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SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #310 **Petitioner:** Mark Chilson, v. **Respondents:** Jason Bertolacci and Owen Alexander Clough, and **Title Board:** Theresa Conley, Christy Chase, Jennifer Sullivan	▲ **COURT USE ONLY** ▲
Attorneys for Respondents: Sarah M. Mercer, #39367 David B. Meschke, #47728 Rosa L. Baum, #56652 BROWNSTEIN HYATT FARBER SCHRECK, LLP 675 15th Street, Suite 2900 Denver, CO 80202 Tel: 303.223.1100; Fax: 303.223.1111 smercer@bhfs.com; dmeschke@bhfs.com; rbaum@bhfs.com	Case Number: 2024SA157

RESPONDENTS' 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) or C.A.R. 28.1(g).

It contains 5,892 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

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).

For each issue raised by the appellant, 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.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's 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.

/s/David B. Meschke

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Respondents Jason Bertolacci and Owen Alexander Clough, the proponents of Proposed Initiative 2023-2024 #310 (collectively "Respondent Proponents"), through undersigned counsel, submit their Opening Brief in this original proceeding brought by Petitioner Mark Chilson challenging the actions of the Ballot Title Setting Board ("Title Board") to set a title on Proposed Initiative 2023-2024 #310 (unofficially captioned "Concerning the Conduct of Elections").

ISSUES PRESENTED FOR REVIEW

A. Whether the Title Board correctly determined that Initiative #310 encompasses a single subject.

B. Whether the title for Initiative #310 is incomplete or misleading.

STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #310 ("Initiative #310" or the "Initiative") presents an integrated system to modernize Colorado's election system to provide all voters more choice and opportunity to elect officials based on the fundamental precept of the will of a majority. It is one of several measures proposed this cycle by Respondent Proponents, who are the designated representatives of a bipartisan group of civic and political leaders. To effectuate this change, Initiative #310 would create

an all-candidate primary election in which every voter and candidate, regardless of political party affiliation or non-affiliation, participates and from which the four candidates who receive the greatest number of votes advance to the general election, where voters rank candidates by preference under instant runoff voting and elect the candidate who receives a majority of votes at the end of the ranked voting tally. These essential elements work together to achieve Respondent Proponents' common objective. Take away one element, and the system falls apart.

The Title Board has consistently found this cycle that the essential elements of Respondent Proponents' proposed measures encompass a single subject. Initiative #310 is no different. At the measure's April 18, 2024 hearing, the Title Board voted 2-1 that the Initiative constituted a single subject and then set a title. When asked again at the Initiative's April 26, 2024 rehearing, the Title Board voted 2-1 to deny Petitioner's motion for rehearing as to his challenge to single subject,[1] as well as the

[1] The Board granted Petitioner's motion only to the extent changes were made to the title.

motions of all other objectors. Petitioner appealed. Respondent Proponents now ask this Court to affirm the Title Board.

SUMMARY OF THE ARGUMENT

Initiative #310 proposes a unified election system to achieve Respondent Proponents' one common objective. The Title Board correctly found that the Initiative contains a single subject, determined it therefore had jurisdiction over the Initiative, and set a brief and comprehensive title for the Initiative. While Petitioner lists various elements of the Initiative in his Petition for Review, his single subject argument appears to center around (a) that altering the primary and general elections violates single subject and (b) a misunderstanding of the Initiative's effect, or lack thereof, on access to the primary election ballot.

First, Respondent Proponents' reforms to the Colorado primary and general elections are necessarily and properly connected to their common objective of instituting an integrated system for electing Colorado's officials. Initiative #310's single subject is to expand voter choice to elect candidates for certain federal and state offices who better represent the

will of a majority of the voters. Initiative #310 would accomplish this single subject through its interrelated elements. It would create an all-candidate primary election, where all voters participate and all candidates appear on the same ballot, regardless of the voter's or the candidate's political party affiliation. From that all-candidate primary election, the four candidates who receive the most votes advance to the general election. Then, in the general election, the Initiative would implement instant runoff voting, where voters may rank up to four candidates by preference, and the candidate with a majority of the votes in the final tally is elected.

These elements work hand in glove to fulfill Initiative #310's single subject; without one element, the system does not operate as intended. For example, absent instant runoff voting in the general election, the all-candidate primary election would allow for vote splitting or spoiler candidates, both of which undermine the will of a majority of the voters.

