SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203 ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2) Appeal from the Title Board	DATE FILED: May 15, 2015 FILED IN THE SUPREME COURT MAY 14 2015 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk
IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2015-2016 #24	
Petitioner: Dan Chapin v. **Title Board:** SUZANNE STAIERT, JASON GELENDER, and FRED YAGAR	
Attorney or Party Without Attorney: Name: Dan Chapin Address: 12422 E. Amherst Circle Aurora, CO 80014 Phone Number: 303-696-6759	▲ **COURT USE ONLY** ▲ Case Number: 2015SA122-1

OPENING BRIEF FOR PETITIONER

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 less than 30 pages

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 , not to an entire document, where the issue was raised and ruled on.

Dan Chapin

Pro se party

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I. Statement of the Issues

Whether the Board incorrectly determined that Initiative 2015-2016 #24 was not a single subject as required by article V, section 1(5.5) of the Colorado Constitution and C.R.S. 1-40-106.5.

Whether the Title Board followed Colorado law and prior decisions by this Court in determining whether an initiative contains a single subject.

II. Statement of the Case

Proponents Dan Chapin and Ryan Chapin filed Proposed Initiative 2015-2016 #24 with the Secretary of State and the Title Board held a hearing on April 15, 2015. At the hearing on April 15, 2015 the Title Board ruled that Initiative #24 was not a single subject and refused to set title. On April 22, 2015 proponent Dan Chapin filed a Motion for rehearing with the Secretary of State and a rehearing of the initiative was held by the Title Board on April 23, 2015. The Title Board denied the Motion after a hearing on April 23, 2015. The Petitioner file the above-captioned appeal shortly thereafter.

III. Statement of the Facts

Initiative #24 seeks to add a new Article to the Colorado Constitution which will create an Elector Bill of Rights. The subject of the Initiative is to Create an Elector Bill of Rights in regard to elections. There are many other Elector Rights that were not addressed in this initiative as it was limited to Elector Rights as they relate to fair, open, and informed elections for Coloradans. Elector Rights in regard to elections is a well defined subset of rights under the umbrella of all Elector rights that accomplishes a single general purpose of well informed equal participation in Colorado elections.

Initiative #24 has a single well defined purpose, as related to the Title Board at the April 23, 2015 hearing, which is to create a framework that encourages a well informed and truthfully informed electorate that has an equal opportunity to participate in Colorado elections. Equal participation being

the ability to support, influence, message, and vote on an equal basis with other Coloradans.

The Title Board refuse to set title at the April 15, 2015 hearing, ruling that the Initiative did not contain a single subject. The Title Board did not present what additional subjects were perceived to be in the Initiative at that time nor did they indicate or define what the perceived multiple subjects were at any other time. The proponents of the Initiative filed a Motion for rehearing.

At the rehearing on April 23, 2015 the Title Board again refused to set title, again claiming that the Initiative was not a single subject. The Title Board at that hearing identified the follow five items as what they perceived as multiple subjects.

1. The general assembly is no longer allowed to legislate without approval of the electorate.
2. The elector may petition the proper legislative body for consideration.
3. Sending money off to school finance.
4. Funds previously collected for candidates is going somewhere else.
5. Special consideration for Political Parties.

The Title Board did not identify any purpose beyond the single purpose presented by the proponents, nor did the Board define or identify any incongruous subjects or specify why these particular items were not connected to the general purpose of the Initiative.

Petitioner challenges the Title Boards contention that these are multiple subjects and brings to the attention of this Court, as Petitioner did in the Title Board hearings, that the actions of the Title Board appear to be based more on evaluation of the merits, than on prior actions by the Board and previous decisions by this Court.

IV. Summary of the Argument

This Initiative is a single subject initiative for the following reasons. The Title Board did not prove beyond a reasonable doubt that there are multiple subjects contained in the Initiative. Initiatives must be liberally construed to preserve the fundamental right of initiative. All portions of the Initiative

are properly and necessarily connected. The Initiative has only a single purpose. The Title Board has ruled opposite to similar initiatives or initiatives that appear to address a wider range of issues. The Board may have erroneously ruled based on bias or conflict of interest.

