

SUPREME COURT OF COLORADO  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

DATE FILED: April 9, 2014 4:06 PM

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-  
107(2)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title,  
and Submission Clause for Proposed  
Initiative 2013-2014 #75 (“Right to  
Local Self-Government”)

▲ COURT USE ONLY ▲

**Petitioners: MIZRAIM S.  
CORDERO AND SCOTT  
PRESTIDGE**

v.

**Respondents: CLIFTON  
WILLMENG AND LOTUS**

and

**Title Board: SUZANNE STAIERT;  
DANIEL DOMENICO; and  
SHARON EUBANKS**

Attorneys for Petitioners:

Chantell Taylor, No. 33059  
Elizabeth H. Titus, No. 38070  
Hogan Lovells US LLP  
1200 Seventeenth Street, Suite 1500  
Denver, Colorado 80202  
Phone: (303) 899-7300  
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Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014  
#75 (“RIGHT TO LOCAL SELF-GOVERNMENT”)**

Mizraim S. Cordero and Scott Prestidge (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #75 (“Right to Local Self-Government”) (hereinafter “Proposed Initiative”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #75**

Clifton Willmeng and Lotus (“Proponents”) are the designated proponents of the Proposed Initiative. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal services on March 19, 2014. Proponents thereafter timely submitted a final version of the Proposed Initiative to the Secretary of State on March 5, 2014, for purposes of having the Title Board set title. The Secretary of State or his designee is a member of the Title Board.

The Title Board considered and set title for the Proposed Initiative at its March 19, 2014 meeting. On March 26, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Proposed Initiative violated the single-subject requirements and therefore the Title Board lacked jurisdiction to set title, and alternatively, that the title was confusing,

misleading and failed to reflect the true intent of the Proponents. The Title Board considered Petitioner's Motion at its April 2, 2014 meeting, and denied the Motion.

## **B. Jurisdiction**

Petitioners submit this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board pursuant to C.R.S. § 1-40-107(1) and timely filed this Petition for Review within seven days from the date of rehearing as required by C.R.S. § 1-40-107(2).

Consistent with the requirements set forth in section 1-40-107(2), Petitioners have attached the following: (1) the original, amended, and final versions of the Proposed Initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Petitioners' Motion for Rehearing; and (4) the Title Board's ruling on the Motion. Petitioners respectfully submit that the Title Board erred in denying the Motion for Rehearing and therefore this matter is properly before this Court.

## **GROUND FOR APPEAL**

In violation of Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, the Board set title for Proposed Initiative despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. The Title Board therefore lacked jurisdiction to set title. In the alternative,

the Title Board set a title and submission clause that violates Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, -107 insofar as it is confusing, misleading, and not reflective of the Proponents' intent. The following is an advisory list of issues which will be fully discussed in Petitioners' brief:

1. The Title Board lacked jurisdiction to set title because the Proposed Initiative contains the following multiple, distinct and not interdependent subjects under a single umbrella category of "right to local self-government":
  - a. Establishing a new, inherent and inalienable individual right to local self-government within article II of the Colorado Constitution;
  - b. Empowering local governments to enact laws "establishing the fundamental rights of individuals, communities, and nature";
  - c. Expanding the authority of local governments to enact laws protecting health, safety and welfare that are not subject to section 6 of article XX of the Colorado Constitution or preemption by any federal, state, or international laws; and
  - d. Creating a solitary, lesser-protected class for corporations and business entities by granting local governments the authority to redefine, alter or eliminate their rights and powers, and effectively changing the legal status of corporations and business entities operating in Colorado.