Second, contrary to Petitioner's pronouncements, Initiative #310 maintains the status quo for major political party candidates accessing the primary election ballot. In fact, in response to concerns voiced by the

Title Board regarding *other* initiatives Respondent Proponents filed with the Board—initiatives not before the Court—that did alter ballot access in various ways, Respondent Proponents specifically excised those alterations.[2] This Court should not be swayed by Petitioner's attempt to muddy Initiative #310's central purpose and common objective.

Petitioner's clear title arguments are similarly flawed. He carries through his misunderstanding of the Initiative's provisions and effects. The Initiative does not impact the already-existing allowance for any elector to sign a petition for a minority political party or unaffiliated candidate to access the primary election ballot. Also, the title alerts voters in plain language that they may rank candidates by preference, as compared to the current system by which they select just one.

Therefore, Respondent Proponents respectfully request that this Court affirm the Title Board's single-subject determination and the clear title it set.

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[2] For example, prior measures would have eliminated the ability of candidates to access the primary election ballot through a political party assembly process and/or allowed major political party candidates to obtain signatures from voters with different political party affiliation.

STANDARD OF REVIEW

This Court is vested with the authority to review the rulings of the Title Board. § 1-40-107(2), C.R.S. As part of this review, this Court "employ[s] all legitimate presumptions in favor of the propriety of the [Title] Board's action." *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010)) (alteration in original). And the Court will "only overturn the Board's decision in a clear case." *In re Title, Ballot Title & Submission Clause for 2017–2018 #4*, 395 P.3d 318, 320 (Colo. 2017).

The statutory single-subject requirement, per its own plain language, must be "liberally construed." § 1-40-106.5(2), C.R.S. Maintaining this liberal approach to the requirement is critical "so as not to impose undue restrictions on the initiative process." *Matter of Title, Ballot Title & Submission Clause, Summary Clause for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998). In reviewing whether a measure encompasses more than a single subject, the focus is on whether the initiative presents either of the two "evils" the single subject requirement

ails to prevent: logrolling and voter surprise. *See Matter of Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1224 (Colo. 2021). This Court has "held repeatedly that where a proposed initiative tends to effect or to carry out one general objective or purpose, it presents only one subject." *Id.*, at 1221 (quoting *In re 2017–2018 #4*, 395 P.3d at 321).

Additionally, an initiative's title must "correctly and fairly express [its] true intent and meaning," § 1-40-106(3)(b), C.R.S., and "should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal," *In re Title, Ballot Title & Submission Clause for 2015–2016 #73*, 369 P.3d 565, 568 (Colo. 2016). However, "[i]t is well-established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly." *In re 1997–1998 No. 74*, 962 P.3d at 930.

ARGUMENT

I. Initiative #310 encompasses a single subject.

Initiative #310 has one "unifying or common objective": To expand voter choice to elect candidates for certain federal and state offices who better represent the will of a majority of the voters. This common objective solves for a dilemma inherent in Colorado's current election system, which incentivizes candidates to appeal to a narrow base of voters to win their primary elections. Due to the geographic clustering of like-minded voters, the vast majority of districts in Colorado are sufficiently partisan leaning that the primary election nominee from the dominant political party is virtually assured to win the general election.

The Initiative accomplishes this single subject, and solves for this dilemma, by giving all voters the right to participate in an all-candidate primary election, where all candidates (major political party, minor political party, and unaffiliated candidates) appear on the same ballot and where the four candidates who receive the most votes advance to the general election; and by using instant runoff voting in the general election, where voters may rank the candidates by preference. Under this

system, every voter will have the opportunity to vote for any eligible candidates as part of narrowing the field of candidates who appear on the general election ballot and to rank the advancing candidates in order of preference. No longer could candidates win by simply appealing to a minority of voters.

Based on Petitioner's Petition for Review, Respondent Proponents anticipate that Petitioner will argue that (a) a system that impacts both the primary and general elections constitutes multiple subjects, (b) choosing to affect some, but not all, elected offices creates a second subject, (c) the mere fact that an initiative proposes a "fundamental" or "radical" change necessitates heightened scrutiny, and (d) purported changes for accessing the ballot violate single subject. *See* Pet. for Review, at 3–6. As detailed below, none of these withstand scrutiny.

A. Initiative #310's impact on the primary and the general elections for specific offices does not violate single subject requirements.

