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OF THE STATE OF COLORADO
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SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	
Original Proceeding Pursuant to CRS § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #197 (“Elections to Fill Vacancies in the General Assembly”) Petitioner: Linda Good f/k/a Linda Bissett, v. Respondents: Jason Bertolacci and Owen Alexander Clough, And Title Board: Theresa Conley, Christy Chase, Jennifer Sullivan	▲ COURT USE ONLY ▲
Pro Se Petitioner: Linda Good 916 E Costilla Way Centennial, CO 80122 720-219-3053 LindaLaughs@ProtonMail.com	Case Number: 24SA93
PETITIONER’S ANSWER	

CERTIFICATE OF COMPLIANCE

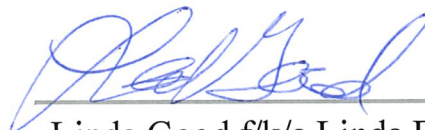
I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g).

It contains 3288 words.

The brief complies with C.A.R. 28(k).

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.



Linda Good f/k/a Linda Bissett
Pro Se Petitioner

Table of contents

INTRODUCTION5

LEGAL ARGUMENT.....6

 I. The Title contains additional provisions not found in the Proposed Initiative; therefore, the Title is not legally set.....6

 II. The Initiative violates the single subject requirement.8

 A. Changing the voting method from Plurality of votes to Ranked Choice Voting cannot be considered an implementing measure.8

 B. Ranked Choice Voting is not tied to the single subject.....11

 III. Title set is in violation of CRS § 1-40-106.5(e)(II).....15

 A. Voter Surprised by Rank Choice Voting Methods.....15

 B. Voters Surprised by New Executive Power.....17

CONCLUSION.....19

TABLE OF AUTHORITIES

Cases

.” In re 2013-2014 #76, 2014 CO 52, ¶ 8.”11

In re 2013-2014 #76, 2014 CO 52, ¶ 85

In re 2021-2022 #16, 2021 CO 55, ¶ 2911

Statutes

CRS § 1-11-10613

CRS § 1-11-208.5(6)(a)14

CRS § 1-11-301(1)(c)14

CRS § 1-11-310(5).....14

CRS § 1-40-106.5(e)(II).....19

CRS § 1-4-10414

Constitutional Provisions

Colo. Const.Article V § 2(3).....7

INTRODUCTION

The Title Board, hereinafter referred to as “the Board” is not required to set perfect ballot titles. This leeway, however, is not a license to set initiative titles whereby additional provisions are presented in the Title that are not in the text of the initiative as has been done with Proposed Initiative #197.

Proponents may argue that their Initiative’s single subject is to establish an election to fill a General Assembly vacancy. However, Proponents have clearly articulated in their brief an additional subject: “the use of a ranked voting method is central to Respondent Proponents’ **goal** of increasing voter participation in elections so that officials are elected pursuant to the will of a majority of those voting.” Proponent’s brief p. 9. **emphasis added.** Clearly, the Proponents’ stated single subject of replacing the Vacancy committee appointments with a special legislative election and their goal of increasing voter participation through elected officials receiving the majority of votes in a Ranked Choice Voting method are not necessarily and properly connected. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

LEGAL ARGUMENT

I. The Title contains additional provisions not found in the Proposed Initiative; therefore, the Title is not legally set.

The Title Board argues that Petitioner does not have standing to raise any argument regarding the title set. “To the extent that Petitioner Good advances any clear title arguments, those arguments were not raised in her motion for rehearing or in her statement before the Title Board. Accordingly, any clear title objections are waived.” Title Board brief p. 5. However, with 62 initiatives presented to the Board by the Proponents since January, the Board discussed initiatives in groups vs individual proposals in order to manage this highly unusual influx of proposals concerning the conduct of elections. The Title Board, in their brief, conceded that Petitioner did state at the March 6, 2024 meeting that the proposed Title was not a single subject. Attempting to state that a citizen Petitioner does not have standing is a blatant attempt to cover for their failure to set a legal Title.

The Board has exhausted themselves to maintain the normal conduct of their hearings. However, the sheer volume of the Proponent’s initiatives forced the Board to conduct discussions of the current batch of initiatives along with referencing previous hearing’s discussions which Petitioner was not familiar with. This has caused confusion and a messy record which is evidenced by the fact that the Title Board accidentally, and illegally, inserted a provision for party affiliation for vacancies filled into the title set for Initiative #197 that is not included in the original initiative. Proponents, also, appear to be confused as they believe this

additional provision is appropriate to be included in the Title. They state “the measure alerts a voter to the restrictions on who is eligible to fill that seat, as prescribed by the state constitution.” Proponents’ brief p. 16. However, the Final Initiative #197 has excluded all reference to eligibility by party affiliation.