2. Contrary to the constitutional and statutory requirements for ballot titles as set forth in Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, 107, the Board set a title and submission clause that is confusing, misleading, and not reflective of the proponents' intent insofar as it:
  - a. Provides no definition of what the “right to local self-government” means and who holds the right (i.e., individuals, communities, or nature);
  - b. Provides no definition of the “fundamental rights” local governments are authorized to establish for “individuals, communities and nature” and how those rights differ or relate to the “right to local self-government,” which is the purported focus of the Proposed Initiative;
  - c. Incorrectly suggests to voters that “communities” and “nature” are capable of holding individual and/or fundamental rights that are independently protected and enforceable under the law;
  - d. Fails to inform voters that the initiative eviscerates the distinction between statutory and home-rule municipalities by effectively granting home-rule powers to all towns, cities, counties and other municipalities;
  - e. Confusingly interchanges the phrases “protect fundamental rights” with “fundamental rights or protections” without defining whether “protections” means something different or in addition to “fundamental rights”;

- f. Misleadingly suggests that the initiative grants local governments absolute immunity from preemption, but fails to inform voters that local laws could still be preempted by federal law;
- g. Fails to clearly identify who is granted “the power to enact laws” and “define or eliminate the rights and powers of corporations” – “the people,” or “counties and municipalities” (i.e., are these powers vested in legal residents of a particular county or municipality, citizens of the state, or local governments?); and
- h. Purports to expand local government authority to establish laws protecting health, safety and welfare notwithstanding the fact that through its constitutional and statutory police powers, such authority already exists.

### **PRAYER FOR RELIEF**

Petitioners respectfully request that after consideration of the parties’ briefs, this Court determine that the Title Board lacked jurisdiction to set title and therefore title setting must be denied. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not reflective of the proponents’ intent and therefore remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 9th day of April, 2014 by:

HOGAN LOVELLS US LLP

s/ Chantell Taylor

Chantell Taylor, No. 33059

Elizabeth H. Titus, No. 38070

Hogan Lovells US LLP

1200 Seventeenth Street, Suite 1500

Denver, Colorado 80202

Phone: (303) 899-7300

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CERTIFICATE OF SERVICE

I certify that on April 9, 2014, a true and correct copy of the above and foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #75 (“RIGHT TO LOCAL SELF-GOVERNMENT”)** was served electronically, via US First Class Mail, which caused automatic electronic notice of such filing upon:

Elizabeth A Comeaux  
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First Assistant Attorney General  
Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

s/ Marcia Yannacito



DATE FILED: April 9, 2014 4:06 PM

# STATE OF COLORADO

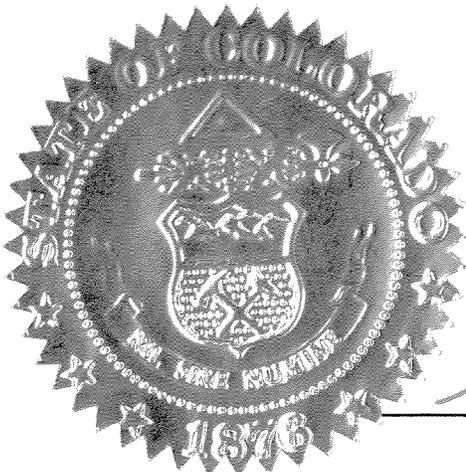
DEPARTMENT OF  
STATE

## CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, motions for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #75 'Right to Local Self-Government'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 8<sup>th</sup> day of April, 2014.



A handwritten signature in cursive script, reading "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

Colorado Secretary of State

**Be it Enacted by the People of the State of Colorado**

In the constitution of the state of Colorado, **add** section 32 to article II as follows:

**Section 32. Right to Local Self-Government**

(1) As all political power is vested in and derived from the people, and as all government of right originates from the people, the people have an inherent and inalienable right to local self-government, in each county, city, town, and other municipality.

(2) That right shall include, without limitation:

(a) The power to enact local laws protecting health, safety, and welfare by establishing the fundamental rights of individuals, their communities, and nature, and by securing those rights using prohibitions and other means; and

(b) The power to enact local laws establishing, defining, altering, or eliminating the rights, powers, and duties of corporations and other business entities operating or seeking to operate in the community, to prevent such rights and powers from interfering with such locally-enacted fundamental rights of individuals, their communities, and nature.

(3) Local laws adopted pursuant to subsection (2) of this section shall not be subject to preemption by international, federal, or state laws, nor shall they be subject to limitation pursuant to section 6 of article XX of this constitution; provided that:

(a) Such local laws shall not restrict fundamental rights of individuals, their communities, or nature secured by the Colorado constitution, the United States constitution, or international law; and

(b) Such local laws shall not weaken protections for individuals, their communities, or nature provided by state, federal, or international law.

