

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE SUBMISSION CLAUSE  
FOR INITIATIVE 2023-2024 #267

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**MOTION FOR REHEARING**

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On behalf of Ryan Ross and William Joseph Blazek (collectively, the “Proponents”), registered electors of the State of Colorado and designated representatives of Proposed Ballot Initiative 2023-2024 #267 (“Initiative #267”), undersigned counsel hereby submit this *Motion for Rehearing* under § 1-40-107, C.R.S. (2024), and as grounds state as follows:

**I. Introduction**

Initiative #267 seeks to increase voter choice in elections. It does so through several changes to current law that would help to accomplish this goal. The Proponents believe these changes necessary to fix structural problems in a political system that has increasingly reduced choice for Colorado voters. The proposed changes contained in Initiative #267 all seek to address that single issue.

Prior to submitting Initiative #267, Proponents submitted Proposed Ballot Initiative 2023-2024 #223 (“Initiative #223”). The Title Board conducted a hearing for Initiative #223 on March 20, 2024. By a 2-1 vote, denied to set title on the grounds that the initiative contained multiple subjects. Proponents originally requested a rehearing, but withdrew that request.

Instead, Proponents chose to draft and submit Initiative #267. Proponents addressed many of the concerns raised by the Title Board in Initiative #223 that led it to conclude Initiative #223 had multiple subjects. Specifically, in Initiative #267 Proponents:

- Limited who may sign a petition for a candidate affiliated with a party to registered voters affiliated with the same party as the candidate (thus reflecting current law).

- Removed language that would have required the initiative to supersede any conflicting statutes.
- Changed the language of the initiative to include candidates districts that include parts of multiple counties or serve on boards with regional jurisdiction.

Not only did these changes address concerns previously raised by the Title Board, but they also made the most of the provisions included in Initiative #267 similar to other proposed initiatives that the Title Board has set title on in 2023-2024 (for example, Initiatives #307, #308, #309, #310, #312, and #313) and more narrow than others (for example, Initiative #188, which does not limit the party affiliation of eligible electors who may sign petitions).

The only other change made by Proponents was a provision to fund increased choice in elections by providing funds to political parties and candidates to help ensure more candidates could access that ballot. This provision falls squarely under the single subject of Initiative #267: increased voter choice for elections.

Nonetheless, one member of the Title Board pointed to this provision as a basis for determining that Initiative #267 had multiple subjects while another member of the Title Board maintained that changes to primary and general elections constitute multiple subjects regardless of content. The Proponents respectfully disagree and believe that Initiative #267 has only a single subject.

## **Argument**

### *A. The Single-Subject Rule*

Colorado Constitution Article V § 5.5 requires that “No measure shall be proposed by petition containing more than one subject.” The single-subject rule is intended to prevent two dangers: (1) combining subjects with no necessary or proper connection for the purposes of garnering support for an initiative from various factions, and (2) to help avoid voter surprise or fraud due to passage of a surreptitious provision coiled up in the folds of a complex initiative. *In; re Ballot Title 2011-2012 No. 45*, 2012 CO 26; *In the Matter of the Title, Ballot Title & Sub. Clause for 2015-2016 No. 63*, 2016 CO 34. However, the single-subject requirement is not violated if provisions within an initiative are necessarily or properly

connected to each other. *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996).

Where multiple different provisions are directly connected and related to, and are intended to achieve, the initiative's central purpose, the provisions do not constitute separate subjects. *In Re Title, Ballot Title, Sub. Cl. for 2009-2010 No. 45*, 234 P.3d 642 (Colo. 2010); *In the Matter of the Title, Ballot Title and Sub. Clause for 2015-2016 No. 63*, 2019 CO 57. Furthermore, a proposed initiative presents only one subject if it tends to effect or carry out one general objective or purpose; provisions to effectuate the single object or purpose of the initiative may be properly included. *Title, Ballot Title & Sub. Clause for 2015-2016 No. 132*, 2016 CO 55; *In re Ballot Title 2019-2020 No. 3*, 2019 CO 57; *In re Ballot Title 1999-2000 No. 256*, 12 P.3d 246 (Colo. 2000).

When evaluating an initiative for compliance with the single-subject rule, and to determine if only effectuates or carries out one general rule, it is necessary to look at the text of the initiative. The rule is not violated if the matters in the text are connected. Mere implementation details tied to the single subject do not constitute a separate subject. *In re Ballot Title 2005-2006 No. 73*, 135 P.3d 736 (Colo. 2006); *In re Ballot Title 2005-2006 No. 74*, 136 P.3d 237 (Colo. 2006).