V. Argument

A. Standard of Review

The Title Board must abide by Colorado laws and the decisions of this Court when considering proposed initiatives. Indeed, Colo. Const., art. V, § 1(2) states: The first power hereby reserved by the people is the initiative. Further the legislature has strengthened that power in C.R.S. 1-40-106.5(2) It is the intent of the general assembly that section 1 (5.5) of article V and section 2 (3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

The Court noted in LOONAN v. WOODLEY, "The right of initiative and referendum, like the right to vote, is a fundamental right under the Colorado Constitution. *See Clark v. City of Aurora,* 782 P.2d 771, 777 (Colo.1989) (right of initiative); *Meyer v. Lamm,* 846 P.2d 862 (Colo.1993) (right to vote). Likewise both the right to vote and right of initiative have in common the guarantee of participation in the political process. *See McKee v. City of Louisville,* 616 P.2d 969, 972 (Colo.1980) ("Like the right to vote, the power of initiative is a fundamental right at the very core of our republican form of government.") In light of the nature and seriousness of these rights, we have held that constitutional and statutory provisions governing the initiative process should be "liberally construed" so that "the constitutional right reserved to the people may be facilitated"," *LOONAN v. WOODLEY 882 P.2d 1380, 1383-1384 (1994).*

This Court stated in Parental Rights, "In order to violate the single-subject requirement, the text

of the measure must "relate[ ] to more than one subject and [have] at least two distinct and separate purposes which are not dependent upon or connected with each other."". The Court continued, "The single subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous."", *In re PROPOSED BALLOT INITIATIVE ON PARENTAL RIGHTS, 913 P.2d 1127, 1130-1131 (1996).*

B. Initiative is a Single Subject

Proposed initiative #24 is a single-subject initiative. That subject is to Create an Elector Bill of Rights in regard to elections. There are many other Elector Rights that were not addressed in this initiative as it was limited to Elector Rights as they relate to fair, open, and informed elections for Coloradans. Elector Rights in regard to elections is a well defined subset of rights under the umbrella of all Elector rights that accomplishes a single general purpose of well informed equal participation in Colorado elections.

1. Board has not Met Burden of Proof

CRS Section 1-40-106.5(3) directs the Board to "apply judicial decisions construing the constitutional single-subject requirement for bills and ... follow the same rules employed by the general assembly in considering titles for bills." The court also noted in *Lamm v. Barber*, "Thus courts should "never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, beyond reasonable doubt." *Lamm v. Barber, 565 P.2d 538, 546 (1977).*" The Court continues in *Lamm v. Barber*, " "courts do not seek reasons to find statutes unconstitutional. Rather, it is our duty to presume that the statute involved is constitutional." It is fundamental that one who asserts that a statute is unconstitutional has the burden of proving its invalidity beyond a reasonable doubt."

It follows that the Title Board must apply judicial decisions in determining single subject and they must presume that it is constitutional, in that it does contain a single subject unless they are able to establish beyond a reasonable doubt that there are clear, recognizable, and defined multiple subjects.

The burden of proof lies with the Title Board to specifically define beyond a reasonable doubt what those subjects are. The Board has not established this.

In the April 15, 2015 hearing the Board did not identify any subjects contained in the Initiative beyond the single subject defined by the proponents. Not only is this not established beyond a reasonable doubt, but it is simple not established at all. In order for the Board to be prohibited from acting in a capricious and arbitrary manner they must be required to provide, specific references to multiple subjects, legal analysis, and legal justification for declaring an initiative unconstitutional in that it does not contain a single subject as required by the Colorado Constitution and Statute. In addition, since the burden of proof beyond a reasonable doubt lies with the Board, their evidence and analysis must be compelling and able to stand on its own, and not just merely some feeling they have stated.

