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COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-102(2), C.R.S. (2024)
Appeal from the Ballot Title Board

In the Matter of the Ballot Title of Proposed Initiative 2023-2024 #310

MARK CHILSON,
Petitioner,

v.

JASON BERTOLACCI and OWEN ALEXANDER CLOUGH

and

TITLE BOARD: Theresa Conley, Christy Chase, and Jennifer Sullivan,
Respondents.

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Case No. 2024SA157

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THE TITLE BOARD'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, 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 1718 words.

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/ Michael Kotlarczyk

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

ARGUMENT

I. Petitioner's single subject arguments fail.

In his Opening Brief, Petitioner argues that (A) #310's changes to the primary and general elections constitute two separate subjects and (B) the single subject of #310 is too broad. The Board addresses these in turn.[1]

A. The changes to the general and primary elections are not separate subjects.

Petitioner devotes several pages of his Opening Brief to describing the effects #310 would produce on primary and general elections. *See* Petr's Opening Br. 9-12. After detailing those changes, Petitioner concludes that so many changes must indicate multiple subjects. But Petitioner confuses purposes and effects. The single-subject rule is designed to ensure that measures contain only one purpose—here, implementing an election system that seeks to expand voter choice in a

[1] Petitioner also argues that #310 presents risks of logrolling and voter surprise. *See* Petr's Opening Br. 21-23. The Board addressed those issues in its Opening Brief and stands on its brief. *See* Title Bd. Opening Br. 9.

manner intended to better reflect voters' intent. The single subject rule thus prevents joining different purposes in a single measure, but it does not preclude Coloradans from voting on laws that could have multiple effects. *See, e.g.*, *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 12 ("[A] proposed initiative cannot seek to accomplish multiple, discrete, unconnected purposes.").

Petitioner likens this measure to a 2016 case where this Court found multiple subjects in an initiative that sought to change redistricting for state and federal offices. *See In re Title, Ballot Title, & Submission Clause for 2015-2016 #132*, 2016 CO 55. That case actually supports the Board's position here. In *In re 2015-2016 #132*, the Court recognized that a broad range of changes to the redistricting process would still constitute a single subject, including that the measure would

> modify the criteria to be used in drawing legislative districts, subject the restructured commission to open meetings and open records laws, require a two-thirds vote of commissioners to approve any action of the commission, change the process for drafting and approving redistricting plans and the process for supreme court review of such plans, and allow the reconfigured commission to adopt rules to govern its administration and operation[.]

Id. ¶ 18.

Notwithstanding the broad scope of changes to the redistricting process that initiative contemplated, the Court held it would have still been a single subject had it stopped there. But instead, the initiative contained a second and third subject because it also reallocated constitutional authority in ways unconnected to the measure's primary purpose of changing legislative redistricting—first by allowing the Supreme Court Nominating Commission to appoint members to the new Reapportionment Commission, second by reallocating congressional redistricting authority from the General Assembly to the new Commission. *Id.* ¶¶ 23, 29.

Here, #310 does not involve reallocating constitutional powers. It proposes major changes to Colorado's election processes, but as *In re #132* recognizes, wide-ranging and comprehensive changes do not create single subject concerns. *See id.* ¶ 18.

Another case relied on by Petitioner similarly establishes that broad changes to Colorado election systems do not violate the single subject requirement. In *In re 2013-2014 #76*, the Court recognized that

"a host of significant changes to the manner in which recall elections are triggered and conducted constitute a single subject." *Id.* (citing *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶¶ 17-25). Similar to #310's changes to multiple levels of Colorado's election system, the Court in *In re 2013-2014 #76* concluded that a number of changes to both the petitioning process for recall elections and the ballot contents for recall elections constituted a single subject. 2014 CO 52, ¶¶ 17-25.

Petitioner argues that *In re 2013-2014 #76* supports his position here because the Court found that changing the list of officers who could be recalled from the current constitutional limitations was a second subject from the procedural changes to recall elections. But like *In re 2015-2016 #132*, the Court was concerned with a reallocation of constitutional authority, as the measure would have created not just new recall procedures, but a right to recall appointed officials that fundamentally changed the right currently enshrined in the Colorado Constitution. *See In re 2013-2014 #76*, 2014 CO 52, ¶ 33 ("[A] new constitutional right to recall non-elected officers has no necessary

connection to the initiative's new recall petition, election, and vacancy provisions."). Proposed Initiative #310 does not present such a reallocation of constitutional authority. Instead, its changes to Colorado's elections modify the election procedures, similar to the changes the Court approved of in *In re 2013-2014 #76*.

