

**SUPREME COURT, STATE OF COLORADO**

2 East 14<sup>th</sup> 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 #96 ("State Legislative Redistricting")

**Petitioners:** RANDOLPH E. PYE and  
MAX S. GAD,

v.

**Respondents:** ROBERT DURAY and CARLA  
CECILIA CASTEDO RIBERO

and

**Title Board:** SUZANNE STAIERT, JASON  
GELENDER, and GLENN ROPER.

**ATTORNEYS FOR PETITIONERS:**  
Kelley B. Duke, #35168  
Benjamin J. Larson, #42540  
IRELAND STAPLETON PRYOR & PASCOE, PC  
717 17th Street, Suite 2800  
Denver, Colorado 80202  
Telephone: 303-623-2700  
Facsimile: 303-623-2062  
E-mail: [kduke@irelandstapleton.com](mailto:kduke@irelandstapleton.com)  
[blarson@irelandstapleton.com](mailto:blarson@irelandstapleton.com)

▲ COURT USE ONLY ▲

Supreme Court Case No.:  
2018SA30

**PETITIONERS' OPENING 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 1,060 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A), because it contains under a separate heading before the discussion of the issue, as applicable, 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 or 28.1, and C.A.R. 32.

By: /s/ Benjamin J. Larson  
Benjamin J. Larson, #42540

## TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
STATEMENT OF CASE .....	1
I. Nature of the Case and Proceedings before the Title Board .....	1
II. Statement of Relevant Facts. ....	2
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	3
Initiative #96 Contains Multiple Subjects. ....	3
I. Standard of Review; Preservation of Issues on Appeal. ....	3
II. Requiring the Judicial Branch to Select Half the Commissioners Is a Separate Subject. ....	4
CONCLUSION.....	6

## TABLE OF AUTHORITIES

### *Cases*

<i>In re Proposed Initiative on "Public Rights in Water II", 898 P.2d 1076 (Colo.1995)</i> .....	3
<i>In re Title, Ballot Title &amp; Submission Clause for 2013-2014 #76, 2014 CO 52</i> .....	3
<i>In re Title, Ballot Title &amp; Submission Clause for Proposed Initiative 2001-02 #43, 46 P.3d 438 (Colo. 2002)</i> .....	3, 4, 6
<i>In re Title, Ballot Title 1997-98 #30, 959 P.2d 822 (Colo. 1998)</i> .....	4
<i>In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #89, 328 P.3d 172 (Colo. 2014)</i> .....	4
<i>In re Title, Ballot Title, &amp; Submission Clause for Initiative 2015-16 #132 and #133, 2016 CO 55</i> .....	3, 5

### *Statutes*

§ 1-40-106.5, C.R.S. ....	3
§ 1-40-107, C.R.S. ....	1, 2

### *Constitutional Provisions*

Colo. Const. art. V, § 48(1)(b).....	5
--------------------------------------	---

Petitioners Randolph E. Pye and Max S. Gad ("Petitioners"), registered electors of the State of Colorado, through counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, respectfully submit their Opening Brief in opposition to the title, ballot title, and submission clause (the "Title(s)") set for Initiative 2017-2018 #96 ("Initiative #96").

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Whether Initiative #96 violates the single subject requirement when it politicizes the judicial branch by requiring the Chief Judge of the Colorado Court of Appeals to select half of the commissioners, including four of the six partisan commissioners.

## **STATEMENT OF CASE**

### **I. Nature of the Case and Proceedings before the Title Board.**

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. of the title setting for Initiative #96. Proponents Robert DuRay and Carla Cecilia Castedo Ribero filed Initiative #96 with the Secretary of State on January 5, 2018. The Title Board, on behalf of the Secretary of State, held a title hearing on January 17, 2018, finding that Initiative #96 contains a single subject and setting the Titles. R., p. 40.<sup>1</sup>

---

<sup>1</sup> Record citations are to the electronic page number.

Petitioners timely filed a motion for rehearing ("Motion for Rehearing"). R., pp. 33-38. The rehearing was held on February 7, 2018, at which the Title Board granted the Motion for Rehearing as to clear title issues, but denied it as to single subject issues. R., p. 40. On February 14, 2018, Petitioners petitioned this Court pursuant to section 1-40-107(2), C.R.S., seeking review of one of the single subject issues. Petition for Review, p. 4.

## **II. Statement of Relevant Facts.**

Initiative #96 re-writes the procedures and criteria by which the Colorado Reapportionment Commission (the "Commission") draws state legislative districts. R., pp. 2-10. The Commission is increased from 11 to 12 members, half of whom are selected by the Chief Judge of the Colorado Court of Appeals. R., pp. 5-6, Proposed art. V, § 48(1)(e). The Chief Judge's selections include two unaffiliated commissioners, two commissioners registered with the state's largest political party, and two commissioners registered with the state's second largest political party. *Id.*

## **SUMMARY OF ARGUMENT**

Initiative #96's tasking of the judiciary with selecting half of the commissioners for state legislative redistricting, including four of the six partisan commissioners, involves the judiciary in the politically charged redistricting

process. This politicization of the judiciary constitutes a second subject under *In re Title, Ballot Title, & Submission Clause for Initiative 2015-16 #132 and #133*.

