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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2015-2016 #99

MOTION FOR REHEARING

On behalf of Kelly Brough and Joe Blake, registered electors of the State of Colorado and designated representatives of Proposed Ballot Initiative 2015-2016 #99 ("the Proponents"), the undersigned counsel hereby submits this Motion for Rehearing on Initiative #99, and as grounds therefore states as follows:

**THE TITLE BOARD ERRONEOUSLY CONCLUDED THAT THE
MEASURE HAS TWO DISTINCT SUBJECTS**

At its March 2, 2016 hearing, the Title Board found that it lacked jurisdiction to set a title on Initiative #99 because the measure violated the single subject requirement by including provisions that (a) allow unaffiliated voters to participate in all primary elections, and (b) reinstate a presidential primary in Colorado. However, because both of those provisions necessarily relate to the single-subject of conducting primary elections, such ruling was in error and should be reversed.

As an initial matter, it is important to note that for purposes of determining which voters are allowed to participate in a primary election - which is the subject and purpose of this measure - a presidential primary is no different than any other partisan election, whether it be an election for the U.S. Senate or County Commissioner. At the March 2nd Title Board hearing, at least one member of the Board expressed concern that including a presidential primary was a second subject because that particular election is in reality not one for a candidate, but rather for delegates to a political party's national convention, even though the candidate's name appears on the ballot. But that is a distinction without relevance to the single-subject analysis here. The critical point is that primary elections are the process where voters express their preference as to who should appear on the general election ballot, and this measure seeks only to allow unaffiliated voters to participate in that process and to include a presidential primary among the laundry list of elections covered by that change.

Likewise, the fact that Colorado does not currently have a presidential primary does not deem the inclusion of it here a second subject. Again, this measure is, at its core, about how Colorado selects general election candidates - regardless of the jurisdiction or race. It impacts equally local races such as county commissioner and federal races such as U.S. Senate. There is little doubt that if

Colorado currently had a presidential primary and that additional provision were not included in this measure, it would surely be a single subject. Indeed, on the same day that the Title Board considered this measure, it considered and approved Proposed Initiative 2015-2016 #98, which was identical to Initiative #99 except that it did not include the presidential primary. But Initiative #98 impacts not only all existing partisan races in Colorado, but also any presidential primary that might be conducted in the future (*see* § 1-4-101(2) therein, stating that an elector is not required to vote in the same party primary during a presidential primary as the other primary contests). And by permitting and including a presidential primary, it simply includes that race among the multitude of covered races. Whether Colorado should allow unaffiliated voters to participate in those elections, including the presidential primary, surely relates to a single subject.

Moreover, including a presidential primary in this measure does not invoke the constitutional concern of “logrolling” that was likewise discussed at the hearing. Admittedly, there could in theory be a voter that supports the idea of allowing unaffiliated voters to participate in primary contests while at the same time opposes the idea of reinstating a presidential primary. But the fact that a voter may have a personal preference for one element of a measure and not others has never been the definition of “logrolling” nor deemed a measure in violation of the single subject requirement. Rather, logrolling refers to practice of including various disconnected subjects in a measure that on their own could not win voter approval, but when combined in a single measure elicit enough support from various special interests to pass the combined measure itself. *See, generally, Matter of Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995*, 898 P.2d 1076, 1078 (Colo. 1995). There is no indication that such is the case here. Indeed, common sense dictates that it is highly likely that voters who support the idea of allowing more people to vote in primary elections also support the reinstatement of a presidential primary, where voter participation will certainly be higher than under Colorado’s current caucus system.

Accordingly, the Proponents respectfully request that this Motion for Rehearing be granted and that a proper title be set at a hearing held pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 9th day of March, 2016.

A handwritten signature in black ink, appearing to read "Jason R. Dunn", is written over a horizontal line.

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