

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Mark Chilson,
Objector,

v.

Jason Bertolacci and Owen Alexander Clough,
Designated Representatives of Initiative 2023-2024 #188

**MOTION FOR REHEARING ON RESUBMITTED
PROPOSED INITIATIVE 2023-2024 #188**

Mark Chilson, a Colorado registered elector, seeks a rehearing on Proposed Initiative 2023-2024 #188, on one ground – that the Title Board had no jurisdiction to set a title, because the resubmitted measure did meet the explicit requirements of Colo Const. Art V, Section 1(5.5).

Section 5.5 allows proponents to resubmit an initiative that earlier failed single subject. Specifically,

the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject¹

The standard is a simple one: the revisions may not “involve more” than the “elimination of provisions” to achieve a single subject. Resubmitted Proposal 188 fails this test.

¹ Colo. Const. Art V., § 1(5.5).

The Title Board originally rejected Proposal 188 because it contained two separate subjects. First was a new ranked choice method of voting, and second was a nomination process that removed any party affiliation requirement for those show signed nominating papers for party-affiliated nominees. Accordingly, the proponents sought to strike language that removed the second subject. But they went too far. They removed the following two clauses, both of which went beyond the second subject:

First was proposed 1-4-603(2), which stated:

(2) CANDIDATES FOR COVERED OFFICES SPECIFIED IN SECTION 1-4-502(1.5) SHALL BE PLACED ON THE ALL-CANDIDATE PRIMARY ELECTION BALLOT BY PETITION, AS PROVIDED IN PART 8 OF THIS ARTICLE.

Second was a proposed clause in 1-4-802(5)(2)(A), which stated:

THE PETITION MAY INDICATE THE NAME OF THE CANDIDATE'S POLITICAL PARTY AFFILIATION OR NON-AFFILIATION IN NOT MORE THAN THREE WORDS.

Removal of these two provisions go far beyond what is necessary to achieve a single subject. Whether candidates for covered offices are placed on ballot by petition does not implicate who can sign a petition for a candidate. And especially plain, the fact that a petition “may” indicate the name of a candidate’s political party or non-affiliation on the ballot has nothing to do with the permissibility of non-party members signing nominating papers for party designated candidates.

Indeed, members of the Title Board themselves seemed to recognize that removal of both provisions went beyond what was necessary to achieve single subject, but excused the excesses as immaterial or unimportant, or without changing the meaning of the measure. But this is not the standard. The standard is whether a removed provision is beyond necessary to

achieve single subject. Not whether the removed provisions may go beyond what is necessary, but nonetheless have little perceived practical effect. Ultimately, the Title Board members are sworn to follow the law and not violate it, even if they believe there is no harm.

This Title Board should not allow Resubmitted Proposed Initiative 188 to go forward this election cycle, because the resubmitted version violates Colo. Const. Art. V, Section 1(5.5). The proponents can resubmit for next election cycle, to enact their preferred public policy in November 2026, rather than November 2024.

Respectfully submitted this 11th day of April 2024,

GESSLER BLUE LLC

s/ Scott E. Gessler

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CERTIFICATE OF SERVICE

On April 11, 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:

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