



## 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:

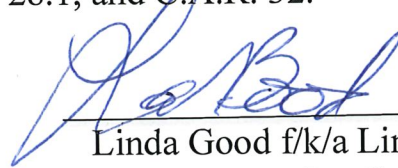
The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains ~~1,999~~ words.  
5654 pd

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

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 or 28.1, and C.A.R. 32.



---

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

## TABLE OF CONTENTS

INTRODUCTION .....	6
ISSUES PRESENTED.....	7
STATEMENT OF THE CASE.....	8
A. Nature of the Case, Course of Proceedings, and Disposition Below. ....	8
1. The Initiative.....	9
2. Jurisdiction.....	16
SUMMARY OF ARGUMENT .....	17
LEGAL ARGUMENT.....	18
A. Standard of review. ....	18
1. Initiative 2023-2024 #197 has multiple subjects. ....	23
2. Making substantial change to the method in which an election is conducted, such as Ranked Voting Method from plurality of votes, constitutes a single subject .....	24
3. Surreptitious and misleading measure .....	25
PRAYER FOR RELIEF .....	31

## TABLE OF AUTHORITIES

### Statutes

C.R.S. § 1-40-106.5 .....	5, 7, 19, 25
C.R.S. § 1-40-107 .....	6, 8, 17
C.R.S. 1-12-203 .....	10, 11, 16
C.R.S. 1-40-106.5 (II) .....	7

### Cases

<i>Fine v. Ward (In re Titles, Ballot Titles, &amp; Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, &amp; #128), 2022 CO 37, ¶8</i> .....	19, 23
<i>Fine v. Ward, 2022 CO ¶13</i> .....	20
<i>Hayes v. Spalding (In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #76), 2014 CO 52, ¶ 10</i> .....	22
<i>In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P. 2d 1023, 1026 (Colo. 1992)</i> .....	21
<i>In re Title, Ballot Title &amp; Submission Clause for 2015-2016 #156, 2016 CO 56, ¶ 8</i> .....	20
<i>In re Title, Ballot Title &amp; Submission Clause for 2021-2022 #16, 2021 CO 55, ¶ 13</i> .....	20
<i>In re Title, Ballot Title and Submission Clause for 2007-2008 Initiative #61, 184 P.3d 747, 752 (Colo. 2008)</i> .....	22, 26
<i>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22, 44 P.3d 213, 217 (Colo. 2002)</i> .....	23
<i>Matter of Proposed Election Reform Amendment, 852 P.2d 28, 34-35 (Colo. 1993)</i> .....	26

<i>Meyer v. Alaskans for Better Elections</i> , 465 P.3d 477 (Alaska 2020).....	23
See <i>Matter of Proposed Election Reform Amendment</i> , 852 P.2d 28, 34-35 (Colo. 1993). .....	22
<i>VanWinkle v. Sage (In re Title, Ballot Title &amp; Submission Clause for 2021-2022 #1)</i> , 2021 CO 55, ¶ 10.....	21
<i>VanWinkle v. Sage (In re Title, Ballot Title &amp; Submission Clause for 2021-2022 #1)</i> , 2021 CO 55, ¶ 13.....	22

**Other Authorities**

<i>Meyer v. Alaskans for Better Elections</i> , 465 P.3d 477 (Alaska 2020).....	20
---	----

**Constitutional Provisions**

Colo. Const, Art, IV § 3 .....	5, 7, 9
Colo. Const. art. V, § 1(5.5).....	6, 9

## INTRODUCTION

Linda Good f/k/a Linda Bissett, Pro Se, (“Petitioner”), registered elector of the County of Arapahoe and the State of Colorado, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Ballot Title Setting Board (“Board”) with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #197 (“Elections to Fill Vacancies in the General Assembly”). Respondents Jason Bertolacci and Owen Alexander Clough, (“Proponents”) have filed 62 similar initiatives all containing a new method, or mechanism of conducting elections commonly referred to as a Ranked Voting Method. Additionally, Proponents filings have had one or more subjects including All Candidate primaries, petition-on only access to the ballot, omitting the party requirements for petition signatures and, in this instance, special legislative vacancy elections to be open to all electors. These multiple subject initiatives are contrary to Colo. Const. art. V, § 1(5.5). Despite lacking jurisdiction due to multiple subjects, the Board set titles for initiative #197 that are misleading and incomplete as they do not fairly communicate the full intent and meaning of the measure and will mislead. As a consequence, communities' legislative representation could completely change without the full knowledge and consent of

voters. Voters would suffer injurious hardships due to lack of legislative representation in their communities.