In the April 23,2015 rehearing the Board continued with a ruling which was based mainly on what they "felt", "thought", or what "appeared" to be. None of which is a reasonable or accepted legal argument. These are by the definition of the words, a decision made on the perceived merits of the Initiative. The Board did finally identify what they claimed were five subjects contained in the Initiative over a span of 1 minute and 24 seconds at the end of the hearing, where they denied the proponents an opportunity to respond or even clarify exactly where those subjects were pulled from. Again these five subjects, pulled from single sentences in a twenty page document, without the ability of the proponents to respond, does not constitute or establish proof beyond a reasonable doubt. As before the Board provided no legal justification or prior decisions of this Court to support their contentions.

Because the Board is denying the " first power hereby reserved by the people", they must be held to a high standard and there must be an expectation that standard shall rise "beyond a reasonable doubt" and their decision must be firmly rooted in past decisions of this Court regarding similar

initiatives. The Board has clearly not even grazed that standard, let alone established it, and has acted in a capricious and arbitrary manner, ruling on what the Initiative is perceived to be rather than what is legally and factually provable. For this reason alone this Court should reverse the actions of the Title Board and recognize that since the Board has not and can not prove multiple subjects, that this Initiative must be recognized as the single subject it is as defined by the proponents.

2. Single Subject Must be Liberally Construed

In MATTER OF TITLE 1997-1998 NO. 74 the court stated, "The single-subject requirement must be liberally construed, however, so as not to impose undue restrictions on the initiative process.", *In MATTER OF TITLE 1997-1998 NO. 74 962 P.2d 927,929.* In the same ruling the Court found, "The single-subject requirement is intended to prevent voters from being confused or misled and to ensure that each proposal for change is considered on its own merits." at 928. The Board did not identify a single instance in the Initiative that would intentionally confuse or mislead the voters. They merely stated that they felt there was "a lot going on", which again is not a legal argument.

Even recognizing that the Initiative is comprehensive in its protection of election rights for Coloradans the Court found *In MATTER OF TITLE 1997-1998 NO. 74* that, "the single-subject requirement does not preclude the use of provisions that are not wholly integral to the basic idea of a proposed initiative." at 929.

3. Board Based Multiple Subjects on Analysis of Merits

In the April 23, 2015 hearing the Board identified what they claim were five subjects contained within the Initiative: The general assembly is no longer allowed to legislate without approval of the electorate, the elector may petition the proper legislative body for consideration, sending money off to school finance, funds previously collected for candidates is going somewhere else, and special consideration for Political Parties. All of these "subjects" are mostly single sentence portions of the Initiative, that only have a possibility of occurring if certain conditions should occur after the Initiative

has been approved.

Doing an infinitesimal analysis of an initiative down to the level of individual sentences will always produce subjects that are not exact in their nature, but the Court has already ruled that this is not an acceptable method of determining multiple subjects. In *1997-1998 NO. 74* the Court found, "Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.", *In MATTER OF TITLE 1997-1998 NO. 74 962 P.2d 927,929.*

In addition, perceived effects of an initiative by analysis of the merits is outside the scope of what the Board is allowed. *In Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995)* the court clearly established, "We do not address the merits of a proposed initiative, nor do we interpret its language or predict its application if adopted by the electorate." see *In re Petition on Campaign and Political Fin.,* 877 P.2d 311, 313 (Colo.1994).

The Court has addressed this type of analysis in *In the Matter of the Title, Ballot Title, and Submission Clause for 2007–2008 #62,* where the Court ruled, "In short, Petitioner thinly parses the language of the measure in an attempt to create separate and distinct subjects." The Court continued in its ruling that, "In order to do this, Petitioner speculates about the effects of the measure, postulating that if the measure is interpreted in a way that fits his conclusions, then the measure will have multiple effects. This approach is erroneous."

Addressing analysis of the merits the Court found, "In determining whether a proposed initiative comports with the single subject requirement, [w]e do not address the merits of a proposed initiative, nor do we interpret its language or predict its application if adopted by the electorate." In re Proposed Initiative for 1997-1998 #64, 960 at 1197 (emphasis added) (quoting In re Proposed Initiative

"Petitions", 907 P.2d 586 at 590), *In the Matter of the Title, Ballot Title, and Submission Clause for 2007–2008 #62.* Finally the Court concluded in *2007–2008 #62,* "Because Petitioner's argument is comprised of mere speculation about the potential effects of the Initiative,...we affirm the decision of the Title Board that this Initiative contains only one subject." This Court can not hold the Title Board to a lower standard than the standard Colorado citizens, who are claiming multiple subjects on an initiative, are held to.