Respondent Proponents' measures, Initiative #310 included, have faced intense scrutiny from the Title Board, objectors, and public commentators throughout the initiative process. Initiative #310's

detractors, including Petitioner, point to the measure's changes to the primary and the general elections as proof that the measure contains multiple subjects. This reflexive reaction, though, ignores that Initiative #310 presents a narrowly tailored and unified election system whereby the changes to the primary and the general elections are necessarily connected to achieve Respondent Proponents' common objective. This Court has recognized, "[m]ultiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction," but that is not the appropriate exercise under single subject review. *In re 2021-2022 #16*, 489 P.3d at 1223 (quoting *In re 1997–1998 No. 74*, 962 P.2d at 929).

1. Initiative #310 presents a unified system.

Each of Initiative #310's elements are fundamental to advancing the Initiative's one objective: to expand voter choice to elect candidates for certain federal and state offices who better represent the will of a majority of the voters. *See* § 1-40-106.5(1)(e) (explaining that the constitutional single subject requirement seeks to "forbid the treatment of incongruous subjects in the same measure, especially the practice of

putting together in one measure subjects having no necessary or proper connection"). Colorado's current system of siloed political party primary elections that advance a single candidate to the general election ballot undermines the will of a majority of voters. While Colorado has relatively high general election turn out, a large swath of those votes do not have any impact on the ultimate candidate elected because many legislative and congressional districts are decided in low-turnout political party primary elections. For example, although 58 percent of Colorado voters voted in the 2022 November general election, only 13 percent of voters cast *meaningful* votes in state house races and only 18 percent in Congressional races.[3] The majority of officials elected in Colorado are effectively determined in the political party primary elections. And, while those races are open to unaffiliated voters, they do not provide equal access to all voters. Initiative #310 would change that.

[3] Ross Sherman, *Report: Fewer Than 1 in 5 Eligible Colorado Voters are Casting Ballots in Competitive Elections*, Unite America (Apr. 30, 2024), *available at* https://www.uniteamerica.org/articles/release-colorado-primary-problem-report.

The comprehensive electoral system proposed in Initiative #310—which implements changes to both the primary and the general elections—addresses this ill. Serving as a primary election that narrows the field of candidates, with the participation of *all* voters, the all-candidate primary produces a pool of candidates representative of all voters who participate.[4] Then, adopting instant runoff voting in the general election assures that a voter's choice is not a false choice between a single Democrat or a single Republican, the outcome of which is often predetermined by district boundaries and voter registration numbers. The general election is instead a truly competitive contest among a range

[4] Petitioner's concern that the all-candidate primary election would not nominate a political party's standard bearer addresses the effect of the initiative, a question not properly before the Court. *See Matter of Title, Ballot Title and Submission Clause for 2019-2020 #315*, 500 P.3d 363, 367 (Colo. 2020) ("[The] effects [of a proposed initiative] are not relevant to whether the proposed initiative contains a single subject."). Initiative #310 provides that the advancing candidates from the all-candidate primary election to the general election are not political party nominees in order to not run afoul of the First Amendment right of association and the protections it provides political parties. *See* Pet. for Review, at 4; *see also Cal. Dem. Party v. Jones*, 530 U.S. 567, 585–86 (2000) (observing that the nonpartisan blanket primary "has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee"); *accord Washington State Grange v. Washington State Repub. Party*, 552 U.S. 442, 453–55 (2008).

of candidates who are most closely representative of the district or constituency.

The reforms in Initiative #310, like the primary and general elections which they impact, are an interconnected and integrated system. *See* Title Board Hearing at 1:27:20 (March 20, 2024), *available at* https://www.coloradosos.gov/pubs/info_center/audioBroadcasts.html (Chair Theresa Conley agreeing that Respondent Proponents' reforms to the primary and general elections reflect an "integrated system"). Even the United States Supreme Court has recognized that the primary election, which is a creation of state law, is often vital to the election process. *Storer v. Brown*, 415 U.S. 724, 735 (1974) (observing that the primary election "is not merely an exercise or warm-up for the general election but an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers") (internal citation omitted). Thus, Initiative #310 reforms Colorado's unified election system with a new process spanning the two elections. *Cf. In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative*

Pub. Rights in Waters II, 898 P.2d 1076, 1080 (Colo. 1995) (holding that the initiative violated the single subject requirement where there was "no unifying or common objective").