Petitioner's third case is simply inapposite. In *In re Title, Ballot Title, & Submission Clause for 2003-2004 #32 & #33*, the Court found that excluding attorneys from serving on the Title Board was not necessarily or properly connected to the rest of the measure, which sought to liberalize initiative procedures. 76 P.3d 460, 462-63 (Colo. 2003). The Court there concluded that the exclusion of a class of persons—lawyers—from the political process constituted a second subject. *See id.* The current measure does no such thing. Petitioner argues that it "effectively excludes" voters who choose not to rank candidates under #310 if their first-choice candidate is eliminated. Petr's Opening Br. 15. But that no more excludes voters than current law does when it allows voters to leave their ballot blank for particular races. It has no bearing on #310's single subject.

B. The single subject of #310 is not too broad.

Petitioner next argues that the offered single subject of #310 is too broad. But breadth alone does not create a single subject problem. "An initiative that tends to carry out one general, broad objective or purpose does not violate this constitutional rule." *In re Title, Ballot Title, & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). Only if a proponent seeks to unite "separate and unconnected purposes" under "some overarching theme" is the single subject rule violated. *Id.*

Here, #310 contains a single purpose: implementing a new election system that seeks to expand voter choice to elect candidates who better reflect the majority will. As explained in the Title Board's Opening Brief, the changes to the primary and general election further that purpose, both independently and together. Independently, the measure expands the candidates for whom voters can vote in the primary election by creating an all-candidate primary, and expands voter choice at the general election by allowing voters to rank all the candidates rather than select a single candidate. And these two provisions also work in tandem: the all-candidate primary seeks to

identify the four candidates that appeal to the most Coloradans, which would be more likely to produce candidates that a voter would be interested in ranking than if the primary remained a first-past-the-post partisan primary. The provisions of #310 are thus necessarily and properly connected in furtherance of a single subject.

II. Petitioner's clear title objections fail.

Petitioner's Opening Brief advances two clear title objections, which differ from the clear title objections identified in the Petition for Review.

First, Petitioner argues that the title should "includ[e] the simple phrase 'instant runoff voting' [to] allow voters to quickly find a description of" the new voting system created by #310. Petr's Opening Br. 25. This argument differs from the issue identified in the Petition for Review, which argued that the title should "inform voters *how* this new system works." Pet'n for Review 6 (emphasis added). Petitioner's motion for rehearing before the Title Board similarly complained about the lack of explanation rather than the failure to use the specific phrase "instant runoff voting." *See* Record, p 28. This specific issue is therefore

waived. *See In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1130 n.3 (Colo. 1996).

Even if not waived, the Board appropriately exercised its discretion to describe the measure in generally understood terms without using the technical term "instant runoff voting." Though familiar to election administrators and election lawyers, the phrase "instant runoff voting" does not necessarily have a commonly understood meaning among voters. So the Board chose to describe the process as "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." Record, p 23. This complied with its obligation to "summarize the central features of a proposed initiative." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. Inserting the phrase "instant runoff voting" in this description would not add any descriptive value to many voters. Even if it would for some voters, the Court does not "consider whether the Title Board set the best possible title." *In re Title, Ballot Title, & Submission Clause for*

2019-2020 #3, 2019 CO 107, ¶ 17. At a minimum, the Board's description of the voting process falls well within its discretion to "resolv[e] interrelated problems of length, complexity, and clarity in setting a title." *In re 2013-2014 #90*, 2014 CO 63, ¶ 24.

The second clear title issue identified in Petitioner's Opening Brief—that the title should explain "that the measure changes how one measures voter participation in different rounds of voting (or alternatively how it defines a 'vote' or 'voter')," Petr's Opening Br. 25—is not raised in either the Petition for Review in this Court or the motion for rehearing before the Title Board. *See* Pet'n for Review 6; Record, p 28. It is waived. *See In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d at 1130 n.3.

But even if not waived, the title is not unfair or misleading. It advises voters they will be able to rank the candidates on the general election ballot and that a winner will be determined based on those rankings. No more is needed. "[S]etting forth all of the details that petitioners seek to add would result in a prolix title that would likely

create, rather than prevent, voter confusion." *Ward v. State*, 2023 CO 45, ¶ 54. Therefore, the title should be affirmed.

CONCLUSION

The Court should affirm the actions of the Title Board.

Respectfully submitted on this 17th day of May, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCE, at Denver, Colorado, this 17th day of May, 2024, addressed as follows:

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