## **ARGUMENT**

### **Initiative #96 Contains Multiple Subjects.**

#### **I. Standard of Review; Preservation of Issues on Appeal.**

While the Court employs all legitimate presumptions in favor of the propriety of the Title Board's actions, it will overturn the Title Board where it has clearly erred. *In re Title, Ballot Title & Submission Clause for 2013-2014 #76, 2014 CO 52*, ¶ 8. Pursuant to article V, section 1(5.5) of the Colorado Constitution and section 1-40-106.5(1)(a), C.R.S., ballot initiatives must contain a single subject. The single subject requirement forbids the joining of "incongruous subjects in the same measure," and thereby ensures "each proposal depends on its own merits for passage." *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 441 (Colo. 2002) (quoting *In re Proposed Initiative on "Public Rights in Water II"*, 898 P.2d 1076, 1078 (Colo.1995)) (internal quotations omitted). Accordingly, a measure has multiple subjects if it has "two distinct and separate purposes which are not dependent upon or connected with each other." *Id.* (quoting *Public Rights in Water II*, 898 P.2d at 1078-79) (internal quotations omitted).

The purpose of the single subject requirement is twofold. First, it prevents the enactment of combined, unrelated measures that would fail on their individual merits. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014). Second, it protects against voter surprise by the inadvertent passage of surreptitious provisions hidden within a complex initiative that has multiple, unconnected purposes. *Id.* at 177-78.

The determination of the single subject requirement is not based on the merits of an initiative or how an initiative might be applied if enacted. *In re 2001-02 #43*, 46 P.3d at 443. However, the Title Board and this Court "must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated." *Id.* In making this assessment, the Court applies the usual rules of statutory construction, including the requirement that terms be given their plain meaning. *In re Title, Ballot Title 1997-98 #30*, 959 P.2d 822, 825 (Colo. 1998).

The single subject issues raised by Petitioners on appeal were preserved below in their Motion for Rehearing. R., pp. 33-34.

## **II. Requiring the Judicial Branch to Select Half the Commissioners Is a Separate Subject.**

Proposed article 5, § 48(1)(e) of Initiative #96 grants significant redistricting responsibilities to the judiciary by requiring the Chief Judge of the Colorado Court



of Appeals to select half of the Commission's members, including four of the six partisan commissioners. R., pp. 5-6. In *In re 2015-16 #132 and #133*, this Court reasoned that imposing politically charged responsibilities on a separate, apolitical constitutional body constituted a second subject. 2016 CO 55, ¶ 25.

Moreover, the incursion on the independent judiciary is much greater here than was proposed in *In re 2015-16 #132 and #133*. In that case, the Supreme Court Nominating Commission was to be tasked with recommending a pool of candidates from which the already-appointed commissioners would select the four unaffiliated commissioners. 2016 CO 55, ¶¶ 6, 26. Whereas, here, Initiative #96 requires the judiciary to make the final selection for half of the Commission's members, including four of the six partisan commissioners.<sup>2</sup> This level of intrusion constitutes a second subject under *In re 2015-16 #132 and #133*. See 2016 CO 55, ¶ 25.

---

<sup>2</sup> To the extent Proponents contend that the judiciary is already involved in the selection of commissioners to the Commission, that constitutional provision at article V, section 48(1)(b) was added prior to the advent of the single subject requirement in 1994. *In re 2001-02 #43*, 46 P.3d at 440 (describing history of single subject requirement).

## CONCLUSION

WHEREFORE, Petitioners respectfully request that, based on the foregoing arguments and authorities, this Court find that Initiative #96 violates the single subject requirement and that the Title Board lacked jurisdiction to set the Title.

Respectfully submitted this 6<sup>th</sup> day of March, 2018.

IRELAND STAPLETON PRYOR & PASCOE, PC

*/s/ Benjamin J. Larson* \_\_\_\_\_

Kelley B. Duke, # 35168

Benjamin J. Larson, #42540

**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of March, 2018, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was duly filed with the Court and served via CCEF upon the following:

Carla Cecilia Castedo Ribero  
Robert DuRay  
c/o Mark G. Grueskin  
RECHT KORNFELD, P.C.  
1600 Stout Street, Suite 1000  
Denver, CO 80202  
[mark@rklawpc.com](mailto:mark@rklawpc.com)  
*Attorneys for Respondents*

LeeAnn Morrill  
Matthew Grove  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203  
*Attorneys for Title Board*

*/s/ Hannah Pick* \_\_\_\_\_

Hannah Pick