2. Initiative #310's reforms are dependent upon each other.

The reforms to the primary election and the general election do not operate independently. If Initiative #310 did not propose instant runoff voting in the general election, it risked establishing an unrepresentative system contrary to Respondent Proponents' purpose of providing more choice to voters so that candidates are elected based on the will of a majority of the voters. Winning candidates could receive less (and potentially significantly less) than 50 percent of the vote, and a different (losing) candidate could have more broad support from voters.[5] *See* Richard H. Pildes & G. Michael Parsons, *The Legality of Ranked-Choice Voting*, 109 Calif. L. Rev. 1773, 1781–84 (2021).

[5] For example, in a Democratic leaning district, if two Democrats advanced from the primary election to the general election, and those candidates split the Democratic vote, then a Republican candidate could win with a small plurality of votes, contrary to the "will of a majority of voters."

A general election ballot with four candidates absent a ranked voting method is ripe for vote splitting or spoiler candidates. Vote splitting occurs when two candidates with significant support divide the majority of votes and allow a third candidate to prevail. *Id.* at 1781. In a race with four candidates, as the general election would be under Initiative #310 without instant runoff voting, a candidate could win with just 26 percent of the vote—a strikingly non-representative result. Similarly, spoiler candidates are those who siphon off just enough votes from a majority-party candidate to throw the race to the other majority-party candidate. *Id.* This result, which occurs with frequency when a minor political party candidate garners more than a few percentage points of the vote in a hotly contested race between the major political party candidates, is also diametrically opposed to Respondent Proponents' common objective.

Initiative #310's use of a ranked voting method thus is critical to ensuring that the candidate elected has support from a majority of votes. *Id.* at 1801, 1818–25. Severing the all-candidate primary election from instant runoff voting in the general election would gut Respondent

Proponents' single subject. And contrary to Petitioner's overstated fears of the novelty of instant runoff voting, Colorado's election system already embraces the process in municipal elections. *See, e.g.*, § 1-7-1003, C.R.S. (providing for instant runoff voting in municipal elections).

Conversely, and as described above, simply implementing instant runoff voting in the general election does not achieve Respondent Proponents' common objective. Absent the all-candidate primary, which allows four candidates to advance to the general election, voters would be stuck with having to choose between two viable candidates—one from each majority political party. These candidates are often selected in lower turnout primary elections, which are closed to voters affiliated with the opposite major political party. Excising the all-candidate primary election would effectively nullify the impact of voters ranking multiple candidates through instant runoff voting.

3. Instant runoff voting in the general election implements the Initiative's single subject.

A different way of viewing this proposed election system is that instant runoff voting in the general election is an implementing provision for the all-candidate primary election that does not frustrate single

subject. *See Matter of Title, Ballot Title & Submission Clause for 2019-2020 #315*, 500 P.3d 363, 367 (Colo. 2020) ("[A]n initiative will not be deemed to violate the single subject requirement merely because it spells out details relating to its implementation."); *In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000) ("Implementation details that are 'directly tied' to the initiative's 'central focus' do not constitute a separate subject."). Once four candidates advance to the general election, instant runoff voting is the mechanism by which the Initiative achieves Respondent Proponents' unifying, common objective. Without instant runoff voting, a candidate could be elected based off of a small plurality of the votes.

As part and parcel to establishing the new all-candidate primary election, Respondent Proponents faced the need to adjust the administration of the rest of the election system to accordingly respond to the change that four candidates, regardless of political party affiliation, advance to the general election from the all-candidate primary election. *See In re 2019-2020 #315*, 500 P.3d at 368 (classifying provisions related to the creation *and administration* of an initiative's single subject

as "implementing provisions"). In other words, a logical question from a voter researching Initiative #310 and the new all-candidate primary election it establishes would be how a single candidate is then elected from the four advancing candidates in the general election. Proponent Respondents' decision to implement a ranked voting method, which requires a winning candidate to receive a majority of the votes in a contest, provides an answer to this natural follow-up question. *See In re 2021–2022 #16*, 489 P.3d at 1223 (identifying as an implementing provision an element that answered a "natural next question" from a hypothetical voter). Plainly stated, the Initiative's adoption of instant runoff voting in the general elections for covered office is directly tied to and necessary for the Initiative's single subject.