With these past decisions of the Court in mind let us examine each of the alleged subjects of the Board. First - the general assembly is no longer allowed to legislate without approval of the electorate. This was pulled from a sentence which stated if the legislature passed a law restricting the ability to vote then that law would have to be approved by the electors. This would only occur if the legislature passed a restrictive voting law. We do not know if this will happen unless we "predict its application", an analysis not allowed in determining single subject.

Second - the elector may petition the proper legislative body for consideration. This would occur only if the electorate petitioned the legislative body. We do not know if this will happen unless we "predict its application", an analysis not allowed in determining single subject.

Third - sending money off to school finance. This is at most a possible single occurrence and would only occur if a candidate chooses several voluntary actions. We do not know if this will happen unless we "predict its application", an analysis not allowed in determining single subject.

Fourth - funds previously collected for candidates is going somewhere else. This is merely a reiteration of subject three which is based on the same small portion of the Initiative, it is at most a one time occurrence. This would only occur if a candidate choose to take certain voluntary actions. We do not know if this will happen unless we "predict its application", an analysis not allowed in determining single subject.

Fifth - special consideration for political parties. This can not be a separate subject because it

does not attempt to change anything but merely confirms that its ability to operate and continue to function is still governed by existing law. Only in regard to elections would the political parties encounter change and that would be based on voluntary choice of actions. We do not know if this will happen unless we "predict its application", an analysis not allowed in determining single subject.

It is obvious that all of these alleged subjects by the Board only exist if specific perceived or predicted effects of the Initiative occur. Something, we can not know and something which is outside of the scope of what is allowed the Board in determining single subject.

4. Alleged Subjects by the Board are Necessarily Connected

The five alleged subjects by the Board are necessarily connected and thus do not comprise of separate subjects. "The single subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous."", *In re PROPOSED BALLOT INITIATIVE ON PARENTAL RIGHTS, 913 P.2d 1127,1131 (1996)*.

Let us address each alleged subject of the Board and establish the connections to fair, equal, and informed elections for Coloradans.

First - the general assembly is no longer allowed to legislate without approval of the electorate. This is referencing a single subsection that merely requires any legislative body that passes a law that is more restrictive in the ability of the electorate to vote, to obtain the approval of the electorate. The right to vote and to have equal access to vote has long been recognized by the courts as a fundamental right, "We have consistently recognized that the power of initiative and referendum reserved for the people under Article V of the Colorado Constitution, like the right to vote, is a fundamental right.", *LOONAN v. WOODLEY 882 P.2d 1380, 1386 (1994)*. Without equal access and ease of voting all of the rights during the election are nullified.

Second - the elector may petition the proper legislative body for consideration. Again this is referencing a single subsection that allows the electorate to place processes, that can improve the

opportunity or ability of the electorate to vote, in front of the legislative body for consideration. Often incumbent representatives do not see a better election process as a high priority because of the inherent advantage afforded to incumbents in our elections. In addition, this gives the average electorate an opportunity to place processes for consideration in front of their legislatures that are often only available to powerful or well funded lobbying groups. This helps tip the balance back to the average Colorado elector in their ability to participate in and influence elections, once again creating a fairer election process for all Coloradans.

Third - sending money off to school finance. This alleged subject is a voluntary choice available to candidates that may feel their donations have come from local citizens since they are local representatives, and instead of paying some of the funds to the State they have the option of making the choice of those funds going to the local schools instead. This is a one time occurrence, there is no portion of the Initiative that requires any monies to go to the schools. The purpose of this subsection is to create a level playing field between incumbents and new candidates. Often incumbent candidates can have a campaign fund that runs into the millions of dollars, with funds that may have come from a very small group of donors, from sources outside Colorado, or even from unidentified sources. New candidates must make a choice of whether they are going to incur the penalty for running a campaign not in the interest of Coloradans or if they will voluntarily place reasonable limits and behavior on their campaigns for the benefit of the electors. This subsection is a one time voluntary choice to be made by incumbent or previous candidates to at least make an effort to level the playing field for all candidates in the first year of implementation. An elector's candidate can not participate on an equal basis with a candidate that is already sitting on a large war chest of campaign funds. Essentially all elections are not equal if a group of candidates begins with a large advantage.