Just because a proposal may have different effects or make multiple, detailed policy choices that are not invariably interconnected does not mean that an initiative violates the single-subject rule; it is enough that the provisions are connected. *In re Ballot Title 1999-2000 No. 256*, 12 P.3d 246 (Colo. 2000).

It is also important to note that Colo. Const. art. V § 1(5.5) is drawn from that language used in Colo. Const. art. V § 21, which applies the single-subject rule to most bills in the general assembly. § 1-40-106.5(1)(c), C.R.S. (2024). The general assembly has instructed that Colo. Const. art. V § 1(5.5) be liberally construed to preserve and protect the right of initiative and should follow the same rules employed by the general assembly in considering titles for bills. §§ 1-40-106.5(2) and (3). It necessarily follows that initiatives should not be held to a higher standard than that of the general assembly; if anything there should be more flexibility given to proponents who do not have either the professional resources or experience available to members of the general assembly.

Consequently, in addition to Colorado Supreme Court case law, it is also instructive to review the Colorado Legislative Drafting Manual ("CLDM") prepared

by the Office of Legislative Legal Services. Among the guidance provided, the CLDM states that:

- A bill can contain any number of sections and provisions so long as they relate to one subject. § 2.1.
- A bill may amend any number of different statutes so long as all the amendments made to those statutes relate to one general subject. § 2.1.
  - As an example, the CLDM cited a permissible bill that amended more than 400 different sections of existing statutes under the general title, “Concerning courts.”
- Proper bill titles may be general, specific, or narrow and encompass a wide array of matters (e.g. “A BILL FOR AN ACT CONCERNING SCHOOLS” is a general title where the body of the bill could contain any matter concerning schools).

*B. Funding ballot access is a policy choice properly connected to the single subject of increasing voter choice in elections*

In coming to its conclusion that funding ballot access represents a separate subject from increasing voter choice in elections, the Title Board seemed to believe that this would be a very unusual change. Notwithstanding that the magnitude of change is not a proper basis for ruling on single-subject compliance, *In re Ballot Title 1999-2000 No. 255*, 4. 3d 485 (Colo. 2000) (in determining whether a proposed measure contains more than one subject, the court [nor the Title Board] may not interpret the language of the measure or predict its application if adopted), it is also not as uncommon as the Title Board seemed to believe.

The Federal Election Commission has overseen the presidential public funding program for nearly half a century.<sup>1</sup> The mechanism for funding appears on every federal tax return filed by individuals; a tax checkoff box on Form 1040 asks individuals if they would like to designate \$3 of their taxes paid to the Presidential Election Campaign Fund. The fund in turn helps to increase choice for voters in

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<https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/>

elections by making payments directly to candidates participating in the program. Furthermore, from 1996 through 2012, the program funded the major parties' presidential nominating conventions and partial funding for qualified minor parties. These provisions are almost identical to those in Initiative #267 and for the same purposes, increasing voter choice in elections.

Similarly, voters in 2018 the City and County of Denver adopted the Fair Elections Fund to provide public matching funds to candidates for municipal office.<sup>2</sup> One of the stated purposes of the Fair Elections Fund is:

“to foster an open political process which allows incumbents and challengers alike to compete in the marketplace of ideas on a fair and equitable basis. The people of Denver will best be served by a process which promotes the fullest and most thorough discussion and debate of issues and candidates.”  
Revised Municipal Code of the City and County of Denver § 15-31(c).

The Fair Elections Fund led to a record number of candidates in the Denver mayoral race during the 2023 election with all but one participating.<sup>3</sup> This is precisely what the funding mechanism in Initiative #267 intends to do for candidates across the state: increase voter choice in elections by increasing the number of candidates who may seek ballot access.

Beyond these examples of public funding for candidates and parties increasing voter choice, the Title Board should also note that many prior initiatives have been deemed to be a single-subject despite including a funding mechanism. For example, the Title Board set title in:

- 2003-2004 Proposed Initiative #28 which authorized video lottery terminals, directed their placement, and subsequently allocated funds under the subject of promoting tourism.
- 2005-2006 Proposed Initiative #118 which set ethical standards applicable to government officials while simultaneously directing the general assembly to

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<sup>2</sup>

<https://denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Director-y/Clerk-and-Recorder/Campaign-Finance>

<sup>3</sup> <https://coloradosun.com/2023/04/03/denver-elections-campaign-cash/>

appropriate funds for a new independent ethics commission under the single subject of ethics in government.