4. Other state supreme courts have held that similar measures encompass a single subject.

Two other state supreme courts have determined that this integrated electoral system does not violate single subject requirements. *See Helton v. Nevada Voters First PAC*, 512 P.3d 309 (Nev. 2022); *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020). The initiative at issue in Nevada paralleled Initiative #310: it established a

primary election in which "any voter could vote . . . regardless of party affiliation, and the top five candidates from the primary would proceed to the general election," where voters would be able to "rank the candidates by preference" using a "ranked-choice voting format." *Helton*, 512 P.3d at 312–13. And mirroring Petitioner's concern here, the challenger in Nevada argued that the initiative "could be brought in separate initiative petitions (1) nonpartisan open primaries and (2) general election ranked-choice voting." *Id.* at 314. Rejecting these contentions, the Nevada Supreme Court explained that the fact that the changes

> concern different steps in [the electoral] process—the primary election and the general election—does not make them two separate subjects. Further, the changes are functionally related and germane to each other in that they work together to reform Nevada's election process and the effectiveness of one change would be limited without the other.

Id. at 315.

The Alaska Supreme Court likewise concluded that an initiative proposing these changes encompassed a single subject. *Meyer*, 465 P.3d at 498. As relevant to the question presented to this Court, the Alaska Supreme Court reasoned that "[t]he open, nonpartisan primary system

changes the status quo by forwarding four candidates for voters to rank in the general election by ranked-choice voting. These two substantive changes are interrelated because they together ensure that voting does not revert to a two-candidate system." *Id.* at 499. The Nevada and Alaska courts' reasoning applies equally here.

5. The ills of omnibus measures are not present.

Because voters are presented with a unified system, Initiative #310 does not risk impermissibly surprising voters nor creates a logrolling risk, as Petitioner suggests. Pet. for Review, at 6. Each of the Initiative's elements "tends to effect or carry out one general objective or purpose": the adoption of a comprehensive and unified electoral system to expand voter choice to elect candidates for certain federal and state offices who better represent the will of a majority of the voters. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). The Initiative does not present piecemeal or independent reforms to the voters, but rather one cohesive voting system. Initiative #310's purpose is not to implement a ranked voting method, such as instant runoff voting, in Colorado. Indeed, as explained by the

Nevada Supreme Court, the Nevada initiative's changes "d[id] not constitute logrolling because they are interrelated. . . . To conclude otherwise would only serve to frustrate the people's initiative power" because the changes are "necessarily connected to each other and the initiative's subject." *Helton*, 512 P.3d at 315.

This Court should also trust voters to comprehend the questions on their ballot and vote on whether they approve the system as a whole. *See Tashjian v. Repub. Party of Connecticut*, 479 U.S. 208, 220 (1986) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 797 (1983)) (noting "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues"); *accord Washington State Grange v. Washington State Repub. Party*, 552 U.S. 442, 454 (2008).

Moreover, Initiative #310's title, as set by the Title Board and further discussed below, describes in clear and succinct language the Initiative's election system of an all-candidate primary election, with four candidates advancing to the general election, where voters rank candidates and elect candidates who receive a majority of votes in the final tally. Voters will not be surprised because the Title Board drafted a

title that alerts any voter to Initiative #310's contents. Thus, whether a voter looks to the title or the Initiative itself, they will not be confused nor surprised at the Initiative's central purpose or impact.

B. Respondent Proponents' choice to impact certain covered offices does not frustrate single subject.

That Initiative #310's unified election system does not cover every Colorado elected office—in other words, that Respondent Proponents selected to only cover certain offices—does not create a second subject. Rather, the elected offices Respondent Proponents chose to cover under the Initiative's new integrated election system is a permissible policy decision. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000) ("We have never held that just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected."). Indeed, Respondent Proponents chose as covered offices the more high-profile elections in Colorado likely to need

a primary election to winnow the number of candidates.[6] If Initiative #310's proposed system proves successful, then perhaps it can be extended to district and county offices.

C. The significance of Initiative #310's proposed changes to Colorado's election system has no independent bearing on the single-subject analysis.

Throughout the Title Board process, and in his Petition for Review, Petitioner has made broad pronouncements that Initiative #310 would usher in "fundamental" and "radical" change and, because of that, single subject is not met. This is a red herring.