(4) All provisions of this section are self-executing and severable.

**Colorado Community Rights Network Contacts:**

<b><u>Proponent Representative 1</u></b>	<b><u>Proponent Representative 2</u></b>
Clifton Willmeng 1246 Doric Dr. Lafayette, CO 80026 303-478-6613 FAX: 970-233-7151 <a href="mailto:willmeng70@gmail.com">willmeng70@gmail.com</a>	Lotus (Is legal name, has only one name.) Home Physical Address:                      Office & Mailing Address: 723 Hathaway Dr.                                      1020 Ford St Apartment 107E    Unit F Colorado Springs, CO 80915                      Colorado Springs, CO 80915 719-337-0029 cell    719-330-3699 office Lotus23@comcast.net    Fax: 719-355-1382

RECEIVED

MAR 05 2014

S.WARD  
3:29 P.M.

Changes to #75

Colorado Secretary of State

**Be it Enacted by the People of the State of Colorado**

In the constitution of the state of Colorado, **add** section 32 to article II as follows:

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RECEIVED

MAR 05 2014

SWARD  
3:29 P.M.

Original #75

Colorado Secretary of State

**Be it Enacted by the People of the State of Colorado**

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(a) such local laws shall not restrict fundamental rights of individuals, their communities, or nature secured by the Colorado constitution, the United States constitution, or international law; and

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(4) All provisions of this section are self-executing and severable.

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	Office & Mailing Address: 1020 Ford St Unit F Colorado Springs, CO 80915 719-330-3699 office Fax: 719-355-1382	

Ballot Title Setting Board

**Proposed Initiative 2013-2014 #75<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law?

*Hearing March 19, 2014:  
Single subject approved; staff draft amended, title set.  
Hearing adjourned 12:23 p.m.*

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<sup>1</sup> Unofficially captioned “**Right to Local Self-Government**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

MAR 26 2014

Colorado Secretary of State

S.WARD 4:14 P.M.

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2013-2014 #75

**MOTION FOR REHEARING**

On behalf of Stuart Sanderson, a registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on proposed Initiative 2013-2014 #75 ("Measure") and as grounds therefore states as follows:

**I. THE MEASURE IMPERMISSIBLY CONTAINS SEVERAL SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE CONSTITUTIONAL AND STATUTORY SINGLE-SUBJECT REQUIREMENT.**

Article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., require proposed ballot measures to contain a single subject. "[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects." *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253.

Although the stated single subject of this Measure is the declaration of a person's "inherent and inalienable right to local self-government," as secured within Colorado's constitutional bill of rights, several other separate and distinct subjects are impermissibly woven into the Measure. (Proposed Initiative 2013-2014 #75 ("Init. #75"), § 1.)

Each of the following is a subject that is of such significance and magnitude that none can be considered merely incidental to the Measure's stated single subject of declaring and securing the right of individuals in Colorado to "local self-government." Indeed, each of the following subjects is a subject in its own right:

(a) Granting counties, cities, towns, and other municipalities the power to enact laws protecting "health, safety, and welfare" (Init. #75, § 2(a));

(b) Granting counties, cities, towns, and other municipalities the power to enact laws that establish "fundamental rights of individuals, their communities, and nature" (Init. #75, § 2(a));

(c) Granting counties, cities, towns, and other municipalities the power to use "prohibitions and other means" to protect "fundamental rights" (Init. #75, § 2(a));

(d) Granting counties, cities, towns, and other municipalities the power to enact laws "establishing, defining, altering, or eliminating the rights, powers, and duties of corporations and other business entities" (Init. #75, § 2(b));

(e) Declaring that local laws enacted under the Measure are not preempted by international, federal, or state law (Init. #75, § 3);

(f) Modifying the reach of Colorado’s constitutional municipal home rule provisions (Init. #75, § 3);

(g) Prohibiting counties, cities, towns, and other municipalities from restricting any “fundamental rights” that are contained in the Colorado constitution, the United States Constitution, or international law (Init. #75, § 3(a)); and

(h) Prohibiting counties, cities, towns, and other municipalities from weakening “protections for individuals, their communities, or nature provided by state, federal, or international law” (Init. #75, § 3(b)).

