

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding Pursuant to §1-40-107(2),
C.R.S.

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2015-
2016 #133

Petitioners: DONNA R. JOHNSON,

v.

Respondents: KATHLEEN CURRY and FRANK
MCNULTY,

and

Title Board: SUZANNE STAIERT, SHARON
EUBANKS, and FREDERICK R. YARGER.

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Supreme Court Case No.:
16SA154

RESPONDENTS' ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) because it contains **2,019** words.

In response to each issue raised, Proponents provide under a separate heading before the discussion of the issue, a statement indicating whether Proponents agree with Ms. Johnson's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

By: /s/ Kelley B. Duke
Kelley B. Duke, #35168

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Respondents Kathleen Curry and Frank McNulty ("Proponents"), registered electors of the State of Colorado and the proponents of Initiative 2015-2016 #133 ("Initiative #133"), through counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, respectfully submit their Answer Brief in support of the title, ballot title, and submission clause (the "Title(s)") set by the Title Board for Initiative #133 and in response to the Opening Brief submitted by Petitioner Donna R. Johnson ("Ms. Johnson").

SUMMARY OF ARGUMENT¹

Ms. Johnson cannot dispute that Initiative #133's provisions all relate to redistricting in Colorado. Instead, she asserts that certain implementing provisions in Initiative #133 that address the redistricting commission's nominating process and eligibility requirements are separate subjects. This argument fails because implementing provisions that are directly connected to the central purpose of the initiative are not separate subjects. Accordingly, the Petition should be denied.

¹ Pursuant to C.A.R. 28(b), Proponents' Answer Brief omits the statement of the issues and statement of the case, not because Proponents agree with Petitioners' recitation of such sections, but because they were addressed in Proponents' Opening Brief.

ARGUMENT

I. Initiative #133 Contains a Single Subject

A. Standard of Review.

Ms. Johnson's recitation of the standard of review omits statements of law reflecting the appropriate deference owed to the Title Board's conclusion that Initiative #133 contains a single subject. Proponents believe the standard of review is more accurately and completely set forth in their Opening Brief. See *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) ("*In re #89*") (in connection with reviewing the Title Board's decision on single subject, the Court should "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's actions.").

Proponents agree that Ms. Johnson preserved the single subject issue below.

B. Initiative #133 Addresses the Single Subject of Redistricting in Colorado.

"So long as an initiative encompasses related matters, it does not violate the single subject requirement." See *In re #89*, 328 P.3d 177. Here, as reflected in its Title, the single subject of Initiative #133 is redistricting in Colorado. Initiative #133 proposes to change the process of redistricting state legislative districts in Colorado by restructuring and renaming the Colorado reapportionment commission as the Colorado redistricting commission and setting forth its authority

and procedures for redistricting state legislative districts. Ms. Johnson does not contend that any of Initiative #133's provisions are unrelated to redistricting in Colorado, but instead asserts that redistricting in Colorado is too broad to constitute a single subject. However, this Court has upheld the Title Board's decision as to single subject where the initiatives in question were comparatively broader in scope than Initiative #133.

For example, this Court recently affirmed the Title Board's decision that 2015-2016 #73 contains a single subject. *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶¶ 20-21 ("*In re #73*"). The single subject of Initiative #73 is the manner in which recall elections are triggered and conducted for both state and local elective officials. *Id.* ¶ 20. Its provisions address such far-reaching issues as: (1) dramatically reducing the signature requirement for recall elections; (2) allowing four different types of officials to be recalled by the same petition; (3) limiting the petition review that election officials perform to ensure that the recall election should go forward; (4) specifying successor election procedures for state and local officials; (5) changing qualifications to hold office for state and county officials by prohibiting recalled officials and officials who resign from office during a recall process from holding any elective office for six years; and (6) eliminating the application of campaign

finance laws and disclosure requirements for only the proponents of the recall, but not for the opponents. *Id.* at Appendix. This Court reasoned that Initiative #73 contains a single subject because all of its provisions, while wide-ranging, fall under the umbrella of the manner in which recall elections are triggered and conducted for both state and local elective officials. *Id.* at ¶ 20 (citing *In re Title, Ballot Title, and Submission Clause for 2013-2014 #76*, 333 P.3d 76 (Colo. 2014) ("*In re #76*") (finding similar recall initiative would have contained single subject absent provision creating new constitutional right to recall non-elected officials)).

