

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 2017-
2018 #48

Petitioners: ROBERT DURAY and
KATINA BANKS,

v.

Respondents: KATHLEEN CURRY and
TONI LARSON,

and

Title Board: SUZANNE STAIERT, SHARON
EUBANKS, and GLENN ROPER.

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Supreme Court Case No.:
2017SA259

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 **1,251** 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 Opponents' 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/ Benjamin J. Larson
Benjamin J. Larson, #42540

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Respondents Kathleen Curry and Toni Larson ("Proponents"), registered electors of the State of Colorado and the proponents of Initiative 2017-2018 #48 ("Initiative #48"), 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 #48 and in response to the Opening Brief submitted by Petitioners Robert DuRay and Katina Banks ("Opponents").

SUMMARY OF ARGUMENT¹

The Titles clearly explain the political composition of the commission and state that the initiative is "changing the qualifications and methods of appointment of members of the commission." Opponents nevertheless contend that the Titles should provide additional details about the method of appointment. In overstating the importance of these details, Opponents mischaracterize Initiative #48 and certain of Proponents' informational materials. In fact, after reading Opponents' Opening Brief, one would think that Initiative #48 merely changes the appointment process for the Reapportionment Commission, when, in fact, Initiative #48 overhauls state legislative redistricting in Colorado.

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 Opponents' recitation of such sections, but because they were addressed in Proponents' Opening Brief.

For example, the Opening Brief fails to mention that Initiative #48 balances the political composition of the commission, subjects the commission's work to open meeting requirements, prohibits the drawing of plans to purposefully advantage or disadvantage any political party or person, requires non-partisan legislative staff—not the commissioners—to draw redistricting plans, and requires the agreement of at least 8 of 12 commissioners, including one independent commissioner, to approve any action of the commission, among other things. Given all of these important changes, the Title Board was well within its considerable discretion in describing the end result of the political composition of the Commission, not the process by which that balanced composition is achieved.

ARGUMENT

The Titles Are Fair, Clear, Accurate, and Complete.

A. Standard of Review/Preservation.

Opponents' recitation of the standard of review omits statements of law reflecting the appropriate deference owed to the Title Board in setting titles. Proponents believe the standard of review is more accurately and completely set forth in their Opening Brief.

Proponents agree that the issue was preserved for appeal.

B. The Titles Clearly State That the Initiative Changes the Appointment Process and Also Explain the Political Balance of the Commission.

Opponents cannot dispute that the Titles inform voters that Initiative #48 changes the method and process for appointing commissioners, identify the number of commissioners who will sit on the Independent Legislative Redistricting Commission (the "Commission"), and describe the commissioners' respective political affiliations or non-affiliations. R., pt. 2, p. 22. Opponents nevertheless contend that the Titles should also explain that the 8 major party members of the Commission are appointed by party leadership, rather than by partisan-elected officials, as is the case with 7 of the 11 members of the reapportionment commission.

In making this argument, Opponents go to great lengths to argue about the merits of the appointment process when the merits of a measure are not relevant to whether the Title Board fulfilled its duty of ensuring that the Titles meet constitutional requirements. *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 375 P.3d 123, 125 (Colo. 2006). Moreover, in attempt to inflate the importance of the details of the appointment process, Opponents mischaracterize Initiative #48 and certain informational materials. For example, the Opening Brief states that "[t]he title fails to inform voters that a commission

that is supposedly a response to political party control of redistricting is, in fact, controlled by the two major political parties." Opening Br. at 6.

This is wrong. In fact, the two major political parties control the redistricting process under the current system, and Initiative #48 takes critical steps to eliminate their control. *See* Colo. Const. art. V, § 48(1)(c) (describing that 7 out of the 11 commissioners on the reapportionment commission are appointed by partisan elected officials). Opponents simply ignore these aspects of the measure, including the following:

- The Commission must include 4 members who are not affiliated with the state's two largest political parties. R., pt. 2, p. 6, Proposed Colo. Const. art. V, § 48(2).
- Maps must be drawn by the nonpartisan professional staff of the General Assembly and presented to the Commission in a public meeting for public input and discussion. R., pt. 2, p. 14, Proposed Colo. Const. art. V, § 48.5(1)(a).
- Maps cannot be drawn to purposefully advantage or disadvantage any political party or person. R., pt. 2, p. 5, Proposed Colo. Const. art. V, § 47(4)(c).
- All Commission actions, including approval of a final map, requires the affirmative vote of at least 8 of the 12 members, including at least one member who is not a member of either of the two major political parties, thereby precluding the major parties from controlling the process. R., pt. 2, p. 14, Proposed Colo. Const. art. V, § 48.3(9).
- If the commissioners cannot agree, then a map drawn by the nonpartisan legislative staff becomes the approved map for submission for court

approval. R., pt. 2, pp. 15-16, Proposed Colo. Const. art. V, § 48.5(2), and (6)(d).

In ignoring these important features of Initiative #48, Opponents incorrectly insinuate that certain statements made on the website for Initiative #48 are not true. *See, e.g.*, Opening Br. at 7 (quoting statements concerning how redistricting plans are drawn, such as, "Our initiatives take map drawing out of the hands of political insiders."). The website is accurate—Initiative #48 tasks nonpartisan legislative staff with drawing redistricting plans. Moreover, the way in which Opponents cherry-pick these statements also glosses over the fact that the website makes clear that the Commission will have commissioners affiliated with the state's two largest political parties.²

Of course, this is also plainly reflected in the Titles, which identify the political balance of the Commission as being evenly balanced between 4 commissioners from the state's largest political party, 4 commissioners from its second largest political party, and 4 commissioners who are not affiliated with either party. R., pt. 2, p. 22. This political balance is the critical information for voters—not how that political balance is achieved.

² *See* <http://fairdistrictscolorado.org/the-solution/> ("Redistricting should be done by an independent commission consisting of Republicans, Democrats, and non-major party members.")

In demanding that the Titles include unnecessary detail, Opponents fail to consider that "ballot titles often cannot describe every feature of a proposed initiative in a title or ballot title and submission clause and simultaneously heed the mandate that such documents be concise." *In re Title, Ballot Title & Submission Clause for 1997-98 #62*, 961 P.2d 1077, 1083 (Colo. 1998). Here, adding an explanation of how the non-independent commissioners are appointed would then require an explanation of the detailed process by which the independent commissioners are appointed. R., pt. 2, pp. 7-10, Proposed Colo. Const. art. V, § 48(6). Such a change would push the Titles to unwieldy lengths and would violate the requirement that ballot titles be concise.

As currently drafted, the Titles properly balance clarity and brevity because they inform voters that the method for appointing commissioners is changing and they identify the political affiliation of each of the commissioners. Accordingly, the Court should defer to the Title Board's considerable discretion in setting titles and deny the Petition.

CONCLUSION

WHEREFORE, Proponents respectfully request that the Court deny the Petition and affirm the Title Board's setting of the Titles for Initiative #48.

Respectfully submitted this 5th day of December, 2017.

IRELAND STAPLETON PRYOR & PASCOE, PC

/s/ Benjamin J. Larson _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2017, a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was duly filed with the Court and served via CCEF upon the following:

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