### **ISSUES PRESENTED**

1. Whether Initiative #197 violates the single subject requirement by changing the current method of filling vacancies in the Colorado General Assembly from an appointment by committee to a legislative election *and* changing the conduct of the election for the General Assembly appointment to Ranked Voting Method.
2. Whether changing the conduct of the election from a plurality of votes, to the Ranked Voting Method or similarly named voting method is consistent with the Colo. Const, Art, IV § 3 as a stand-alone single subject.
3. Whether titles set for Initiative #197 violate C.R.S. 1-40-106.5 (II) “To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters” by failing to properly explain:
  - a. Ranked Voting method will drastically change the voting method voters are accustomed to; thus increasing the lack of confidence voters have in fairness and transparency of elections,

- b. the language regarding the political party of the candidate for the vacancy does not appear in the title set for Initiative #197 thus, misleading voters in regards to who can and will be serving their community,
- c. if the candidate elected to be appointed to fill the vacancy serves until the next General election or if they are elected to fill the full term of the office and whether that person is required to be of the same political party as originally elected by the voters for the vacancy being filled,
- d. rolled up in the folds is a realistic possibility of a vacancy remaining unfilled for months, and possibly up to two years.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case, Course of Proceedings, and Disposition Below.**

Jason Bertolacci and Owen Alexander Clough (hereafter “Proponents”) proposed Initiative 2023-2024 #197 (the “Initiative” or “Initiative #197). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted a final version of the Initiative to the Secretary of State. A Setting Title Board hearing was held on March 6, 2024, at which time titles were set for 2023-



2024 #197. On March 13, 2024, Petitioner filed a Motion for Rehearing, alleging that Initiative #197 contained multiple subjects, contrary to Colo. Const. art. V, § 1(5.5). The rehearing was held on March 20, 2024, at which time the Title Board denied the Motion for rehearing in its entirety. Petitioner filed a timely petition with the Supreme Court on March 27, 2024 to appeal the Title Board’s decision.

**1. The Initiative.**

The ballot title and submission clause as designated and fixed by the Board is as follows:

“Shall there be 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?”

It is surreptitious to have language set in the title that does not appear in the proposed initiative. Specifically, the title calls for “a vacancy election...requiring that the candidates for the vacant position be members of the same political party as the vacating legislator”. The proposed initiative does not include this provision,

but instead would propose the opposite and eliminate that requirement where C.R.S. 1-12-203 (1) (a) currently reads “of the same political party”. In short, the set Title conceals from the voter that an additional undisclosed issue and a significant change from the historical manner in which vacancy candidates were appointed will be implemented by this one rather than multiple initiatives. Per the Initiative, vacancy candidates will no longer be required to be from the same political party and will be filled with an election with no party affiliations required. A ballot Title that directly contradicts the language of the initiative is not only misleading and will cause confusion among voters, but it is in violation of statutes and case law governing the Title Board.

Initiative #197 will change the way vacancies in the General Assembly are filled and this is unclear and misleading from the set Title. Currently as laid out in Colo. Rev. Stat. § 1-12-203 vacancies are filled by the vacancy committee with a member of the same party as the former member.

CRS § “1-12-203. Vacancies in general assembly. (1) In the event of a vacancy in the general assembly caused by the death or resignation of a member who has been sworn into office, caused by the death or resignation of a member who has been elected to a seat but who has not yet been sworn into office, or caused by a person not taking the oath of office as provided in paragraph (b) of subsection (3) of this section, **the vacancy shall be filled by the appropriate vacancy committee**, if any, as provided in section 1-3-103 (1)(d), **of the same political party and of the same representative or senatorial district represented by the former member whose seat is**

**vacant.** If the member was affiliated with a minor political party, then the vacancy shall be filled by the vacancy committee designated in the constitution or bylaws of the minor political party. If the member was unaffiliated with a political party, then the vacancy shall be filled by the vacancy committee designated on the petition for nomination pursuant to section 1-4-802 (1)(e). The vacancy shall be filled until the next general election after the vacancy occurs, when the vacancy shall be filled by election.”

Initiative #197 proposes, in what should be an independent ballot issue, new executive powers to call a special election whose date is to be determined at the Governor’s discretion to replace the current method of vacancy appointments. This will impose additional costs on local communities which is not made clear in the set Title.

Proposed C.R.S. § 1-12-203(1)(a) in part adds “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, SUBJECT TO SECTION 2 OF ARTICLE V OF THE STATE CONSTITUTION. THE ELECTION SHALL BE HELD IN THE DISTRICT FOR THE VACANT GENERAL ASSEMBLY SEAT AND NO PRECINCT OR PRECINCTS MAY BE EXCLUDED.”

During the initial hearing on March 6, 2024, counsel for the Proponents, Ms. Mercer stated “That single subject for initiative 197 is filling vacancies in the state legislature by voters through an election.” During the rehearing on March 20, 2024 Ms. Mercer stated “We're just simply amending current law because really,

the purpose here is to eliminate those vacancy committees.” Importantly, to the voter, is that the Initiative fails to identify the second substantive subject and true purpose of the initiative: the conducting of the legislative elections by Ranked Voting method or similarly named voting process, as seen in the measure’s proposed C.R.S. § 1-12-203(1.5) (a)

“ANY LEGISLATIVE ELECTION TO APPOINT A PERSON TO FILL A VACANT GENERAL ASSEMBLY SEAT SHALL BE CONDUCTED USING A RANKED VOTING METHOD.”