“The Title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning filling a vacancy in the Colorado legislature through a vacancy election instead of a political party vacancy committee appointment, and, in connection therewith, requiring the vacancy election to be held as soon as possible after the vacancy has occurred or during a November even-year election and to be conducted by ranked voting; **requiring that the candidates for the vacant position be members of the same political party as the vacating legislator and allowing any eligible voter to participate in the vacancy election;** and requiring the Colorado secretary of state to develop rules on how candidates petition onto the vacancy election ballot.” **Emphasis added**

Moreover, if this illegally added provision were not included, the initiative would be unconstitutional per Colo. Const. Art. V § 2(3) (see below); thus, making it subject to potential future legal challenges.

“Any vacancy occurring in either house by death, resignation, or otherwise shall be filled in the manner prescribed by law. The person appointed to fill the vacancy shall be a member of the same political party, if any, as the person whose termination of membership in the general assembly created the vacancy.”

II. The Initiative violates the single subject requirement.

A. Changing the voting method from Plurality of votes to Ranked Choice Voting cannot be considered an implementing measure.

Both the Board and the Proponents argue in their briefs that changing the conduct of elections from Plurality, or what they refer to it as “single choice method”, to Ranked Choice Voting method is merely “an implementing provision” Proponent’s brief p. 4 or “implementation details for how such elections will be conducted.” Title Board’s brief p. 9.

However, if changing the conduct of elections to Ranked Choice Voting was merely an “implementation detail”, then the Colorado General Assembly would not need to introduce single subject bills, such as Bill SB23-301, to change the conduct of the Presidential Primary Election to the Ranked Choice Voting method.¹ The legislators understand that not only changing the method of how we conduct elections is a subject matter worthy of its own Bill that narrowly targeted only the Presidential Primary election. With regards to Ranked Choice Voting, the General Assembly passed a

¹ https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a_301_01.pdf

single subject HB 21-1071 in June 2021. This bill allows counties to conduct Municipalities' elections using Ranked Choice Voting method in their coordinated elections.² These two legislative Bills illustrate that Ranked Choice is a material change to the conduct of elections and requires a single subject. For additional context, 4 Colorado localities, Aspen, Telluride, Boulder, and Basalt, have attempted to use Ranked Choice Voting beginning in 2009. Aspen used the method once in 2009 and recalled it after having had a bad experience with the method. Similarly, Telluride discontinued the method in 2015.

Taken in totality, only a tiny fraction of Coloradans have ever experienced Ranked Choice Voting; thus it is disingenuous to suggest that use of this method is merely "implementation".

Specifically, if all the people, who have experienced Ranked Choice Voting, are assumed to still reside in Colorado, then only 117,400* have experience with Ranked Choice Voting. Out of a state population of 5.9 million Coloradans, this represents 0.02%. Therefore, Petitioner contends

² <https://leg.colorado.gov/bills/hb21-1ba071>

that the change to Ranked Choice Voting is not simply an “implementation detail” Title Board brief p 7. Rather it creates a significant change to the conduct of elections and establishes a multi-subject Title which will confuse and potentially disenfranchise voters.

Localities Population in Year of Rank Choice Voting Use

Aspen: 6,800 in 2009

Telluride: 2,400 in 2015

Boulder: 104,200 in 2023

Basalt: 4,000 in 2020

Lastly, by comparison, when Ranked Choice Voting is implemented in other states, it is a single subject in and of itself. For comparison, the state of Maine passed a single subject ballot initiative in November 2018 for Ranked Choice Voting. The question appeared on the ballot as follows:

Do you want to allow voters to rank their choices of candidates in elections for U.S. Senate, Congress, Governor, State Senate, and State Representative, and to have ballots counted at the state level in multiple rounds in which last-place candidates are eliminated until a candidate wins by majority?

Voters in Colorado should be entitled to the same consideration outlined in our Title and Subject clause and not be subjected to its covert inclusion.