- 2009-2010 Proposed Initiative #53 which increased individual income taxes to disburse to political candidates under the subject of making campaigns more competitive.
- 2019-2020 Proposed Initiative #283 which directed employers to provide family and medical leave for Coloradans while simultaneously creating an insurance program and funding under the subject paid family and medical leave insurance program.

These are only a few examples that came before the Title Board since 1993 when Colo. Const. art. V § 1(5.5) was adopted, much less bills that have passed through the legislature, and included funding mechanisms that were deemed to qualify under the single-subject rule. Setting title was appropriate because the funding mechanisms were connected to the single subject of each initiative. That is no different for Initiative #267.

The Title Board should also note that while primaries in Colorado are political party events, they have been paid for by the city, municipality, county or state since primaries were first adopted in 1910.

Funding ballot access for candidates and political parties is directly related to its single subject of increasing voter choice in election.

*C. Primary and general elections constitute a “single instrumentality for choice” in the election process*

The position that changes to ballot access, primary and general elections represent separate subjects as a general rule is untenable. U.S. Supreme Court case law, Colorado law, and prior Title Board decisions all run counter to that position.

As Proponents pointed out at its initial hearing, the U.S. Supreme Court has long held that primary and general elections represent a “single instrumentality of choice.” This position was first expressed in *United States v. Classic*, 313 U.S. 299, 318 (1941):

“Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by Article I, § 2. And this right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative.

Four years later, the U.S. Supreme Court reviewed, reaffirmed and further cemented this position in *Smith v Allwright*, 321 U.S. 649, 659-60 (1944):

“By this decision the doubt as to whether or not such primaries were a part of 'elections' subject to Federal control, which had remained unanswered since *Newberry v. United States*, 256 U.S. 232, 41 S.Ct. 469, 65 L.Ed. 913, was erased ... The fusing by the Classic case of the primary and general elections into a **single instrumentality for choice** of officers has a definite bearing on the permissibility under the Constitution of excluding Negroes from primaries” (emphasis added).

It should be noted that the Colorado Attorney General, on behalf of the Colorado Secretary of State, recently made this very point in a briefing to the U.S. Supreme Court. In its *Brief on the Merits for Respondent Jena Griswold, Secretary of State of Colorado* at 44, *Trump v. Anderson*, 601 U.S. 100 (2014) (No. 23-719), they wrote:

“Excluding candidates who are not qualified to hold office from primary as well as general election ballots helps prevent voter confusion and deception and ensures that voters cast meaningful ballots. *See Storer*, 415 U.S. at 735 (emphasizing that a primary election is ‘not merely an exercise or warm-up for the general election but an integral part of the entire election process’).”

This passage makes it clear that the State of Colorado believes that ballot access, primary elections and general election are all a part of the same election process. That mirrors Proponents’ position that ballot access, primary elections and general



elections are properly included in the single subject emphasis on increasing voter choice in elections.

Review of the bill that enacted primaries in Colorado makes this point even more clear. Specifically, Colorado H.B. 2 (1910) dictated that political parties would nominate candidates through primary elections. The bill also developed the ballot access rules for candidates to appear on the primary ballot and addressed who would appear on the general election ballot. As discussed above, bills by the general assembly must also pass the single-subject rule. Consequently, even the very enabling statute for primaries in Colorado demonstrates that ballot access, primary and general elections should all be viewed within the same, single process. It necessarily follows that the single-subject rule is not violated simply because an Initiative addresses each.

Finally, while the Proponents have already referenced similar initiatives that have had title set this year, there is also historical precedent. For example, in 2002 the Title Board set title to an initiative that implemented separate campaign finance rules for primary and general elections. In 2014, Proponent Ross submitted and had title set to 2013-2014 Proposed Initiative #112, which is substantially similar to the current Initiative #267; in particular, it addressed changes in both the primary and general elections.

When viewed against this backdrop, it is apparent that the Title Board should not deny setting title for Initiative #267 because it changes ballot access, primary and general election procedures. All are properly included within the single subject of increasing voter choice in elections.

### **Conclusion**

Proponents believe the information provided above is persuasive and should help the Title Board to reconsider its position, determine that Initiative #267 meets the single-subject rule, and set title.

Thank you for your time and consideration,



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