Because the Measure contains these multiple, distinct subjects, it violates the constitutional and statutory single-subject requirement, and thus fails to meet the jurisdictional threshold for the Board to set a title.

**II. THE MEASURE IS SO VAGUE THAT IT IS IMPOSSIBLE TO SET A TITLE THAT ACCURATELY REFLECTS THE TRUE PURPOSE OF THE MEASURE.**

The Measure purports to declare and secure the right of Coloradans to “local self-government in each county, city, town, and other municipality” (Init. #75, § 1). However, the Measure is fatally ambiguous with respect to its key provisions and, as outlined above, contains multiple subjects. “In setting title, the title board shall consider the public confusion that might be cause by misleading titles.” *Aisenberg*, 987 P.2d at 254. As outlined below, the Measure here is so vague that the Board is precluded from setting an adequate title pursuant to section 1-40-106(3)(c), C.R.S.:

(a) The Measure professes to grant individuals the right to “local self-government,” but also appears to confer certain related powers to counties, cities, towns, and other municipalities (Init. #75, § 1). The right would be added to Colorado’s bill of rights, and it is unclear whether or how individuals would have the power or capacity to exercise it. Instead, it appears the rights of individuals vis-à-vis their counties, cities, towns, and other municipalities would remain unchanged. The language of the Measure is so platitudinous that no title can accurately describe how a declaration of the right to “local self-government” would meaningfully affect the current functioning of local government.

(b) The Measure simultaneously permits and prohibits the enactment of laws concerning “fundamental rights” by counties, cities, towns, and other municipalities. For instance, while the Measure authorizes counties, cities, towns, and other municipalities to enact local laws that protect health, safety and welfare “without limitation” (Init. #75, § 2), the Measure at the same time prohibits counties, cities, towns, and other municipalities from weakening any state, federal, or international “protections” (Init. #75, § 3(b)). Nor does the Measure define the terms “fundamental rights” or “protections.” Consequently, no title can accurately reflect the manner or degree by which the Measure would expand the authority of local government to create, preserve, or maintain the “fundamental rights of” or “protections for individuals, their communities, and nature.”

(c) The Measure gives counties, cities, towns, and other municipalities the power “to enact local laws protecting health, safety, and welfare” (Init. #75, § 2(a)). The Measure further provides that such local laws “shall not be subject to preemption by international, federal, or state laws” (Init. #75, § 3). If counties, cities, towns, and other municipalities are permitted to protect health, safety, and welfare, it is unclear whether the state would retain plenary authority over issues of statewide concern. As to federal and international law, it is unlikely that insulation from preemption can be achieved. No title can accurately reflect the type or kind of local laws that will survive international, federal, or state preemption challenges.

(d) The Measure surreptitiously authorizes counties, cities, towns, and other municipalities to regulate business entities. Buried within the language of the Measure, counties, cities, towns, and other municipalities are given the power to enact laws “establishing, defining, altering, or eliminating the rights, powers, and duties of corporations and other business entities” (Init. #75, § 2(b)). The power for such broad regulation of business entities by local governments under the pretext of protecting undefined “fundamental rights” would surprise voters in a way that no title can accurately reflect.

(e) The Measure attempts to extend undefined “fundamental rights” to undefined “communities” and undefined “nature” (Init. #75, §§ 1, 2(a)–(b), 3(a)–(b)). The Measure does not distinguish between “fundamental rights” accorded to “individuals, their communities, or nature,” and it is unclear what results if such rights conflict. Similarly, the Measure is silent as to how and why the “fundamental rights of individuals, their communities, and nature” relate to the right of individuals to “local self-government.” No title can accurately define the relationship among “individuals,” “communities,” and “nature”; whether “fundamental rights” can even be held by “communities” or “nature”; or why the right of “local self-government” is a right held by “individuals” but not by “communities” or “nature.”