This Court has similarly held that other more broadly defined initiatives contained a single subject. *See In re #89*, 328 P.3d at 179 (upholding title setting for initiative creating a right to conservation of the environment, adopting a public trust doctrine based on common property, and empowering local control over environmental regulations that would preempt less restrictive state laws); *In the Matter of the Title, Ballot Title and Submission Clause for 1999-2000 #256*, 12 P.3d 246, 254-55 (Colo. 2000) (upholding title setting for initiative relating to "management of development" and addressing "numerous issues in a detailed manner" with "different effects" because all the provisions were connected to management of development).

Here, the provisions of #133 all relate to, and are directly connected with, redistricting in Colorado, which is not a broader subject than recall elections, a public right to the environment, or management of development. Nevertheless, Ms. Johnson raises two arguments in support of her position that Initiative #133 contains multiple subjects. Each is addressed in turn.

1. Initiative #133's Prohibition on Lobbyists from Serving on the Redistricting Commission Is Properly Connected to Redistricting in Colorado.

Ms. Johnson maintains in her Opening Brief that prohibiting "registered lobbyists" from sitting on the redistricting commission is a separate subject. Petitioner's Op. Br. at 7-9. As set forth in Proponents' Opening Brief, prohibiting lobbyists who are directly involved in influencing the political process is properly connected to Initiative #133's central purpose of depoliticizing redistricting through a new redistricting process. Ms. Johnson's statement that this "issue is controlled by a clear holding on another ballot initiative" is incorrect. Petitioner's Op. Br. at 7 (citing *In re Title, Ballot Title and Submission Clause for 2003-2004 #32 and #33*, 76 P.3d 460, 462 (Colo. 2003) ("*In re #32 and #33*"). As set forth in Proponents' Opening Brief, *In re #32 and #33*, is inapposite because the initiative's prohibition on all attorneys from serving on the Title Board ran contrary to its purpose of liberalizing the initiative process. Proponent's Op. Br. at 11-13.

Ms. Johnson's reliance on *In re #32 and #33* ignores that only separate and unconnected purposes violate the single subject rule. *In re Ballot Title 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000). In contrast, implementation provisions that tend "to effect or to carry out" the "one general object or purpose of the initiative" do not violate the single subject rule. *Id.* Here, eligibility requirements for the redistricting commission implement Initiative #133's central purpose of addressing redistricting in Colorado through an independent commission.

Other ballot initiatives have utilized similar prohibitions and did not violate the single subject rule. For example, this Court recently single-subject approved 2015-2016 #73, which, in addition to dramatically changing how recall elections are triggered and conducted, prohibits all recalled official and all officials who resign from office during a recall process from holding any elective office for six years. *In re #73*, 2016 CO 24, at Appendix. This Court reasoned that the broad prohibition on participating in the political process did not constitute a separate subject because it was related to the manner in which recall elections are triggered and conducted. *See id.* at ¶¶ 20-21.

Similarly, the ballot initiative behind Amendment 41 contained a number of provisions related to ethics in government, including a prohibition on statewide public officer holders and members of the general assembly from serving as

professional lobbyists for two years after leaving office. Colo. Const. art. XXIX, § 4. Amendment 41 was single subject approved by the Title Board and approved by the Colorado voters in 2006.² The lobbying prohibition in Amendment 41 did not violate the single subject requirement because it implements its central purpose of addressing ethics in government. Likewise, the lobbyist prohibition in Initiative #133 implements its central purpose of redistricting in Colorado through an independent commission and does not constitute a separate subject.