In furtherance of the Petitioner’s position the following overview of the Board Hearing dated March 6, 2024 is offered for consideration:

Board members expressed that it had been burdened with a plethora of initiatives from the Proponents over the last three months and there were varying opinions as to whether the Proponent’s proposed initiatives were single subject.

Ms. Christy Chase expressed that she saw the subjects among **all** the initiatives presented as under one common and connected subject, “as a person who has come to this not really knowing a whole lot about elections, but just as the voter, I look at this point as we're elected candidates and this is the process to elect candidates for office.”

Ms. Theresa Conley stated “As Mr. Gessler said, in terms of, [these are all kind of,] the mechanics of voting is a big deal and a separate issue from ballot access. And so that is kind of where I'm sitting”. However later in the hearing Ms. Conley clarified her stance after Petitioner commented, “Having rank choice voting, instant runoff, that is its very own separate subject.” Ms. Conley responded, “ Yes, yes, I understand. And there's other board members that may

agree with you. I just wanted to make sure that there was just a small nuance I wanted to capture, my issue was the ballot access and the party role in the ballot access.”

Jennifer Sullivan, the representative for the Colorado Attorney General stated the following in regards to the multiple initiatives being presented by the Proponents, “I think all of us now have read and reread the same cases, because the same language can seem to support both sides and at times, that's very difficult and so, in revisiting it myself when I try to glean any rule line between all of these different cases, there seems to be some language and it seems to focus really on the voters. What are we asking voters to choose?... but also to elect candidates who better represent the will of the people. It goes to the mechanics of how you elect people, and who gets elected, whether it's plurality, rank choice voting, and those still seem distinct to me. Those still seem like things that people care a lot about, and have feelings about, and asking voters, even in service of a common objective, asking them to have to take those things together, to consider them together, and swallow one with the other still seems to me to be the kind of discrete purpose that the single subject cases tend to find the separate.”

As indicated in the overview above, there was significant confusion at the Board meeting regarding the Proponent’s Initiative. Thus, the Petitioner contends that if the Board and meeting participants were confused about the Initiative, the voters will undoubtedly be.

The proposed changes to CRS § 1-12-203 - *Vacancies in general assembly* create a number of occasions for confusion.

- 1) Language added to (1)(a) “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, SUBJECT TO SECTION 2 OF ARTICLE V OF THE STATE CONSTITUTION. THE ELECTION SHALL BE HELD IN THE DISTRICT FOR THE VACANT GENERAL ASSEMBLY SEAT AND NO PRECINCT OR PRECINCTS MAY BE EXCLUDED.”

The language regarding “a legislative election to appoint a person to fill any such vacancy” is misleading and will cause confusion among voters. The current statute involves a committee “to *appoint* a person to fill the vacancy”, alternately there would be an “election to *fill* the vacancy”, but an “*election to appoint a person to fill* [the vacancy] would be a orphaned and undefined term and procedure not otherwise found in either Colorado’s Statutes in the statutes of any other state in the nation.

- 2) Proposed section (1)(b) states “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.”

Petitioner contends that this is misleading to vote and not aligned with the set Title. Specifically, what defines a “reasonable determination” by the governor

whether or not there is “meaningful” time to conduct an election? In support of this position, the Petitioner summarizes somewhat lengthy debate about whether a vacancy could go unfulfilled for up to two years.

Ms. Mercer stated “And just a point of clarification, you know, this language in subsection 1 . . . , the governor is asked to call for the vacancy election as soon as practicable after the vacancy occurs. But the governor does have discretion here. Let's say the vacancy occurs in October, and there's going to be a regular there's gonna be a general election in November the governor can choose not to call the vacancy election. And then that election that happens at the general election would just be a general election, it would not be a vacancy election.”

To complicate and further confuse the matter, in regards to this section, C.R.S. § 1-5-203(3) (a) requirements for certifying the ballot would prevent this timeline from occurring, narrowing the window of opportunity even further for when a special vacancy election might be held:

“No later than sixty days before any election, the designated election official of each political subdivision that intends to conduct an election shall certify the order of the ballot and ballot content.”

Other scenarios discussed that add credence to the surreptitious nature and confusion surrounding this section and the Initiative overall, include district

vacancy and misuse by the Governor. [Summary notes of hearing recording<sup>1</sup> provided below for context]

Ms. Conley: ...if a member of the legislature dies in January, you wouldn't be able to hold an election before May so that remains vacant.

Ms. Mercer: There could be a district without representatives. So, you can't really schedule election?

Ms. Chase: In this scenario that you described, where the vacancy occurred in October, this spot will be filled in that general election. That applies only in even years, right?

Ms. Mercer: That's right. Ms. Chase: And then the other question I have is, is there anything in here that would prevent the Governor from calling an election until there's the next general election. Under the scenario the Chair described, if a member were to be in office and die in January in an odd number year, there is the potential that that vacancy wouldn't be filled until the General election.

Mercer: We talked through that. I think our big concern, biggest concern, would be, that this could be weaponized by a governor? I think we have a lot of faith in our elected officials that that would not happen.”