Fourth - funds previously collected for candidates is going somewhere else. This alleged subject is just a rephrasing of the alleged third subject. It is apparently referencing the one time choice

of candidates currently sitting on campaign funds that by voluntary choice could go to either the State or a local school district. Since is is just a rephrasing of the above alleged subject, the same arguments apply.

Fifth - special consideration for political parties. Petitioner is unsure what the Board is referring to or perceives as a separate purpose of the section, especially since they refused to clarify their concerns or provide legal justification for even mentioning this as a separate subject. Since the Board refused the proponents the opportunity to respond to the item at what was suppose to be a hearing held for the purpose of allowing all sides to present their cases, the Petitioner will make that response here. It is recognized that political parties, unlike issue committees or campaign committees, are long term and enduring organizations and do not appear and disappear with each successive election. In addition it is recognized that political parties serve a purpose in creating a vehicle for electors with common ideas, values, and purpose to produce candidates for public office. There is also a purpose of informing the electorate on issues and candidate on the ballots.

With this in mind proponents of this Initiative determined that it is in the interest of Colorado electors that these organization should not be disadvantaged in their organization and ability to continue as a viable organization by this Initiative. Considering this that section of the Initiative places no restrictions, taxes, or other fees on funds use for administration or operation of those organizations. However, the Initiative does not exempt political parties from the same requirements as other committees in regard to the spending of monies on candidates or specific issues, nor does it exempt them or change any portions of the current law which regulates those political parties and donations made to them. The special consideration is merely a recognition that these specific organization are of a permanent nature rather than a temporary or dependent nature. Political parties allow any elector to become a candidate for public office without having to learn the process from ground zero. Fair and equal elections are more likely to occur when every elector is given the opportunity to run for public

office if they so choose.

These alleged subjects by the Board are necessarily connected and are not incongruous to the general subject of the Initiative. These alleged subjects are components of the implementation of the Initiative, which this Court has recognized as not separate subjects, "An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject.", *MATTER OF TITLE 1997-1998 NO. 74 962 P2d 927, 929.*

5. Board Must Show Two or More Separate Purposes

This Court has already established that even the simplest initiative can be found to have multiple subject if it is parsed to fine degree. However, possibly a more telling test is if an initiative has two or more separate purposes. "In order to violate the single-subject requirement, the text of the measure must "relate[ ] to more than one subject and [have] at least two distinct and separate purposes which are not dependent upon or connected with each other."", *In re PROPOSED BALLOT INITIATIVE ON PARENTAL RIGHTS, 913 P.2d 1127,1130 (1996).*

This Initiative has a single well defined purpose which is to create a framework that encourages a well informed and truthfully informed electorate that has an equal opportunity to participate in Colorado elections. Equal participation being the ability to support, influence, message, and vote on an equal basis with other Coloradans. The Board has not identified or defined any portion of the Initiative the serves or produces a purpose other than that defined by the proponents. This Court has found that, " The initiative is not transformed into a multi-subject proposal simply because it specifies the mechanisms to be used to resolve issues", *MATTER OF TITLE 1997-1998 NO. 74 962 P2d 927, 929.*

The Court must guard against citizens being forced to introduce multiple initiatives, in a piecemeal approach, in an attempt to create a single comprehensive, workable, and complete addition

or change to current law. Simple because citizens attempt to establish a comprehensive initiative, a form of legislative economy, does not make it multiple subject. This Court agrees with that view, "Although the Initiative is comprehensive, all of its numerous provisions relate to the single purpose of reforming petition rights and procedures. *See In re House Bill No. 1353,* 738 P.2d 371, 372-73 (Colo.1987)", *Matter of Petition for Amend. to Const., 907 P.2d 586, 591 (Colo. 1995).*

6. The Board has Ruled Opposite to Prior Actions

The Board has ruled the opposite on this Initiative compared to other initiatives that were accepted as single subjects, which address two or more items that could easily be viewed as separate subjects. An example of this would be the ballot initiative on Parental Rights.