2. The Nominating Process for the Redistricting Commission Is Properly Connected to Redistricting in Colorado.

As discussed above, implementing provisions that tend "to effect or to carry out" the "one general object or purpose of the initiative" do not violate the single subject rule. *In re #200A*, 992 P.2d at 30. Here, the proposed independent redistricting commission is the cornerstone of Initiative #133, and therefore provisions addressing the commission nominating process carry out the initiative's general object or purpose.

Ms. Johnson, however, reiterates her argument below that utilizing the supreme court nominating commission to provide a list of 10 applicants to fill the last 4 seats on the restructured redistricting commission amounts to a separate

² See Colorado Secretary of State, 2005-2006 Initiative Filings, Agendas & Results, <http://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/2005-2006index.html>.

subject because it will politicize the nominating commission. Petitioner's Op. Br. at 9-14. This argument fails because it addresses the "efficacy, construction, or future application" of the initiative. *In re #89*, 328 P.3d at 176. Further, Ms. Johnson inaccurately describes Initiative #133's nominating process when she states that the highest ranking officials from the two largest parties will select the last 4 commissioners from the list of 10 applicants provided by the nominating commission. Petitioner's Op. Br. at 3. The last 4 commissioners will be selected by the 8 commissioners already appointed. Proposed § 45(8)(a)(III)(B). Ms. Johnson's interpretation is just wrong.

Regardless, Ms. Johnson's merits-based position continues to be illogical because Initiative #133 does not alter the composition or selection process for the supreme court nominating commission. Like the redistricting process, the judicial selection process is susceptible to political influences, which is why the supreme court nominating commission was instituted in the first place. If the supreme court nominating committee, as presently constituted and appointed, can leave politics aside in the judicial nominating process, then it can also do so in nominating for the redistricting commission. This is particularly true given that the nominating commission will not directly select any redistricting commissioners but only provide a list of nominees to the redistricting commission. Consequently, Ms.

Johnson's concerns about "voter surprise" as to the purported dramatic impacts on the nominating commission lack merit.

Ms. Johnson also contends that utilizing the judiciary branch in the nominating process constitutes a separate subject because redistricting is a legislative function. Petitioner's Op. Br. at 12. Ms. Johnson's protestations regarding the judiciary's proposed role in the nominating process are puzzling considering the judiciary's current role in the process.

Ms. Johnson's argument that redistricting is a legislative function also assumes that the nominating commission will actually be responsible for redistricting, which is not true. Redistricting will be a function of the redistricting commission, and Ms. Johnson concedes that Colorado voters are free to divest the general assembly of this authority and grant it to the redistricting commission. Petitioner's Op. Br. at 12 (citing *Armstrong v. Mitten*, 37 P.2d 757, 759-60 (Colo. 1934)). Ms. Johnson does not cite, and Proponents cannot find, any authority for the proposition that the common practice of utilizing a separate branch of government in a commission nominating process constitutes a separate subject.

Ms. Johnson again cites *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #64*, 960 P.2d 1192 (Colo. 1998) ("*In re #64*") as the only authority in support of her nominating commission argument.

Petitioner's Op. Br. at 12. As set forth in Proponent's Opening Brief, the central purpose of the proposed initiative in *In re #64* was to address the qualifications of judicial officers, yet the initiative also overhauled the composition and nominating process for the unrelated judicial discipline commission. *Id.* at 1199-1200.

In contrast, here, Initiative #133 does not change the composition or nominating process for the supreme court nominating commission. Rather, Initiative #133 addresses the nominating process for the redistricting commission, which is directly related to its single subject of redistricting in Colorado.

Accordingly, Initiative #133 contains a single subject.

CONCLUSION

WHEREFORE, Proponents respectfully request that the Court deny the Petition and affirm the Title Board's setting of the Titles for Initiative #133.

Respectfully submitted this 2nd day of June, 2016.

IRELAND STAPLETON PRYOR & PASCOE, PC

s/ Kelley B. Duke

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2016, a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was duly filed with the Court and served via ICCES upon the following:

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