## **2. Jurisdiction**

Petitioner is entitled to review before this Court pursuant to C.R.S. § 1-40- 107(2).

Petitioner timely filed her Motion for Rehearing with the Board. See C.R.S. § 1-

---

<sup>1</sup> [https://csos.granicus.com/player/clip/434?view\\_id=1&redirect=true](https://csos.granicus.com/player/clip/434?view_id=1&redirect=true)



40-107(1). Petitioner timely filed her Petition for Review seven days from the date of the hearing on the Motion for Rehearing. See C.R.S. § 1-40-107(2).

### **SUMMARY OF ARGUMENT**

The decision of the Title Board was erroneous for five reasons.

First, the measure has multiple subjects three fold in violation of a single subject requirement not only changes the method of the election from plurality of votes to a ranked vote method to elect members of the Colorado General Assembly but also changes the current method of filling vacancies in the Colorado legislature from an appointment to fill a vacancy to an election to appoint to fill a vacancy, and grants the executive branch of government invasive powers over the operations of the legislative branch to the extent that a governor might prohibit the filling of a legislative vacancy for up to two years. The new Executive branch powers not held before are a intrusion of the government's separation of powers.

Second, changing the conduct of the election from a plurality of votes, to Ranked Voting Method or similarly named process is misleading as the method of rank choice voting is broadly known to be in itself a confusing and complex procedure often misleading to voters about the impact that their actions might have

on an election outcome. Complexity and confusion in elections is not a source of trust but instead erodes the trust and the foundation of our democracy.

Third, this Initiative is misleading and in clear violation of statute and case law of this Court, as voters can foreseeably vote for the special vacancy legislative election only to be surprised that the voting mechanism which has been surreptitiously changed is drastically different than any voting method familiar to them.

Fourth, the additional powers granted to the executive branch in the governor is a misleading provision that is coiled in the folds of this Initiative allowing vacancies to be left unfilled and leaving constituents without representation for up to two years.

Fifth, should the vacancy be filled by a different political party than originally elected, in contradiction to the misleading title that states the opposite.

## **LEGAL ARGUMENT**

### **A. Standard of review.**

*See also* C.R.S. § 1-40-106.5, "When a proposed initiative comprises multiple subjects, the [Title] Board lacks jurisdiction to set its title." *Fine v. Ward*

*(In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128), 2022 CO 37, ¶8.*

The single-subject requirement exists "to prevent or inhibit various inappropriate or misleading practices that might otherwise occur." CRS § 1-40-106.5(1)(d). Specifically, it is designed to prevent "the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits," § 1-40-106.5(1)(e)(I), and to "prevent surprise and fraud from being practiced upon voters" by ensuring that the title of the measure "apprise the people of the subject," § 1-40-106.5(1)(e)(II).

To meet the single-subject requirement, an initiative's provisions must be "necessarily and properly connected," *In re Title, Ballot Title & Submission Clause for 2021-2022 #16, 2021 CO 55, ¶ 13*. An initiative with provisions that are "disconnected or incongruous, covering more than one subject and having at least two distinct and separate purposes which are not dependent upon or connected with each other, —violates this requirement." *Fine v. Ward, 2022 CO ¶13* (internal citations omitted).

The parties agree that the initiative would make three substantive changes to Alaska election law: (1) replacing the party primary system with an open, nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) mandating new disclosure and disclaimer requirements to existing campaign finance laws. A plain reading of the initiative shows that its provisions embrace the single subject of "election reform" and share the nexus of election administration. All substantive provisions fall under the same subject matter of elections, seek to institute an election reform process, and, as the superior court noted, change a single statutory title, Title 15, Alaska's Elections Code. *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020)

*In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8 (quotations omitted). The Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions,” and will “only reverse the Title Board’s decision if the titles are insufficient, unfair, or misleading.” *Id.* (quotations omitted).

The Title Board must set titles that “correctly and fairly express the true intent and meaning” of the proposed initiative and “unambiguously state the principle of the provision sought to be added, amended, or repealed.” C.R.S. § 1-40-106(3)(b). This Court’s duty is to ensure that the titles “fairly reflect” the

proposed initiative so petition signers and voters will not be misled into supporting or opposing a measure due to the words employed by the Title Board. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington*, 830 P. 2d 1023, 1026 (Colo. 1992).

When reviewing the language of a proposed initiative, courts “employ the general rules of statutory construction, giving words and phrases their plain and ordinary meanings.” Under this approach, the plain language of the initiative makes it possible – indeed, likely – that the residents of a legislative district in which a vacancy occurs will go without representation in the general assembly for months or years. *VanWinkle v. Sage (In re Title, Ballot Title & Submission Clause for 2021-2022 #1)*, 2021 CO 55, ¶ 10.

The method for scheduling an election (in some instances over two years following the vacancy) is not “necessarily and properly connected” to the ranked choice voting method, but “rather [] disconnected or incongruous.” *VanWinkle v. Sage (In re Title, Ballot Title & Submission Clause for 2021-2022 #1)*, 2021 CO 55, ¶ 13.

