

**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 #212

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**MOTION FOR REHEARING ON  
PROPOSED INITIATIVE 2023-2024 #212**

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Mark Chilson, a Colorado registered elector, seeks a rehearing on Proposed Initiative 2023-2024 #219, on two grounds. First, the proposed initiative contains two separate subjects – an instant runoff method of voting for most partisan elections in Colorado, and a second, different instant runoff voting method for presidential candidates. Second, the title and submission clause is incomplete and misleading, because it does not distinguish the two different instant runoff methods.

First, the proposed ballot initiative contains two separate provisions. One, an instant runoff system that applies to U.S. senators, representatives, state offices, and state legislative offices. Two, a different system that applies to presidential elections.

The two types of elections are fundamentally different. This can be most readily seen in the structure of the proposed initiative itself. Rather than treat presidential elections the same as all other “covered offices” the initiative instead creates an entirely separate—and

slightly different—instant runoff voting method for presidential elections. If, in fact, they were identical provisions, the initiative would not need to split the two apart.

The division between the two reflects the fact that the purpose and outcome of the presidential election fundamentally differs from covered offices. Whereas the instant runoff method chooses who wins election to “covered office” in fact Colorado voters do not select the presidential winner. Instead, they send presidential electors, who vote for U.S. President in combination with other members of the Electoral College. Whereas the ranked choice voting method is purportedly designed to select better officeholders, this simply does not apply to the presidential election, where Colorado voters only account for less than 2% of the presidential electors (10 out of 538 electors).

In short, the two elections are different, and they constitute two different subjects.

Further, simply declaring a broad topic of “instant runoff voting in general elections” does not save the matter. For example, the Colorado Supreme Court rejected a subject of “recall of government officers” as far too broad.<sup>1</sup> That provision created “a new constitutional right to recall non-elected officers, in addition to elected officers.”<sup>2</sup> Under the same reasoning, the broad subject of “instant runoff in general elections” does not rescue the measure from its serious single-subject violation.

Second, the title and submission clause is misleading and incomplete, because it does not inform voters that the instant runoff procedures for the presidential election differ from

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<sup>1</sup> *Hayes v. Spalding (In re Title, Ballot Title, & Submission Clause for 2013-2014 #76)*, 2014 CO 52, ¶ 10.

<sup>2</sup> *Id.* at ¶ 9.

the instant runoff procedures for other federal and state elections. The instant runoff procedures contained in Section 1-4-301.5, which applies to presidential elections, contains a different voting method than that in Section 1-4-207.

Section 1-4-207(7) is identical to Section 1-4-301.5(6), both of which govern how ballots should be treated. Section 1-4-207 governs “covered offices,” and therefore Subsection 1-4-207(7) applies by its terms to “covered offices.” By contrast, Section 1-4-301.5 applies to presidential elections, but Subsection 1-4-301.5(6) does *not* apply to those presidential elections. Rather, that subsection states: “Ballots for each general election *for covered office* conducted by instant runoff voting shall be treated as follows.” (emphasis supplied). The provision only applies to “covered office” which Section 1-4-207(1)(b) defines as “United States senator, representative to the United States House of Representatives, state officer, and state senator or state representative serving in the general assembly.” By including certain ballot handling procedures for elections to “covered offices” but not for presidential elections, the proposed initiative sets up two different instant runoff procedures. But the ballot title and submission clause does not inform voters of the different procedures, instead treating them as identical.

Respectfully submitted this 27<sup>th</sup> day of March 2024,

**GESSLER BLUE LLC**

*s/ Scott E. Gessler*

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## CERTIFICATE OF SERVICE

On March 27, 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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