In Parental rights, which the Board approved as single subject and the Supreme Court upheld as a single-subject, a voter could inadvertently endorse widespread reform in four distinct areas of law, education, values, upbringing and discipline. It was noted in the Courts opinion that the concept of "values" may govern matters as diverse as constitutional rights, civil liability, criminal responsibility, and conduct governed by the Children's Code.

In comparison this Initiative does not have a far ranging impact on current articles of the constitution or Statutes because if defines a new class of behavior which is determined by a voluntary compliance in the interests of the citizens of Colorado, current election related issues in the constitution or statute remain intact and are unaffected if a group or individual chooses to continue approaching elections as they are currently managed in Colorado.

The Court also noted in Parental Rights that it did not violate the single subject because its provisions pertain to the "single purpose or connecting factor" of the "general relationship of parent and child." In the same way the Elector Bill of Rights pertains to a "single purpose or connection factor" of the "general relationship of electors and elections". The electors and elections would be even more closely related because the electors have right but elections have no rights. The same can not be said

between a parent and a child because not only does the parent have rights but it must be recognized that the child also has rights that must be addressed, and still attempt to serve a single purpose.

In addition the Board also approved last year, as a single-subject, Initiative 135 Horse Racetrack Limited Gaming. The initiative was proposed to expand gambling into specific racetrack location which would make its focus the support of advocates for expanding gambling in Colorado, however they included in the initiative the creation of an education trust fund thus also enlisting the support of advocates for education. Many would look at that as a classic example of enlisting support from advocates on unrelated subjects, thus attempting to elicit additional support where neither would pass based on the merits of those discrete measures. Case in point Petitioner personally knew of several people who were against expanding gambling but had stated they would vote for the initiative because they were for anything that would improve education.

It is a well established principle of law that all laws must be applied consistently and equitably. In light of this principle, since gambling and education were accepted as a single-subject by this Board then they must find two or more subjects in this Initiative that are more disparate or incongruous than gambling and education. An even more challenging task, considering Parental Rights, would be to find four subject in this Initiative more disconnected than education, values, upbringing and discipline.

7. Board Ruling was Biased Based on Potential Impact of Initiative

There is an inherent advantage for incumbent representatives and elected officials in the current election process. They hold a large advantage in the ability to raise funds, in name recognition, and ability to place themselves in front of the electorate. There has always been a question of the ethics or appropriateness of receiving contributions while currently in a position that could possibly be making decisions that impact those very contributors, but it has become a way of business. Incumbents may also limit public debates to only one or two for the whole election cycle. This creates a substantial disadvantage for challengers who are working to inform the electorate of the differences between

themselves and the incumbents.

This Initiative is designed to alleviate some of these advantages and create a more equal and fair system for all candidates. Almost all campaigns are based on finding some sort of advantage over their opponents to sway the electorate. Unfortunately some of the parties directly involved in allowing this Initiative to be placed on the ballot could benefit from these type of inherent advantages and it is human nature to naturally oppose anything that could place you at a disadvantage.

Although it is a well-established and predominant principle that all initiatives should be viewed liberally it appears in this case that a different standard was employed for some reason. In the last seven years 217 initiatives have appeared before the Title Board and only 4 have been refused title due to being deemed not a single subject, of which this Initiative was one. Of those 4 refused title only 1 was refused title without clearly stating the multiple subjects it contained, that was **this Initiative**.