The ballot initiative process does not hinder Colorado citizens from proposing extensive reform to Colorado law. *See In re 2019-2020 #315*, 500 P.3d at 367 (The "effects [of a proposed initiative] are not relevant to whether the proposed initiative contains a single subject."). Rather, regardless of the extent of a measure's effects, if the Title Board determines that the initiative encompasses a single subject, the initiative

[6] Initiative #310 affects the races for the following offices, as described in the title: U.S. Senate, U.S. House of Representatives, governor, attorney general, secretary of state, treasurer, CU board of regents, state board of education, and the Colorado state legislature.

should be sent to the voters. *See also* Title Board Hearing at 1:25:40 (March 20, 2024) (observing that "you're allowed to make big changes" through the citizen ballot initiative process). Voters should then be alerted to significant changes in the initiative's title. *See, e.g.*, *Matter of Proposed Initiative On Parental Notification of Abortions For Minors*, 794 P.2d 238, 241 (Colo. 1990) (holding that when an initiative "adopts a legal standard that is new and likely to be controversial," the title should properly inform voters "of the new standard which will be of significance to all concerned with the issues surrounding the subject").

D. Petitioner misstates provisions of Initiative #310 related to ballot access to contrive another unfounded single-subject challenge.

Initiative #310 does not alter ballot access in the ways Petitioner describes in his Petition. Contrary to his statements, the Initiative does not reduce the number of signatures a candidate must collect to petition onto the primary election ballot, and it is not the Initiative that allows any elector to sign petitions for minor political party candidates and those unaffiliated with a political party to access the primary election ballot. *See* Pet. for Review, at 4, 5.

To be clear, the Initiative would require that candidates affiliated with a minor political party and those unaffiliated with any political party who are seeking election participate in the all-candidate primary election. *See, e.g.,* Proposed Initiative 2023-2024 #310, Secs. 17, 19, §§ 1-4-802, 1-4-1304, Certificate Packet at 20, 21 (providing that candidates from minor political parties or those unaffiliated may petition onto or be nominated by assembly to the all-candidate primary election ballot). Under Colorado's current system, these candidates often can directly access the general election ballot. *See* § 1-4-802, C.R.S. But, because the all-candidate primary election would become the only avenue to access the general election ballot for the covered offices, minor political party and unaffiliated candidates would have no access to this integrated electoral system if Initiative #310 did not provide them an avenue. *See In re 2015–2016 #73*, 369 P.3d at 568 ("[W]hen an initiative tends to effectuate one general objective or purpose, the initiative presents only one subject, and provisions necessary to effectuate the initiative's purpose are properly included within its text."). Thus, the alterations

allowing these candidates a means to access the all-candidate primary election ballot are implementing provisions.

Turning back to Petitioner's arguments, Petitioner misconstrues Initiative #310 to alter the signature requirements for petitioning onto the all-candidate primary election. A plain reading of Initiative #310's text demonstrates that it does not alter any signature threshold requirements. *See, e.g.,* Proposed Initiative 2023-2024 #310, Sec. 16, § 1-4-801, Certificate Packet at 19–20 (applying *current* statutory signature requirements to both covered and non-covered office petitions). Therefore, Petitioner's concerns lack support.

Similarly, Initiative #310 does not create the ability of minor political party and unaffiliated candidates to gather petition signatures from any voter. Although the Initiative would provide that candidates for covered offices—like candidates for non-covered offices—may either petition onto the all-candidate primary election ballot or seek nomination by a political party caucus or assembly,[7] it does not contain any provision

[7] *See, e.g.,* Proposed Initiative 2023-2024 #310, Sec. 9, § 1-4-502, Certificate Packet at 17.

that would allow any voter, regardless of political party affiliation or non-affiliation, to sign the petitions for unaffiliated and minority party candidates. *Cf.* Pet. for Review, at 5. Rather, current Colorado statute—a section unmodified by Initiative #310—provides: "Petitions to nominate candidates from a minor political party or unaffiliated candidates in a partisan election may be signed by any eligible elector who has not signed any other petition for any other candidate for the same office." § 1-4-904(2)(b), C.R.S.

II. The Title Board set a clear and concise title that accurately describes Initiative #310.

Initiative #310's title expresses the measure's single subject in clear and concise language. *See* Colo. Const. art. V, § 1(5.5). Following the Initiative's rehearing on April 26, 2024, the Title Board affixed the following submission clause and title to Initiative #310:

> Shall there be a change to the Colorado Revised Statutes creating new election processes for certain federal and state offices, and, in connection therewith, creating a new all-candidate primary election for U.S. Senate, U.S. House of Representatives, governor, attorney general, secretary of state, treasurer, CU board of regents, state board of education, and the Colorado state legislature; allowing voters to vote for any one candidate per office, regardless of the voter's or candidate's political party affiliation; providing that

> the four candidates for each office who receive the most votes advance to the general election; and in the general election, allowing voters to rank candidates for each office on their ballot, adopting a process for how the ranked votes are tallied, and determining the winner to be the candidate with the highest number of votes in the final tally?

