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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR
INITIATIVE 2017-2018 #50

PROPONENTS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING

Kathleen Curry and Toni Larson, registered electors of the State of Colorado and the proponents of Initiative 2017-2018 #50 ("Initiative #50"), through counsel, Ireland Stapleton Pryor & Pascoe, PC, hereby respond in opposition to the Motion for Rehearing filed by Robert DuRay and Katina Banks ("Movants"), stating as follows:

I. Initiative #50 Has a Single Subject.

A proposed initiative comports with the single subject requirement of Article V, section 1(5.5) of the Colorado Constitution "if the initiative tends to effect or to carry out one general object or purpose." *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014). "An initiative meets this requirement as long as the subject matter of the initiative is necessarily or properly connected. Stated differently, so long as an initiative encompasses related matters it does not violate the single subject requirement." *Id.* (internal citations and quotations omitted) (emphasis in original). In addressing the single subject issue, it is improper for the Title Board to consider the merits of the proposed initiative or to review its "efficacy, construction, or future application." *Id.* at 176.

Here, as reflected in its title, ballot title, and submission clause (collectively, the "Title"), the single subject of Initiative #50 is congressional redistricting in Colorado. More specifically, Initiative #50 establishes an Independent Congressional Redistricting Commission ("Commission") and, directly related thereto, sets forth Commission eligibility requirements, appointment processes, redistricting criteria, and processes for adopting redistricting maps. This subject is not an overly broad or overreaching category, and all of the subsections of Initiative #50 are connected to its single subject of congressional redistricting in Colorado. *See In re #89*, 328 P.3d at 177. Consequently, Colorado voters will not be surprised by any of the provisions of Initiative #50. *See id.*

Movants incorrectly contend that Initiative #50 contains multiple subjects. Movants first argue that Initiative #50's provisions addressing how congressional redistricting plans are approved by the Colorado Supreme Court constitute a separate subject. The premise of Movants' argument is that Initiative #50 changes the Colorado Supreme Court from a court of appellate review to a trial court in approving redistricting plans. This argument is false because the language Movants rely upon to make this argument is unchanged from the existing constitutional language for the approval of plans drawn by the Reapportionment Commission, which currently reads:

The supreme court shall adopt rules for such proceedings and for the production and presentation of supportive evidence for such plan. Any legal arguments or evidence concerning such plan shall be submitted to the supreme court pursuant to the schedule established by the court.

Colo. Const. art. V, § 48 (emphasizing the identical language as emphasized by Movants). In short, Movants' argument is based on a misinterpretation of the language emphasized above because Initiative #50 does nothing to change the role of the Colorado Supreme Court in approving redistricting plans.

Movants' next argument is that Initiative #50's prohibition against incumbent members of congress and candidates for congress from sitting on the Commission is a second subject. However, the inclusion of qualifications for congressional redistricting commissioners is directly connected to the single subject of congressional redistricting. Movants try to manufacture a second subject by arguing that the very logical prohibition against members of or candidates for congress from drawing their own districts violates the United States Constitution. As an initial matter, the purpose of the Title Board's review is not to determine whether Initiative #50 conflicts with the U.S. Constitution, which is not a single subject question.

Regardless, the assumption of a constitutional conflict is incorrect. Initiative #50 does nothing to change the U.S. Constitution's qualifications for running for congress. Any person meeting the age, citizenship, and residency requirements can run for congress. Initiative #50 simply says they cannot also serve on the Commission. Movants' analysis is backwards because a qualification for sitting on the Commission is not also a qualification to run for congress. Any person who wants to run for congress is free to not sit on the Commission or even to resign from the Commission.

To accept Movants' argument would mean that any requirement for holding a state public office that prohibits holding other public office would violate the U.S. Constitution. For example, in arguing against Initiative #48, Movants recognize that Colorado judges cannot hold public office other than judiciary (citing Colo. Const. art. VI, § 18) and therefore Colorado judges cannot also be congress persons. Does that mean that this requirement for holding a judgeship in Colorado creates a backdoor qualification for United States Congress and is unconstitutional? The answer is no, because any person who otherwise meets the qualifications to run for congress is free to not be a judge in Colorado.

In short, the prohibition against congress persons and congressional candidates from sitting on the Commission is not a second subject. Accordingly, the Title Board should affirm the Title setting for Initiative #50 because it has a single subject.

II. The Title Is Not Misleading.

Ballot titles must be brief, while at the same time being fair and not misleading. C.R.S. § 1-40-106(3)(b); *In re Second Initiated Constitutional Amendment*, 613 P.2d 867 (Colo. 1980). The Title Board has considerable discretion in resolving "the interrelated problems of length,

complexity, and clarity" in setting titles. *In re Proposed Initiative Concerning State Personnel Sys.*, 691 P.2d 1121, 1125 (Colo. 1984).

Movants first contend that the title is misleading because it does not state who the appointing authorities are for the eight non-independent commissioners. Mot. for Rehearing at 4. This argument lacks merit because, for the sake of brevity, the title does not describe the appointing authorities of any of the commissioners, whether independent or not. The title does, however, clearly describe the commissioners' respective association or non-association with Colorado's two largest political parties and therefore fairly addresses the political composition of the Commission.

Movants next contend that the title is misleading because it purportedly mischaracterizes how political competitiveness is considered in drawing plans. Mot. for Rehearing at 5. Movants argue that the title suggests that competitiveness is a requirement and always applied by the Commission. *Id.* The title does not suggest as much. Rather, the title states that political competitiveness is added to the "criteria" used by the Commission. "Criteria" and its singular "criterion" are defined as "standard(s) on which a judgment or decision may be based." *Merriam-Webster.com*, 2017, available at <https://www.merriam-webster.com> (last visited Oct. 14, 2017) (emphasis added). By definition, "criteria" to be considered are not requirements.

If anything, the use of the word "criteria" in the title undersells the role that competitiveness plays in the Commission's considerations. Initiative #50 plainly states that, to the extent possible, the commission shall maximize the number of competitive districts. Proposed C.R.S. § 2-1-102(1)(c). Accordingly, Movants' concerns are unfounded because the title properly balances brevity with clarity.

WHEREFORE, Kathleen Curry and Toni Larson respectfully request that the Title Board deny the Motion for Rehearing and affirm the title setting for Initiative #50.

Dated: October 17, 2017

Respectfully submitted,

s/ Benjamin J. Larson

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the foregoing **PROPONENTS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING** was sent this 17th day of October, 2017, via first class U.S. mail, postage pre-paid or email to Movants at:

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