

SUPREME COURT, STATE OF  
COLORADO  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2015-2016 #98 (“Primary Elections”)

**Petitioners:** Jean Martelle Daniels and  
Brandi Renee Meek,

v.

**Respondents:** Kelly Brough and Joe Blake,  
  
and

**Title Board:** Suzanne Staiert, Sharron  
Eubanks, and Glenn Roper.

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Case No.: 2016SA108

**TITLE BOARD’S OPENING BRIEF**

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

A. The brief complies with C.A.R. 28(g) because it contains 2,047 words.

B. The brief complies with C.A.R. 28(a)(7)(A) because each 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, and not to an entire document, where the issue was raised and ruled on.

*/s/ Christopher M. Jackson*  
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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board (“Board”) erred in finding that Proposed Initiative #98 (“#98”) contains a single subject under Article V, § 1(5.5) of the Colorado Constitution.
2. Whether the title the Board set for #98 complies with Colorado law.

## **STATEMENT OF THE CASE**

Petitioners Jean Martelle Daniels and Brandi Renee Meek seek to circulate #98 to obtain the required number of signatures to place the measure on the ballot. In general, #98 would change Colorado law to permit unaffiliated electors to vote in the primary election of a political party. See Mar. 24, 2016 Part 1 Exhibits to Petition for Review of Final Action of Title Setting Board for Proposed Initiative 2015-2016 #98 (“Attachment 1”), at 1 (“[A]ll eligible voters who want their voices to be heard should be able to vote in [primary] elections.”). The initiative also includes two carve-outs to this broad rule. First, it employs a “minor party exemption” under which minor political parties 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." *Id.* at 5. Second, a "major party opt-out provision" provides that major political parties "may choose to change from the nomination of candidates by primary election to the nomination of candidates by assembly or convention for all offices," but only if "three-fourths of the total membership of the party's state central committee votes to use the assembly or convention nomination process ...." *Id.* at 4.

The Board held a public hearing on #98 on March 2, 2016, at which it granted single-subject approval and set a title. Mar. 24, 2016 Part 2 Exhibits to Petition for Review of Final Action of Title Setting Board for Proposed Initiative 2015-2016 #98, at 8 ("Attachment 2"). Both the Respondent-proponents and Petitioner-objectors filed a motion for rehearing. *Id.* at 9-10, 11-14. The Board held a second public hearing on March 16 and made changes to #98's title; the motions were denied in all other respects. *Id.* at 15. The final version of the ballot title reads:

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.

*Id.* at 15. The final version of the submission clause fixed by the Board reads:

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?

*Id.* After the title and submission clause were set, Daniels and Meek filed their petition for review in this Court.

### **SUMMARY OF THE ARGUMENT**

The Board correctly determined that Initiative #98 complies with the single-subject rule under Article V of the state constitution.

Number 98 concerns just one subject: expanding the right of unaffiliated voters to participate in primary elections. Moreover, the

title the Board set “correctly and fairly express[es] the true intent and meaning” of #98 and would not lead to “public confusion.” As a result, the Board’s decision should be affirmed.

## ARGUMENT

### **I. The Board correctly found that #98 contains a single subject.**

#### **A. Standard of review.**

When this Court reviews “the Title Board's single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board's actions. [It] will only overturn the Title Board's finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2011-2012*, #45, 274 P.3d 576, 579 (Colo. 2012) (quotation omitted).

This issue was properly preserved. The Board found that #98 contains a single subject at its hearing on March 2, 2016. Attachment 2, at 8. Petitioners Daniels and Meek moved for rehearing, and the Board denied that motion on March 16. *Id.* at 15. Petitioners then timely filed their petition for review in this Court.



**B. Number 98 complies with the single-subject rule.**

The state constitution provides that “[n]o measure shall be proposed by petition containing more than one subject ....” COLO. CONST., art. V, § 1(5.5). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Title, Ballot Title, & Submission Clause for 1999-2000*, #25, 974 P.2d 458, 463 (Colo. 1999). In contrast, “to constitute more than one subject, the text of the measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2001-2002*, #43, 46 P.3d 438, 441 (Colo. 2002) (quotations omitted).