When discussing the Initiative, in the initial hearing, no legal precedent or valid appropriate Supreme Court cases were presented by the Board. Instead the Board used terms like "I feel", "It appears", or "It seems" when referring to the Initiative. By definition these terms are related to the merits of something. The Board had suggested breaking the Initiative down into multiple initiative, without any indication of how many would be appropriate. In essence, creating a process so onerous as to make it impossible for any group of citizens, as they returned again and again, only to be told by the same Board that it is not piecemeal enough yet. Because the Board has alleged single subsections of the Initiative are separate subjects, by their definition, they could require the Initiative to be broken down into 40, 50, or more separate and disjointed initiatives. Death by a thousand cuts is exactly one of the primary reasons why initiatives have been required to be liberally viewed in order to preserve one of the primary rights reserved for the people.

At the second hearing it appeared the Board had come in with their decision already determined and were not interested in a valid legal analysis, but were instead merely going through the motions of

a hearing. Although the proponents presented numerous legal arguments and cited appropriate relevant case law to support their position, the Board did not respond to a single legal argument or citation of the proponents. Neither did the Board present any legal arguments or relevant case law to support their contention of alleged multiple subjects.

When confronted with the fact that it appeared this Initiative was being treated differently than prior initiatives the Board finally angrily responded with a list of five alleged separate subjects, with the inclusion of at least one that showed the Board had either not fully read the Initiative or did not properly analyze the Initiative for its true nature. That was the claim that the Initiative would require funds to be given to the schools. Proper analysis of the Initiative would have revealed that funds that could go to the schools was an **optional, voluntary, one time action that would only possibly occur in a limited number of instances**. During this listing of alleged multiple subjects, which took a total of 1 minute and 24 seconds, the proponents were not allowed to respond and the Board refused to list the alleged subject one at a time or repeat them so that the proponents could at least record them for analysis.

The definition of hearing is the opportunity to present ones case, or the opportunity to be heard. The proponents did not have the opportunity to respond to the Board's alleged subjects, so they were not heard. The Board ended their list of alleged subjects with the statement "I could probably somehow find more", this statement would tend to indicate more that the Board came into the meeting with a predetermine outcome, rather than a prepared legal justification or readiness to openly and impartially rule based on the legal arguments and precedent presented by both sides.

This Court should hold the Board to a higher standard when they refuse to set a title, especially if there is any appearance or possibility that there could be a personal interest or conflict of interest involving the Board. It must not be forgotten that when the Board refuses to set title they are in opposition to, "The first power hereby reserved by the people is the initiative" and the view by this

Court that "The right of initiative and referendum, like the right to vote, is a fundamental right under the Colorado Constitution", and this opposition, according to this Court, must be strictly construed, "Such a reservation of power in the people must be liberally construed in favor of the right of the people to exercise it. Conversely, limitations on the power of referendum must be strictly construed, and should not be extended by either implication or inference. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692", *BROOKS v. ZABKA No. 23933. 450 P.2d 653, 655 (1969).*

VI. CONCLUSION

The Title Board has the burden of proof to prove beyond a reasonable doubt that the Initiative contains multiple subjects. Not only have they not done this, but the Board has not even presented basic reasoning, legal justification, or prior case history to support their contentions.

Petitioner has shown that all alleged subjects by the Board are either properly and necessarily connected, are issues presupposed on application of the Initiative after passing, or both. In addition Petitioner has shown that the Initiative serves a single general purpose and all portions of the Initiative are related to that single purpose. The Board was unable to identify or define any purpose outside of the purpose defined by the proponents.

The Board has approve past initiatives that were similar or contained a wider and more incongruous list of issues that were addressed. The law must be applied in a consistent and equitable manner and can not be adjusted or changed for different groups or constituents.

The Board's ruling has the appearance of being partially or wholly effected by an analysis of the merits of the Initiative or by a conflict of interest. This type of action is outside the scope of what is allowed the Board in determining single subject and violates the intent of the legislature and this Court in determining such issue on an impartial legal basis.

For these reasons this Court should overturn the ruling of the Title Board and declare this

Initiative is a single subject initiative and title should be set.

Respectfully submitted this 14th day of May 2015

Dan Chapin
Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing OPENING BRIEF was on this 14th day of May 2015 delivered by hand to:

Colorado Secretary of State
Ballot Initiative Title Board
1700 Broadway St. #200
Denver, CO 80290