B. Ranked Choice Voting is not tied to the single subject

The Title Board argues that this “implementing detail” is directly tied to the initiative’s central focus. “However, the ranked voting provision is an implementation detail, not a separate subject, because it describes the mechanism that will carry out the initiative’s single subject of establishing vacancy elections. And implementation details ‘that are directly tied to the initiative’s central focus do not constitute a separate subject.’” *In re 2021-2022 #16*, 2021 CO 55, ¶ 29 (quotations omitted). - Title Board’s brief p. 7. They further argue that the change to Ranked Choice Voting method is necessarily connected to the vacancy election: “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. However, Ranked Choice Voting is NOT directly tied or necessarily connected to the special vacancy election as the single subject of the initiative. Simply stated, the Proponents could have proposed an initiative

that changed the committee appointment to a vacancy election without changing from the current plurality of votes method to Ranked Choice Voting. In making this change, it places voters in a quandary as they may want the election but not want the election to be conducted with Ranked Choice Voting. Essentially, voters will be forced to choose one and accept the other as a consequence.

This Petitioner's support for one part of the measure but not the other reflects voter concerns. Some voters will favor a new vacancy election to choose the replacement, but those voters may not back a "modern" voting method such as Ranked Choice Voting.

Conversely, there will be voters who oppose the new vacancy elections due to time without representation, but those same voters may want to change to a Ranked Choice Voting method of conducting elections. Because this measure addresses both issues, neither group can choose the issue it favors. Instead, voters in each group must decide if getting something they want and swallowing something else they oppose is worth it.

The single subject of 2023-2024 #197 replaces the appointment method of filling vacant seats in the Colorado legislature with a vacancy election method. However, the Board falsely claims that “replacing the appointment method with a vacancy election **logically must also entail specifying how such a vacancy election is conducted.**” Title Board brief p. 7 **Emphasis added.** There is nothing logical about this statement when in fact we have made revisions to Title 1 for over 100 years without “specifying how” elections are conducted because we have conducted elections by plurality of votes for 148 years in Colorado. The Colorado Constitution does not similarly prescribe the conduct of elections for the Legislative Department because plurality of votes had been the unquestioned precedent in the United States for 100 years when Colorado’s Constitution was written. However, CRS § 1-11-106 clearly states that plurality or “the highest number” determines who is elected:

“Upon the organization of the house of representatives, the secretary of state shall deliver to the speaker of the house a certified list of candidates elected to each state office and of each member elected to the general assembly showing the member's district. ... The person having the highest number of votes for any of the offices shall be declared duly elected by the presiding officer of the joint assembly.”

Other references to the highest number of votes and state senators and representatives include, but not limited to: CRS § 1-11-208.5(6)(a), CRS § 1-11-301(1)(c), and CRS § 1-11-310(5).

It is inappropriate to use the term “highest number of votes” in an election using any other method of elections such as Ranked Choice Voting because the General Assembly has connected the two in the only mention of Plurality in both the Constitution and Statutes. “Plurality of votes” and the “highest number of votes” are tied together is in CRS § 1-4-104 Party nominees:

“Candidates voted on for offices at primary elections who receive a plurality of the votes cast shall be the respective party nominees for the respective offices. If more than one office of the same kind is to be filled, the number of candidates equal to the number of offices to be filled receiving the highest number of votes shall be the nominees of the political party for the offices.”

In their pursuit to replace vacancy appointments with a special election, Proponents have offered up numerous Initiatives. Initiative 2023-2024 #134 has a similar subject to Initiative #197 (as does upcoming #219) which had titles set on January 18, 2024 as follows:

“The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution eliminating the use of a vacancy committee selected by a political party to fill certain vacancies in the state legislature, and, in connection therewith, requiring a special election to fill such vacancy.”

Please note the title of 2023-2024 #134 does not change the voting method to Ranked Choice Voting, which the Proponents had the opportunity to address. Since the Proponents did not do so with Initiative #134, but did with Initiative #197, indicates that the change of voting method to Ranked Choice Voting is not necessarily and properly connected as an “Implementation aspect” of the special legislative election. Rather, it appears that Proponents are attempting to improperly log-roll Rank Choice Voting into their stated subject of vacancy elections.

