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COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107 Appeal from the Title Board In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #50 (“Congressional Redistricting”) **Petitioners:** Robert DuRay and Katina Banks v. **Respondents:** Kathleen Curry and Toni Larson and **Title Board:** Suzanne Staiert, Sharon Eubanks, and Glenn Roper.	▲ **COURT USE ONLY** ▲ Case No. 2017 SA 260
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TITLE BOARD’S ANSWER BRIEF

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:

1. The brief complies with the word limits set forth in C.A.R. 28(g) because it contains 951 words.

2. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and C.A.R. 28(b) because, for the party raising the issue, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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

/s/ *Matthew D. Grove*
Attorney for the Title Board

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Title Board members Suzanne Staiert, Sharon Eubanks, and Glenn Roper (the "Board"), by and through undersigned counsel, hereby submit the following Answer Brief.

SUMMARY OF THE ARGUMENT

The Title Board's title for #50 should be affirmed. It strikes an appropriate balance between length, clarity, and detail, and properly informs voters and potential signers of the central features of the initiative.

ARGUMENT

I. Standard of review and preservation.

All parties appear to agree that the Title Board has "considerable discretion in setting the title and the ballot title and submission clause," and that this Court will "employ all legitimate presumptions in favor of the propriety of the Title Board's actions." *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 375 P.3d 123, 125 (Colo. 2006).

All parties likewise agree that Petitioners preserved the issue presented in this appeal by raising it in their motion for rehearing before the Title Board.

II. The title for #50 satisfies clear title requirements.

The thrust of Petitioners' argument is that the title for #50 is incomplete because although it discloses who would be eligible to sit on the Congressional Redistricting Commission, it is silent as to who is responsible for making those appointments. The Title Board largely stands on the arguments outlined in its Opening Brief with respect to this question. The title for #50 correctly balanced the competing demands of clarity and brevity. Explaining that the commissioners would have been appointed by three different authorities[1] would have dramatically expanded the title for #50, and in so doing would have unnecessarily expanded an already-lengthy title.

The Title Board is responsible for "set[ting] fair, clear, and accurate titles that do not mislead the voters through a *material* omission or misrepresentation." *In re 1999–2000 No. 256,* 12 P.3d 246, 256 (Colo. 2000) (emphasis added). A title need not "contain every detail of the proposal" nor "explain every possible effect of enacting the

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[1] The three different appointing authorities would be the state's two largest political parties and a separate group made up of senior judges who are responsible for appointing the four commissioners who do not belong to either of the largest two parties.

initiative." *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 179 (Colo. 2014). So long as the language chosen by the Title Board is not "clearly misleading," it will be approved. *Id.*

In arguing that identity of the appointing authorities is material to the title, and that its omission is grounds for reversal, Petitioners point first to Amendment 27 (proposed in 2002) and also to an earlier opinion from this Court approving the title for a campaign finance reform initiative proposed in 1994. *See In re Title, Ballot Title and Submission Clause, and Summary for a Petition on Campaign and Political Finance*, 877 P.2d 311, 320 (Colo. 1994). The titles for both the 1994 and 2002 initiatives mentioned "political parties" several times. Petitioners claim that if, in connection with those initiatives, it "was important for voters to know what political parties could do in terms of the political contributions they accepted and the political contributions they made," then it is similarly "important that voters know what political parties would do under #50 in terms of making appointments of 2/3 of the supposedly apolitical commission." Op. Br. at 10.

The problem with this argument is that Amendment 27 and its 1994 predecessor both directly imposed limitations on certain activities by political parties. Indeed, imposing limits on the extent to which political parties (among other entities) could fundraise and contribute money to political candidates was a central feature of both initiatives. Omitting any mention of political parties in the title would have thus been surprising and problematic. With #50, by contrast, the mechanics of the appointment process take a back seat to the identity and affiliations of the commissioners themselves. No reasonable voter who understands the affiliation requirement for 2/3 of the commission would be surprised that commissioners affiliated with major political parties may bring certain preferences to the table, regardless of who appointed them. #50 does not hide that fact. Rather, it embraces the polarity of its appointees by imposing a supermajority requirement in order to minimize the risk of political gerrymandering.

Petitioners also cite *Cook v. Baker*, 214 P.2d 787 (Colo. 1950), as support for the proposition that the Title Board was required to describe the mechanics of the appointment process in the title. The title in *Cook*,

however, was not invalidated because it failed to identify who was responsible for appointing the members of the proposed civil service commission. Rather, it was invalidated because it was far too long. 214 P.2d at 790 ("The ballot title and submission clause, as fixed by the board, contains 369 words while the proposed amendment itself contains but 505 words. Obviously little effort was made by the board to comply with the mandatory requirements of the statute that ballot titles be brief."). When this Court rewrote the title—an exercise it no longer engages in—it did choose to identify the appointing authority while omitting certain other information. *Id.* at 194. But even if the initiative in *Cook* were comparable to #50 (and for a host of reasons it is not), nothing in this Court's opinion suggests that identification of the appointing authority was a central feature that it would have been error for the Title Board to omit.

All that *Cook* stands for is that, when it comes to title setting, overinclusiveness is as grave a sin as material omission. With respect to #50, the Title Board struck an appropriate balance between those two extremes. The title should therefore be affirmed.

CONCLUSION

The title for #50 should be affirmed.

Respectfully submitted this 5th day of December, 2017.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **TITLE BOARD'S ANSWER BRIEF** upon all parties herein by Colorado Courts E-filing System or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 5th day of December 2017 addressed as follows:

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