A general, broad title of “vacancy elections” cannot save the measure. The Colorado Supreme Court rejected a subject of “recall of government officers” as

far too broad *Hayes v. Spalding (In re Title, Ballot Title, & Submission Clause for 2013-2014 #76)*, 2014 CO 52, ¶ 10.

If the title clearly and concisely summarizes the measure’s “central features,” the Title Board will be deemed to have done its job, and the title will be upheld. *In re Title, Ballot Title and Submission Clause for 2007-2008 Initiative #61*, 184 P.3d 747, 752 (Colo. 2008). Where, however, the Board has omitted reference to, or mischaracterized, a central element of the measure, the title is legally deficient because voters will be misled, and the title must be sent back to the Board to be corrected. See *Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 34-35 (Colo. 1993).

The titles, standing alone, should be capable of being read and understood, capable of informing the voter of the major import of the proposal, but need not include every detail. They must allow the voter to understand the effect of a yes or no vote on the measure. When they do not, both the title board and this court fail in their respective functions. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 217 (Colo. 2002).

**1. Initiative 2023-2024 #197 has multiple subjects.**

"When a proposed initiative comprises multiple subjects, the [Title] Board lacks jurisdiction to set its title." *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, ¶8.

And though not precedent, the Alaska Supreme court clearly determined that Ranked Choice Voting, or Ranked Voting method, is a substantive subject. "The parties agree that the initiative would make three substantive changes to Alaska election law: (1) replacing the party primary system with an open, nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) mandating new disclosure and disclaimer requirements to existing campaign finance laws." *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020) The court ruled "All substantive provisions fall under the same **subject matter of elections**, seek to institute an election reform process, and, as the superior court noted, change a single statutory title, Title 15, Alaska's Elections Code." The Colorado Supreme Court has a more narrow determination of single subject than allowing all provisions that fall under Title 1 to be single subject.

**2. Making substantial change to the method in which an election is conducted, such as Ranked Voting Method from plurality of votes, constitutes a single subject**

The mechanism of conducting elections in the United States of America for 248 years and in the state of Colorado for 148 years has been plurality of votes (i.e., “joint candidates having the highest number of votes cast for governor and lieutenant governor, and *the person having the highest number of votes for any other office*, shall be declared duly elected.” To surreptitiously implement Ranked Voting Method, or similarly named process, whereby the election is determined when electors rank candidates in order of preference, tabulation proceeds in rounds where in each round either a candidate is elected or eliminated, votes are transferred from eliminated candidates to the voter’s next-ranked candidate, in order of ranked preference, and tabulation ends when a candidate receives the majority of votes cast, is a sufficiently significant change to warrant being ruled a single subject in and of itself.

Ranked Voting method has no necessary and proper connection with Proponent’s initiatives and is being log-rolled into the measures “for the purpose of securing enactment” without being independently “carried upon [it’s] own merits.”



The single-subject requirement exists "to prevent or inhibit various inappropriate or misleading practices that might otherwise occur." CRS § 1-40-106.5(1)(d). Specifically, it is designed to prevent "the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits," § 1-40-106.5(1)(e)(I), and to "prevent surprise and fraud from being practiced upon voters" by ensuring that the title of the measure "apprise the people of the subject," § 1-40-106.5(1)(e)(II).

### **3. Surreptitious and misleading measure**

Of the multiple misleading aspects of this measure, the first is the title set for the Initiative which is legally deficient with the addition of language to mislead the voter that the vacancy election will be for a member of the same political party vacating the office. If the title clearly and concisely summarizes the measure's "central features," the Title Board will be deemed to have done its job, and the title will be upheld. *In re Title, Ballot Title and Submission Clause for 2007-2008 Initiative #61*, 184 P.3d 747, 752 (Colo. 2008). Where, however, the Board has omitted reference to, or mischaracterized, a central element of the measure, the title is legally deficient because voters will be misled, and the title must be sent back to

the Board to be corrected. See *Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 34-35 (Colo. 1993). The Title set for the Initiative has mischaracterized a central element of the measure.

In 2023, twenty-four lawmakers secured a General Assembly seat through a vacancy appointment, including no fewer than nine legislators appointed in a twelve-month span. The impact of any delay filling these vacancies places an undue burden on the legislative system. Jurisdictions face extended periods without representation while the General Assembly is unable to staff committees and conduct business. Further, the statewide county election offices will be thrust into a perpetual election cycle in an attempt to stay abreast with the pace of the newly created vacancies. This “surreptitious measure[]” for withholding this information which will cause “surprise and fraud [to be] practiced upon voters.”<sup>2</sup>

Incorporated within this brief is the Motion for Rehearing (attached as Exhibit A) filed by Mark Chilson through his attorney Scott Gessler on Proponent's nearly identical initiative 2023-2024 #219. In the motion Mr. Gessler argues and Petitioner agrees:

---

<sup>2</sup> C.R.S. § 1-40-106.5(1)(e)(II).