The Board correctly determined that #98 contains only one subject. The purpose of #98 is to expand the right of unaffiliated voters to participate in primary elections. Section 1 of the initiative declares, “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.” Attachment 1, at 2. It is true, as the Petitioners pointed out in their motion for rehearing before the Board, that #98 contains an exception to this general rule, permitting major political parties to opt out of the primary process and nominate their candidates by assembly or convention instead. But contrary to Petitioners’ assertion that this constitutes a “second discrete subject[],” Attachment 2, at 11, the provision is a part of #98’s broader subject: expanding the right of unaffiliated voters to participate in primary elections. The fact that #98 does not give unaffiliated voters an absolute right to participate in *every* nominating process of *every* political party does not mean that it has more than one subject. Number 98 says that unless a major political party abolishes its primary system altogether, unaffiliated voters must be given the opportunity to participate in their primaries—that is its animating purpose. Moreover, the drafters of the language of #98 were understandably concerned that a failure to include this exception would run afoul of the First Amendment. *See Cal. Dem. Party v. Jones*, 530 U.S. 567, 577 (2000) (California’s “blanket primary” violated the First Amendment because it “forces political parties to associate with—to

have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival.”). Thus #98 has no “hidden purpose under a broad theme.” *In re Title, Ballot Title, & Submission Clause for 2007-08, #17*, 172 P.3d 871, 875 (Colo. 2007). The Board’s decision should be affirmed.

## **II. The title the Board set for #98 was proper.**

### **A. Standard of review.**

This Court does not demand that the Board “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2009-2010, #45*, 234 P.3d 642, 645, 648 (Colo. 2010). Rather, it “give[s] great deference to the Title Board in the exercise of its drafting authority and will reverse its decision only if the titles, are insufficient, unfair, or misleading.” *Id.* (citation omitted).

This issue was properly preserved. The Board set a title for #98 on March 2, 2016. Attachment 2, at 8. The Petitioners moved for rehearing, and the Board made changes to #98’s title at the March 16

hearing. *Id.* at 15. Daniels and Meek then timely filed their petition for review in this Court.

**B. The title the Board set for #98 was proper.**

The state constitution requires that the subject of a proposed initiative “shall be clearly expressed in its title ....” COLO. CONST., art. V, § 1(5.5). Section 106(3)(b) establishes the standard for setting titles:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment... shall correctly and fairly express the true intent and meaning thereof .... Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S. In short, a title must be fair, clear, accurate, and complete. *In re Title, Ballot Title, & Submission Clause for 2007-2008, #62*, 184 P.3d 52, 58 (Colo. 2008).

Here, the Board’s title plainly expresses the measure’s core purpose—to expand unaffiliated voters’ right to participate in primary elections—when it describes #98 as “allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party ....”

**C. The title’s omission of an exemption for minor political parties is not misleading.**

The title’s omission of the “minor party exemption” does not render it misleading. Colorado law requires only that the title “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, #24*, 218 P.3d 350, 356 (Colo. 2009) (quotation omitted). The Board “need *not* include every detail” of the measure. *In re Title, Ballot Title, & Submission Clause for 2001-2002, #22 & #23*, 44 P.3d 213, 222 (Colo. 2002). The minor party exemption—which by definition does not affect election processes of any major party—need not be included in the title of #98. The title adopted by the Board makes clear

that #98 “allow[s] an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party.”

While it does not list out every detailed exception to that general rule, the title sufficiently distills #98 down into a “reasonably ascertainable expression of [its] purpose.” *In re Title, Ballot Title, & Submission Clause for 2009-2010, #45*, 234 P.3d 642, 648 (Colo. 2010) (citation omitted). Particularly under this Court’s deferential standard of review, the Board’s decision should be affirmed.

**D. The title’s omission of #98’s creation and use of a “combined ballot” is not misleading.**

To effectuate its substantive goal of permitting unaffiliated voters to participate in primary elections, # 98 makes several minor procedure changes to the election code. Among them, it provides that political parties “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 ....” Attachment 1, at 3.

“Such ballot shall clearly advise that an elector may cast the ballot of only one major political party ....” *Id.* If, however, “it is not practicable

for a county to use a single combined ballot ..., the county clerk and recorder shall send to all [unaffiliated voters] a mailing that contains the ballots of all the major political parties.” *Id.* In that case, “an elector may cast the ballot of only one major political party ....” *Id.* These are precisely the kind of “implementing provisions” or minute details that this Court has consistently held need not be included in a ballot’s title. *See In re Title, Ballot Title, & Submission Clause for 2007-2008, #17*, 172 P.3d 871, 874 (Colo. 2007) (citation omitted). There is no risk of voter confusion or surprise by omitting these details from #98’s title; the Board’s decision should be affirmed.

### **CONCLUSION**

For the reasons given above, the Court should affirm the Board’s March 16, 2016 decision regarding #98.

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

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## CERTIFICATE OF SERVICE

This is to certify that I electronically served the **TITLE BOARD'S OPENING BRIEF** and related documents upon the following parties through ICCES this 14<sup>th</sup> day of April, 2016:

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