A. Initiative #310's title meets the clear title requirement.

Whether or not a voter is familiar with Colorado's electoral process, that voter will be able "to determine intelligently whether to support or oppose [Initiative #310]" from the Initiative's title. *In re 2015-2016 #73*, 369 P.3d at 568.

First, the title plainly identifies each office covered by the creation of the new all-candidate primary election. Voters need not have prior knowledge of governmental structures and organization to understand which offices are impacted.

The second clause explains to voters how they interact with this new all-candidate primary election: they can vote for any candidate, regardless of their political party affiliation or non-affiliation or that of the candidate.

Third, the title describes how candidates in the all-candidate primary election advance to the general election based on voter input.

And finally, the title informs a voter that in the general election, they will be able to rank candidates for each office of their ballot, with the elected candidate receiving the highest number of votes in the final tally. This form of ranked voting is not a "radically new process for Colorado." Pet. for Review, at 6; *see* § 1-7-1003 (providing for instant runoff voting in municipal elections). Moreover, when voters are told that they are allowed to rank up to four candidates in order of preference, this alerts them to the fact that those preferences may be taken into account for the final tally of votes, as the title explains.

B. Initiative #310's title is not incomplete or misleading.

Petitioner makes two arguments in his Petition for Review as to the title: (1) the title and submission clause do not explain how unaffiliated and minority party voters can obtain signatures from any person; and (2) the title does not explain that the general election voting system is an instant runoff voting system. Neither is required in the title.

Contrary to Petitioner's statements, it would be improper for Initiative #310's title to include that "any person" could sign petitions for minor party or unaffiliated candidates to access the ballot. *See* Pet. for

Review, at 6. First, Initiative #310 does not include any provision on signatures for petitions for ballot access. Rather it is current law that provides for such. *See supra* Section I(D). Because Initiative #310 would not change the current law on this, nothing needs to be included in the title. And second, current law allows that "any eligible *elector* who has not signed another petition for any other candidate for the same office" may sign the petition to nominate a candidate from a minor political party or a candidate who is unaffiliated with any political party. § 1-4-904(2)(b). No Colorado law—whether proposed or codified—allows "any person" to sign a petition for unaffiliated or minor political party candidates. *Cf.* Pet. for Review, at 6.

Likewise, Initiative #310's title explains how the instant runoff voting works in easily understandable and succinct language, and without catchphrases. All nuances of instant runoff voting need not be spelled out in the title. *See Matter of Title, Ballot Title, Submission Clause, & Summary, Adopted Aug. 26, 1991, Pertaining to Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991) ("The board must also be cognizant of the need for brevity. The board is not

required to describe every nuance and feature of the proposed measure.") (Internal citation omitted). And whether that language is the most perfect way to describe instant runoff voting is not for this Court to decide. *See Matter of Title, Ballot Title & Submission Clause & Summary Approved Apr. 6, 1994, & Apr. 20, 1994, for the Proposed Initiative Concerning "Auto. Ins. Coverage,"* 877 P.2d 853, 857 (Colo. 1994) (quoting *In re Election Reform Amendment*, 852 P.2d 28, 35 (Colo. 1993) ("In reviewing the Board's performance of this often difficult task, we do not require the Board to meet a standard of perfection; instead, we seek 'simply to eliminate a title which is insufficient or unfair.'")

Of course, in learning what Initiative #310 seeks to do, Respondent Proponents anticipate that some voters—potentially including Petitioner—may dislike the Initiative's proposal or a portion thereof. But that criticism is distinct from whether the measure advances a single subject and whether a voter will know what a vote for or against the measure means. Initiative #310's title clearly, correctly, and fairly expresses the intent and meaning of the measure. *See In re 2015-2016 #73*, 369 P.3d at 568.

CONCLUSION

Respondent Proponents respectfully ask this Court to affirm the Title Board's determination on jurisdiction to set title.

Respectfully submitted May 10, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed a true and correct copy of the foregoing **RESPONDENTS OPENING BRIEF** via the Colorado Courts E-Filing system which will send notification of such filing and service upon counsel of record:

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