomination of all candidates by primary election to the nomination of all candidates by assembly or convention.
2. The title fails to inform voters that the Proposed Initiative allows minor political parties to prohibit unaffiliated voters from participating in minor political party primary elections.

3. The title 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.
4. The title fails to inform voters that where it is not practicable for a county to send a combined “super” ballot to unaffiliated voters, the Proposed Initiative allows counties to send only to unaffiliated voters a separate primary ballot for each of the major political parties.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the Proposed Initiative 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 the Proposed Initiative is neither fair nor accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 23rd day of March 2016.

TIERNEY LAWRENCE LLC

By: s/Martha M. Tierney
Martha M. Tierney, No. 27521
2675 Bellaire Street
Denver, Colorado 80207
Phone Number: (303) 356-4870
E-mail: mtierney@tierneylawrence.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2016 a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 # 98** was filed with the Court via ICCES 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
Attorneys for Designated Representatives Kelly Brough and Joe Blake

LeeAnn Morill, Esq.
First Assistant Attorney General
1300 Broadway, 6th Floor
Denver, Colorado 80203
Email: leeann.morrill@coag.gov
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: March 24, 2016 3:48 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 18th day of March, 2016.

Wayne W. Williams

SECRETARY OF STATE



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S. WARD

#98 FINAL DRAFT

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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.

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#98 REDLINE DRAFT

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 REGISTERED 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 ~~REGISTERED~~ 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.

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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) to read 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) to read 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, ~~add~~ 1.5.402(2), **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, ~~amend~~ 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, ~~amend~~ 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, ~~amend~~ 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, ~~amend~~ 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.

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FEB 19 2016 2:51 P.M.

#98 Original Draft

PRIMARY ELECTIONS

Colorado Secretary of State

DATE FILED: March 24, 2016 3:48 PM

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 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 REGISTERED 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 REGISTERED WITH A MAJOR 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 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) to read 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) to read 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, **add** 1.5.402(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, **amend** 1-7-201 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, **amend** 1-7.5-107 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, **amend** 1-7.5-116 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 **amend** 1-8.5-101(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.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #98¹

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 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.

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 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?

Hearing March 2, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:15 p.m.

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

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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

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

MOTION FOR REHEARING

On behalf of Kelly Brough and Joe Blake, registered electors of the State of Colorado and designated representatives of Proposed Ballot Initiative 2015-2016 #98 ("the Proponents"), the undersigned counsel hereby submits this Motion for Rehearing on Initiative #98, and as grounds therefore states as follows:

I. THE TITLE AS DRAFTED IS MISLEADING AND DOES NOT FAIRLY AND CORRECTLY EXPRESS THE TRUE MEANING OF THE MEASURE.

The Title Board adopted the following title at its March 2, 2016 hearing:

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.

As drafted, the title will lead to voter confusion because it includes a description of the statutory change in the measure allowing a political party, under only very specific and limited circumstances, to opt-out of a primary election. There is significant risk that inclusion of this provision in the title will create the perception among voters that the measure presents the political parties with a simply either/or choice: parties can choose to either elect candidates through a primary election that includes unaffiliated voters, or they can choose them through a convention or assembly. More properly described, however, the measure changes Colorado to a semi-open primary voting system whereby unaffiliated voters are allowed to participate in primary elections *as matter of right*. Admittedly, the measure does give major political parties the opportunity to opt-out of this default system, but they may do so only if a significant portion of a party's state central committee (which number in the hundreds of people) votes by a super-majority of 75% to do so - an unlikely event (as has been proven in other jurisdictions with similar systems).

Accordingly, removing this language from the title will create a more accurate and fair description of the measure's true import, it will help voters understand what the measure's practical effect is on the current primary voting system in Colorado, and ultimately it will give voters the opportunity to make a properly informed decision on whether to vote for or against the measure.

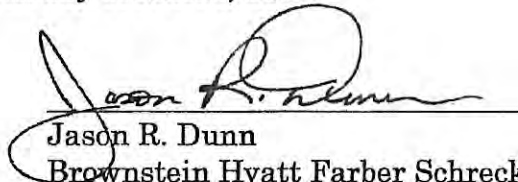
II. ADDITIONAL AMENDMENTS TO THE TITLE WILL PROVIDE CLARITY AND HELP AVOID VOTER CONFUSION.

While perhaps not a constitutional or jurisdictional issue, the Proponents respectfully request additional changes to the title in order to promote clarity and voter understanding. More specifically, the Proponents ask that the title not include a separate single subject clause nor the traditional "in connection therewith" clause, and that it refer to "electors" as the more commonly used "voters". As amended, the Proponents suggest the following language (to include the elimination of the opt-out provision discussed above):

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 voters 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.

Accordingly, the Proponents respectfully request that this matter be set for rehearing pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 9th day of March, 2016.



Jason R. Dunn
Brownstein Hyatt Farber Schreck LLP
410 17th Street, #2200
Denver, Colorado 80202
(303) 223-1100
(303) 223-0914
jdunn@bhfs.com

Attorneys for Kelly Brough and Joe Blake

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MAR 09 2016

S. WARD
4:17 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD Colorado Secretary of State

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

MOTION FOR REHEARING

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 9th day of March, 2016

TIERNEY LAWRENCE LLC



Martha M. Tierney
2675 Bellaire Street
Denver, CO 80207
303-356-4870
mtierney@tierneylawrence.com

Objectors' Addresses:

Jean Martelle Daniels
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 9th 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

Attorneys for Designated Representatives Kelly Brough and Joe Blake



Ballot Title Setting Board

Proposed Initiative 2015-2016 #98¹

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.

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