“The measure first implements ranked-choice voting (also referred to as instant runoff voting), for legislative special elections, by adding subsection 1-12-203(1.5)(a) as follows:

**(1.5) (a) ANY LEGISLATIVE ELECTION TO FILL A VACANT GENERAL ASSEMBLY SEAT SHALL BE CONDUCTED USING A RANKED VOTING METHOD.**

But the proposed initiative also contains a second, critically important subject. It establishes a new timeline for holding a vacancy election, by modifying subsection 1-12- 203(1)(a) as follows:

**CDOS Received: March 27, 2024 4:53 P.M. CH 2023-2024 #219 - Motion for Rehearing (Chilson) THE GOVERNOR SHALL SET A DAY TO HOLD A LEGISLATIVE ELECTION TO ELECT A PERSON TO FILL ANY SUCH VACANCY AS SOON AS PRACTICABLE AFTER THE VACANCY OCCURS.**

Connectedly, it adds a new subsection (b), which states:

**(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.**

When reviewing the language of a proposed initiative, courts “employ the general rules of statutory construction, giving words and phrases their plain and ordinary meanings.”<sup>1</sup> Under this approach, the plain language of the initiative makes it possible – indeed, likely – that the residents of a legislative district in which a vacancy occurs will go without representation in the general assembly for months or years. Specifically, if the governor decides that there is not “meaningful” time to conduct an election prior to a regularly scheduled election, then “the vacancy shall be filled at the next, regularly scheduled general election.” (emphasis supplied).

Two concrete examples suffice to show how the vacancy announcement works. First, if a state senate vacancy occurs in September of 2016, there will be inadequate, “meaningful” time to identify nominees and print ballots that must be sent out in late September (or 45 days before the general election) to military and overseas voters. In this instance, according to the terms of the initiative the vacancy election “shall” be held at the 2028 general election. That means approximately 165,000 Colorado residents will be denied representation in the Colorado Senate for over two years.

Second, if a senate vacancy occurs in June of 2026, when the General Assembly is not in session, and the governor decides not to call a vacancy, then the vacancy election “shall” be held at the 2028 general election. Again, this means approximately 165,000 residents will not have representation for over one and a half years.

The provision that determines when to schedule a vacancy election violates the single subject requirements in three ways. First, voters will be surprised to learn that a new, ranked choice voting method in a vacancy election also brings with it the strong possibility that Coloradans will lose their representation in the General Assembly for months, and possibly years. This is, by definition, a “surreptitious measure[]” which will cause “surprise and fraud [to be] practiced upon voters.”

Second, the method for scheduling an election (in some instances over two years following the vacancy) is not “necessarily and properly connected” to the ranked choice voting method, but “rather [] disconnected or incongruous.”<sup>4</sup> A ballot initiative can certainly enact ranked choice voting for a legislative vacancy election,

without giving the governor discretion to prevent an election from taking place for over two years.

Third, the gubernatorial declaration provision violates “the anti-logrolling and antifraud purposes of the single-subject requirement. Here, it is possible – and certainly likely – that voters who approve of ranked choice voting will nonetheless reject a measure that creates a mechanism that results in eliminating democratic representation in the General Assembly for tens of thousands of Coloradans, for months or years.

Lastly, a general, broad title of “vacancy elections” cannot save the measure. The Colorado Supreme Court rejected a subject of “recall of government officers” as far too broad.<sup>6</sup> That provision created “a new constitutional right to recall non-elected officers, in addition to elected officers.”<sup>7</sup> Under the same reasoning, the broad subject of “vacancy elections” does not rescue the measure from its serious single-subject violations.

Separate and apart from the single-subject violations, the title and submission clause set by the Board is incomplete and misleading,

because it fails to even mention – let alone describe – the new method of scheduling a vacancy election.”


Along with Mr. Gessler’s arguments, Petitioner asserts 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 power that is ripe for abuse in a heated political theater where an adversarial Governor could choose not to hold the special election prescribed by the initiative to control the balance of power in the General Assembly. The law is not intended as a guide for potential faithful actors in office but to restrain prospective faithless actors who might obtain power in government. Any assumption that a reasonableness requirement for the governor might cause them to also act in good faith towards the legislature or to call a timely election is unfounded.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed as containing multiple

subjects and misleading and incomplete language, and direct the Title Board to deny setting titles.

Respectfully submitted this 10th day of April, 2024.



---

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



**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

---

**Mark Chilson,**  
Objector,

v.

**Jason Bertolacci and Owen Alexander Clough,**  
Designated Representatives of Initiative 2023-2024 #219

---

**MOTION FOR REHEARING ON  
PROPOSED INITIATIVE 2023-2024 #219**

---

Mark Chilson, a Colorado registered elector, seeks a rehearing on Proposed Initiative 2023-2024 #219, on two grounds. First, the Title Board has no jurisdiction to det a title, because the measure contains two separate subjects. Second, the title and submission clause is incomplete and misleading, because it does not describe the measure's second subject.