III. Title set is in violation of CRS § 1-40-106.5(e)(II)

A. Voter Surprised by Rank Choice Voting Methods

As a long-term resident and voter in Colorado, Petitioner is of the belief that having her vote counted, as she cast it, is as equally important as her right to vote. The Board and Proponents imply in their briefs that voters will know what Ranked Choice Voting is and have agreed to having their

votes counted via this method because it is referenced in the Title. They state that voters will not be surprised because of this reference. The Board states the Title “does not hide any details of the measure. To the contrary, the plain text of the Initiative clearly states that vacancies in the legislature will be filled via ranked choice method election.” Board brief p. 4. Similarly, Proponents state “[t]here is no reason to believe “that voters would be confused by the policy Initiative #197 proposes.” Proponent’s brief p. 14. Petitioner finds the Title confusing and believes that Coloradans will likewise be confused and surprised by an unfamiliar voting method that they have not agreed to. As mentioned earlier in Petitioner’s Answer, Ranked Choice Voting has only been experienced by 0.02% of Coloradans. To state that this small fraction is representative of the entire state population is like stating that duties of a neurosurgeon are the same as the chores of a 2 year old.

Moreover, by their own admission, as submitted in Proponents’ brief, there are multiple types of Ranked Choice Voting methods. They state, “[t]herefore, the Initiative merely requires that the newly established election be held using **any one of the various methods of ranked voting**. For

example, the relevant Colorado governing bodies **could select instant runoff voting, which is a type of ranked voting** commonly used when there is a single winner.” **Emphasis added.** Proponent’s brief p. 12. By this admission, Proponents acknowledge that the inclusion of Ranked Choice Voting in Initiative #197 compounds the single subject clause as there are “various methods of ranked voting”. Consequently, voters will be confused as they will not know which of the “various methods of ranked voting” will be used and thus, surprised to learn how their vote was counted. It is inauthentic to portray that by using the plain language “and to be conducted by ranked voting” in the Title does not convey unambiguous meaning to the voters.

B. Voters Surprised by New Executive Power

Whether inadvertently or not, the Title misleads voters in regards to timing of elections and newly granted Executive powers. Proponents argue, in their brief, that “[t]he second clause [of the Title] spells out the timing of the election...” Proponents’ brief p. 16. The second clause of the Title states “...requiring the vacancy election to be held as soon as possible after the

vacancy has occurred or during a November even-year election...” What the Title does not communicate to the voter is that a vacancy may go unfilled for months to years depending the Governor’s sole discretion, as dictated in the Initiative [“...the Governor shall set a day to hold a legislative election to appoint a person to fill any such vacancy as soon as practicable after the vacancy occurs...” Proposed CRS § 1-12-203(1)]. Given this lack of clarity, voters will be surprised to potentially find themselves without representation in the General Assembly for long periods of time and that the Governor has acquired a new Executive power.

This new Executive power is created in proposed CRS §1-12-203(1)(b)

“Limited to the event that the governor reasonably determines that either there is not meaningful time to conduct an election prior to a regularly scheduled general election or the general assembly seat will remain vacant only when the General Assembly is not in session, the governor may decide not to call a legislative election to fill the vacancy, and the vacancy shall be filled at the next, regularly scheduled general election.” Initiative #197

Petitioner stated in her Opening Brief, “that an additional subject has been raised by the Initiative is creating a new and unchecked power to the Executive branch by assigning the sole power to determine when, and if, an

election is held to fill General Assembly vacancies.” This is a violation of CRS § 1-40-106.5(e)(II) and the single subject Title clause and will be a significant surprise to voters.

CONCLUSION

Petitioner respectfully requests that this Court determine that the Titles for Initiative #197 are legally flawed as they contain multiple subjects and additional language not reflected in the Initiative and direct the Title Board to deny setting titles.

Respectfully submitted this 17th day of April, 2024.

A handwritten signature in blue ink, appearing to read "Linda Good", is written above a horizontal line.

Linda Good f/k/a Linda Bissett
916 E Costilla Way
Centennial, CO 80122
Phone: 720-219-3053
LindaLaughs@ProtonMail.com

AFFIDAVIT OF SERVICE

I, Linda Good, hereby affirm that a true and accurate copy of the PETITION ANSWER CONCERNING PROPOSED INITIATIVE 2023-2024 #197 (“ELECTIONS TO FILL VACANCIES IN THE GENERAL ASSEMBLY”) was personally delivered this day, April 17, 2024, to the following:

Counsel for the Title Board

MATHEW SERRAN

at:

Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
c/o
1525 Sherman
Denver, CO

I now affix my signature to this affirmation on this 10th day of April, 2024.



Signature

Linda Good f/k/a Linda Bissett