

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD **Colorado Secretary of State**

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2015-2016 #98

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**MOTION FOR REHEARING**

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Registered electors, Jean Martelle Daniels and Brandi Renee Meek, through their legal counsel, Tierney Lawrence LLC, object to the Title Board's ballot title and submission clause for Initiative 2015-2016 #98, and request a rehearing pursuant to C.R.S. §1-40-107.

**I. The Title Board set a title for Initiative 2015-16 #98 on March 2, 2016.**

At the hearing held in connection with this proposed initiative, the Board designated and fixed the following title:

A change to the Colorado Revised Statutes concerning the process of selecting candidates representing major political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a major political party without declaring an affiliation with that political party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election.

**II. Initiative #98 contains multiple subjects, contrary to Colo. Const., art. V, sec. 1(5.5).**

Initiative #98 has at least two distinct and separate purposes. First, it allows voters unaffiliated with a major political party to vote in a primary election for major political parties. Second, it allows major political parties to change from the nomination of candidates by primary election to the nomination of all candidates by assembly or convention.

These two discrete subjects violate the single subject requirement when paired together in Initiative #98. First, the proposal puts together in one measure two subjects having no necessary or proper connection, arguably for the purpose of enlisting in support of the measure the advocates of each separate subject (open primaries on the one hand, and a change from the nomination of candidates by primary to the nomination of all candidates by assembly or convention, on the other), and thus securing the enactment of both subjects contained within Initiative #98 that could not be carried upon their merits independently.

Second, the separate subject allowing political parties to choose to eliminate the primary and nominate all candidates by assembly or convention alone is precisely the type of surreptitious subject coiled in the folds of the measure that will surprise voters who are urged to

vote yes to create open primary elections in Colorado. The extensive declarations contained in Section 1 of the measure contain no mention of the separate and incongruous subject allowing political parties to choose to nominate all candidates by assembly or convention alone; indeed, the heading of the measure affirms that its subject is "Primary Elections."

This voter surprise is evidenced further by proponents' counsel's statement before the Title Board that the primary purpose of the measure is to allow unaffiliated voters to participate in primary elections. The assertion by counsel that the provision allowing political parties to nominate all candidates by assembly or convention is "merely a constitutional safety valve" and not likely to be used, does not save this proposal from violating the single subject requirement. Similarly, including this alternate subject in the title does not cure the violation of Colo. Const., art. V, sec. 1(5.5), because the measure still contains two separate and distinct subjects.

To survive a single subject analysis, an initiative must be necessarily and properly connected rather than disconnected or incongruous. Initiative #98 fails this test.

### **III. The title set for #98 is misleading and prejudicial.**

The title and submission clause of a ballot measure should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010). The title shall correctly and fairly express the true intent and meaning of the initiative. *Id.* The title and submission clause for Initiative #98 falls short of this directive, and by leaving out critical features of the measure, will mislead voters.

#### **A. The title's omission of the exemption for minor political parties is misleading.**

Initiative #98 specifically allows minor political parties to prohibit unaffiliated voters from participating in minor political party primary elections. This distinction exempting minor political parties from the requirement on major political parties to allow unaffiliated voters to participate in primary elections is a critical component of the measure and its omission will mislead voters.

#### **B. The title fails to alert voters of the creation and use of a combined ballot containing all candidates for all major political party primary elections for unaffiliated voters alone.**

Initiative #98 creates a new type of combined "super" ballot for unaffiliated voters that will contain all candidates for all major political parties for all races on one ballot, that only unaffiliated voters will receive. Unaffiliated voters who receive the "super" ballot will be required to vote for only one political party's candidates, and if the voter votes for more than one

political party's candidates, the ballot will be void. These features of the measure are central, and their absence from the title renders the title inaccurate, incomplete and misleading.

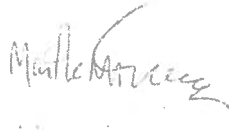
**C. The title fails to alert voters that if a combined ballot is not practicable, unaffiliated voters will receive ballots for all the major political parties.**

Initiative #98 also provides that if a combined "super" ballot is not practicable for a county, then unaffiliated voters in that county will receive primary ballots for all the major political parties and be instructed to return just one of those ballots. This is a substantial change to existing law and failure to advise voters of this central feature of the measure is misleading.

WHEREFORE, Objectors respectfully request that the Title Board withdraw the title set on March 2, 2016 because it contains more than a single subject, or in the alternative, the Title Board should modify the title to account for the concerns raised in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2016

TIERNEY LAWRENCE LLC



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## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of March, 2016 a true and correct copy of the foregoing MOTION FOR REHEARING was filed with the Secretary of State and served via Email to the following:

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