

**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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**Mark Chilson,**  
Objector,

v.

**Jason Bertolacci and Owen Alexander Clough,**  
Designated Representatives of Initiative 2023-2024 #312

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**MOTION FOR REHEARING ON  
PROPOSED INITIATIVE 2023-2024 #312**

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Mark Chilson, a Colorado registered elector, seeks a rehearing on Proposed Initiative 2023-2024 #312. As part of this motion Chilson withdraws his previously-filed motion on April 24, 2024. This motion for rehearing is timely, because it is filed seven days after the Title Board set a title and submission clause, on April 18, 2024.

The motion or rehearing is brought on two grounds: (1) that the Title Board had no jurisdiction to set a title, because the resubmitted measure contained more than one subject, and (2) that the title and submission clause is incomplete and misleading.

**A. The measure violates single-subject requirements.**

In attempting to re-write Colorado election law, the measure contains multiple purposes:

1. It creates a new class of covered offices to which the measure applies;
2. It creates a new all-candidate primary ballot, which includes every party and every unaffiliated candidate;

3. It allows all candidates to petition on to the primary election ballot;
4. It reduces the number of signatures required to petition onto the primary ballot;
5. It creates a new definition of “primary election” for covered office, in which a primary election voters do not choose political party nominees, but rather narrow the number of candidates who can advance to the primary election;
6. It limits the general ballot election to the top four finishers in the newly-defined primary election;
7. It creates a new method of counting votes in the general election, by adopting instant runoff voting; and
8. It creates a new instant runoff voting system for presidential candidates.

This matter contains several, incongruous subjects. First and foremost, it reworks the primary election. It changes the very nature of the primary, from selecting party nominees to instead narrowing the number of general election candidates to four. It allows non-party candidates on the primary ballot, and it limits general election candidates to the top four finishers in the primary.

This rework of Colorado’s primary elections is fundamentally different than the changes to the general election system. The measure creates an entirely new way of voting and tabulating votes, through an instant runoff system. This new general election voting system is a radical departure from the voting system Colorado has used for over 150 years. And it is not necessarily or properly connected to the entirely new primary voting system. In short, the measure includes two radically new voting systems – one for a re-defined primary election, and a separate one for the general election.

Next, the measure creates an entirely new system for nominating candidates for the primary election. It not only changes who can be on the primary ballot, but it also changes how candidates get there. The measure now allows unaffiliated and minority party candidates to petition on the ballot, and it changes the numbers of signatures required, while allowing any voter to sign petitions for unaffiliated or minority party candidates.

Third, the measure contains separate subjects by creating new voting systems for one class of candidates – covered candidates – yet establishing or retaining separate nomination, primary, and general election voting systems for an entirely separate class of candidates.

Fourth, the measure also reworks the manner in which Coloradans vote for presidential candidates. The presidential vote is an entirely different subject than Colorado's primary elections and general elections for its "covered" class of candidates. Presidential elections differ fundamentally than other elections. First, major party presidential candidates are nominated at national conventions, following a multi-month process of voting in fifty states plus the district of Columbia and six U.S. Territories. And minor party candidates are also nominated at a national convention, following an extensive process. This creates a fundamental disparity between party candidates on one hand, and unaffiliated candidates who merely need to turn in petitions in Colorado. Next, voters do not, in fact, elect candidates, but rather presidential electors. Third, historically non-major party candidates are effectively fringe candidates, collecting very few votes when they appear on state presidential ballots. Voters would be shocked to know that one of these minor candidates could win the presidential vote in Colorado based on an instant run-off voting system in which voters' secondary and tertiary preferences govern who is declared the victor. In short, the

presidential election is a wholly and completely different subject, and it is not necessarily and properly connected to the other provisions in the measure.

The measure does not create one, but rather creates multiple, fundamental, radical changes to Colorado's election systems. And it combines different voting systems and different nominating systems within the same measures. But these different, multiple systems are not necessarily or properly connected, thus creating surprise among voters and forcing them into a take-it-or-leave-it, logrolling vote that combines different, incongruous measures.

For these reasons, the measure violates Colorado's single subject requirement.

**B. The title and submission clause are incomplete and misleading.**

In addition, the ballot title and submission clause are misleading and incomplete:

First, the title does not define the scope of the measure – rather than fully informing voters of the offices covered, it refers instead on “certain state offices.” Because the measure radically changes voting systems for the offices it encompasses, it is misleading to fail to inform Colorado voters of exactly what offices are covered by the new measure.

Second, the title and submission clause do not explain how unaffiliated and minority party voters can obtain signatures from any person, including those who do not share a candidate's unaffiliated status or minority party membership.

Third, the title does not explain that the general election voting system is an instant runoff voting system, whereby if no person wins a majority of votes, then

voters' secondary and tertiary candidate preferences determine the outcome of the election, based on the elimination of votes for candidates in each round of instant runoff tabulation. Bluntly put, the Instant Runoff Voting system is a radically new process for Colorado, and the title makes no effort to inform voters how this new system works.

And fourth – similar to the third point – the measure does not explain how instant runoff voting works in the presidential election.

Respectfully submitted this 25th day of April 2024,

**GESSLER BLUE LLC**

*s/ Scott E. Gessler*

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## CERTIFICATE OF SERVICE

On April 25, 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 email on the following:

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