The proposed measure contains two provisions, each of which constitutes a separate subject. The measure first implements ranked-choice voting (also referred to as instant runoff voting), for legislative special elections, by adding subsection 1-12-203(1.5)(a) as follows:

(1.5) (a) ANY LEGISLATIVE ELECTION TO FILL A VACANT  
GENERAL ASSEMBLY SEAT SHALL BE CONDUCTED USING A  
RANKED VOTING METHOD.

But the proposed initiative also contains a second, critically important subject. It establishes a new timeline for holding a vacancy election, by modifying subsection 1-12-203(1)(a) as follows:

# Exhibit A

THE GOVERNOR SHALL SET A DAY TO HOLD A LEGISLATIVE ELECTION TO ELECT A PERSON TO FILL ANY SUCH VACANCY AS SOON AS PRACTICABLE AFTER THE VACANCY OCCURS.

Connectedly, it adds a new subsection (b), which states:

(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.

When reviewing the language of a proposed initiative, courts “employ the general rules of statutory construction, giving words and phrases their plain and ordinary meanings.”<sup>1</sup> Under this approach, the plain language of the initiative makes it possible – indeed, likely – that the residents of a legislative district in which a vacancy occurs will go without representation in the general assembly for months or *years*. Specifically, if the governor decides that there is not “meaningful” time to conduct an election prior to a regularly scheduled election, then “the vacancy *shall* be filled at the next, regularly scheduled *general* election.” (emphasis supplied).

Two concrete examples suffice to show how the vacancy announcement works. First, if a state senate vacancy occurs in September of 2016, there will be inadequate, “meaningful” time to identify nominees and print ballots that must be sent out in late September (or 45

---

<sup>1</sup> *VanWinkle v. Sage (In re Title, Ballot Title & Submission Clause for 2021-2022 #1)*, 2021 CO 55, ¶ 10.

# Exhibit A

days before the general election) to military and overseas voters. In this instance, according to the terms of the initiative the vacancy election “shall” be held at the 2028 general election. That means approximately 165,000 Colorado residents<sup>2</sup> will be denied representation in the Colorado Senate for over two years.

Second, if a senate vacancy occurs in June of 2026, when the General Assembly is not in session, and the governor decides not to call a vacancy, then the vacancy election “shall” be held at the 2028 general election. Again, this means approximately 165,000 residents will not have representation for over one and a half years.

The provision that determines when to schedule a vacancy election violates the single subject requirements in three ways. First, voters will be surprised to learn that a new, ranked choice voting method in a vacancy election also brings with it the strong possibility that Coloradans will lose their representation in the General Assembly for months, and possibly years. This is, by definition, a “surreptitious measure[]” which will cause “surprise and fraud [to be] practiced upon voters.”<sup>3</sup>

---

<sup>2</sup>[https://redistricting.colorado.gov/rails/active\\_storage/disk/eyJfcMFPbHMiOnsibWVzc2FnZSI6IkJBaDdDRG9JYTJWNVNTSWhZbUZtZFdveGIycHdObUpuWVdob2JqbHhpOamh6YkhNM05ESjRid1k2QmtWVU9oQmthWE53YjNOcGRHbHZia2tpV1dsdWJHbHVhVHNnWm1sc1pXNWhiV1U5SWxCdmNlVnNZWFJwYjI0Z1UzVnRiV0Z5ZVM1d1pHWWlPeUJtYVd4bGJtRnRaU285VlZSR0xUZ25KMUJ2Y0hWc1YUnBiMjRsTWpCVGRXMXRZWEo1TG5Ca1pnWTdCbFE2RVdOdmJuUmxibJmZEhsd1pVa2lGR0Z3Y0d4cFkyRjBhVzI1TDNCa1pnWTdCbFE9IiwZlXhwIjoiMjAyNC0wMy0yM1QxOTowOTozMCA1OTRaIiwicHVyIjoiYmxvY19rZXkifX0=-c9cc42091bf1d3ee5f0b468ad7e473711e3b13cd/Population%20Summary.pdf?content\\_type=application%2Fpdf&disposition=inline%3B+filename%3D%22Population+Summary.pdf%22%3B+filename%2A%3DUTF-8%27%27P%20population%2520Summary.pdf](https://redistricting.colorado.gov/rails/active_storage/disk/eyJfcMFPbHMiOnsibWVzc2FnZSI6IkJBaDdDRG9JYTJWNVNTSWhZbUZtZFdveGIycHdObUpuWVdob2JqbHhpOamh6YkhNM05ESjRid1k2QmtWVU9oQmthWE53YjNOcGRHbHZia2tpV1dsdWJHbHVhVHNnWm1sc1pXNWhiV1U5SWxCdmNlVnNZWFJwYjI0Z1UzVnRiV0Z5ZVM1d1pHWWlPeUJtYVd4bGJtRnRaU285VlZSR0xUZ25KMUJ2Y0hWc1YUnBiMjRsTWpCVGRXMXRZWEo1TG5Ca1pnWTdCbFE2RVdOdmJuUmxibJmZEhsd1pVa2lGR0Z3Y0d4cFkyRjBhVzI1TDNCa1pnWTdCbFE9IiwZlXhwIjoiMjAyNC0wMy0yM1QxOTowOTozMCA1OTRaIiwicHVyIjoiYmxvY19rZXkifX0=-c9cc42091bf1d3ee5f0b468ad7e473711e3b13cd/Population%20Summary.pdf?content_type=application%2Fpdf&disposition=inline%3B+filename%3D%22Population+Summary.pdf%22%3B+filename%2A%3DUTF-8%27%27P%20population%2520Summary.pdf)

<sup>3</sup> C.R.S. § 1-40-106.5(1)(e)(II).

# Exhibit A

Second, the method for scheduling an election (in some instances over two years following the vacancy) is not “necessarily *and* properly connected” to the ranked choice voting method, but “rather [] disconnected or incongruous.”<sup>4</sup> A ballot initiative can certainly enact ranked choice voting for a legislative vacancy election, without giving the governor discretion to prevent an election from taking place for over two years.

Third, the gubernatorial declaration provision violates “the anti-logrolling and anti-fraud purposes of the single-subject requirement.”<sup>5</sup> Here, it is possible – and certainly likely – that voters who approve of ranked choice voting will nonetheless reject a measure that creates a mechanism that results in eliminating democratic representation in the General Assembly for tens of thousands of Coloradans, for months or years.

Lastly, a general, broad title of “vacancy elections” cannot save the measure. The Colorado Supreme Court rejected a subject of “recall of government officers” as far too broad.<sup>6</sup> That provision created “a new constitutional right to recall non-elected officers, in addition to elected officers.”<sup>7</sup> Under the same reasoning, the broad subject of “vacancy elections” does not rescue the measure from its serious single-subject violations.

---

<sup>4</sup> *VanWinkle v. Sage (In re Title, Ballot Title & Submission Clause for 2021-2022 #1)*, 2021 CO 55, ¶ 13.

<sup>5</sup> *Id.* at ¶ 16.

<sup>6</sup> *Hayes v. Spalding (In re Title, Ballot Title, & Submission Clause for 2013-2014 #76)*, 2014 CO 52, ¶ 10.

<sup>7</sup> *Id.* at ¶ 9.

# Exhibit A

Separate and apart from the single-subject violations, the title and submission clause set by the Board is incomplete and misleading, because it fails to even mention – let alone describe – the new method of scheduling a vacancy election.

Respectfully submitted this 27<sup>th</sup> day of March 2024,

**GESSLER BLUE LLC**

*s/ Scott E. Gessler*

---

Scott E. Gessler  
7350 E. Progress Place, Ste. 100  
Greenwood Village, CO 80111  
(720) 839-6637 Tel.

## **CERTIFICATE OF SERVICE**

On March 27, 2024, a copy of the foregoing was filed with the Colorado Secretary of State's Office and served on all parties to this matter via U.S. First Class Mail, Postage Pre-paid and email on the following:

Jason Bertolacci  
c/o Brownstein Hyatt Farber Schreck, LLP  
675 15<sup>th</sup> Street, Suite 2900  
Denver, CO 80202

Owen Alexander Clough  
c/o Brownstein Hyatt Farber Schreck, LLP  
675 15<sup>th</sup> Street, Suite 2900  
Denver, CO 80202

*s/ Joanna Bila*

---

Joanna Bila, Paralegal

AFFIDAVIT OF SERVICE

I, Linda Good, hereby affirm that a true and accurate copy of the PETITIONER'S OPENING BRIEF CONCERNING PROPOSED INITIATIVE 2023-2024 #197 ("ELECTIONS TO FILL VACANCIES IN THE GENERAL ASSEMBLY") was personally delivered this day, April 10, 2024, to the following:

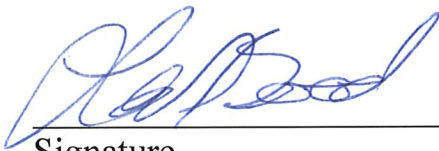
Counsel for Proponents Owen Alexander Clough and Jason Bertolacci

Genie L. Passow

at:

c/o Brownstein Hyatt Farber Schreck, LLP  
675 15th Street, Suite 2900  
Denver, CO 80202

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



Signature

Linda Good f/k/a Linda Bissett

AFFIDAVIT OF SERVICE

I, Linda Good, hereby affirm that a true and accurate copy of the PETITION OPENING BRIEF CONCERNING PROPOSED INITIATIVE 2023-2024 #197 (“ELECTIONS TO FILL VACANCIES IN THE GENERAL ASSEMBLY”) was personally delivered this day, April 10, 2024, to the following:

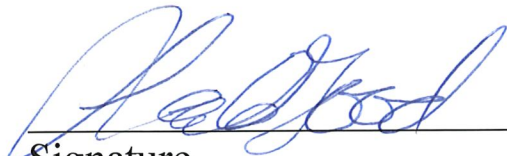
Counsel for the Title Board

MATHEW SERBAN

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