In these ways, the language of the Measure is so vague that no title can correctly and fairly express the true purpose of the Measure. This ambiguity renders the Board without jurisdiction to set a title.

### **III. THE BALLOT TITLE AND SUBMISSION CLAUSE AS DRAFTED FAIL TO DESCRIBE IMPORTANT ASPECTS OF THE MEASURE AND CONTAIN IMPERMISSIBLE CATCH PHRASES IN WAYS THAT ARE MISLEADING AND CONFUSING.**

Pursuant to section 1-40-106(3)(a), a measure’s ballot title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. Section 1-40-106(3)(a) also requires a measure’s title and submission clause to be sufficiently clear and brief. “[A] material omission can create misleading titles.” *Garcia v. Chavez (In re Title, Ballot and Submission Clause 1999–2000 #258A)*, 4 P.3d 1094, 1098 (Colo. 2000). Titles are also prohibited from containing a “catch phrase” that unfairly prejudices the proposal in its favor; this contravenes section 1-40-106(3)(a).” *Id.* Here, the Measure’s title was set as follows:

An amendment to the Colorado constitution concerning a right to local self-government and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to

define or eliminate the rights and powers of corporations and business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law.

The Measure's ballot title and submission clause was set as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations and business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law?

As drafted, the title and ballot title and submission clause are misleading and confusing because they fail to describe important aspects of the Measure and contain impermissible catch phrases:

(a) The Measure's title and ballot title and submission clause improperly omit the Measure's provision concerning the power of counties, cities, towns, and other municipalities "to enact local laws protecting health, safety, and welfare" (Init. #75, § 2(a)). This is a key provision of the Measure because it is through the right to enact these laws that the Measure gives counties, cities, towns, and other municipalities the power to carry out the right of "local self-government."

(b) The Measure's title and ballot title and submission clause also improperly omits the Measure's provision that local laws adopted pursuant to the Measure shall not "be subject to limitation pursuant to section 6 of article XX of this constitution," which refers to the Colorado constitution's municipal home rule provisions (Init. #75, § 3). This is a key provision of the Measure because its purpose is to expand the authority of all counties, cities, towns, and other municipalities in service of the right to "local self-government" and it purports to afford statutory cities and counties – which are creatures of statute – the same quantum of power as home rule cities.

(c) The catch phrase "inherent right to local self-government" is a slogan that is likely to elicit support for the Measure without public understanding that the Measure confers powers associated with this "inherent right" to local governments.

(d) Use of the phrase "individuals, communities, and nature" without definition forms a catch phrase that is also likely to elicit support for the Measure without public understanding of who or what is affected by the Measure.

(e) The undefined terms "fundamental rights" and "protections" are catch phrases that are likely to prejudice the Measure in its favor by virtue of the words' appeal to civic

emotion without contributing to public understanding of the effect of the Measure on the functioning of local government or on the rights of citizens.

(f) The catch phrase “eliminate the rights and powers of corporations or business entities” is a slogan that is also likely to prejudice the Measure in its favor by provoking political emotion that will distract voters from the effects of the Measure.

(g) The title and ballot title and submission clause misleadingly declare that local laws will not be subject to preemption by federal or international law so long as “fundamental rights or protections” are not “weakened.”

For all these reasons, the title and ballot title and submission clause, as drafted, do not conform to the statutory requirements of section 1-40-106(3)(c) or to the case law construing the statute.

**IV. REQUEST FOR RELIEF TO GRANT THE MOTION FOR REHEARING AND TO REJECT THE MEASURE FOR LACK OF JURISDICTION OR, ALTERNATIVELY, TO AMEND THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE.**

Because the proposed Measure contains multiple subjects and because the Measure is so vague that it is impossible to set a title that accurately reflects the Measure’s true purpose, the Board lacks jurisdiction to set a title. To the extent the Board determines it has jurisdiction to set a title, the title and ballot title and submission clause, as drafted, fail to describe important aspects of the Measure in ways that are misleading and confusing, and contain impermissible catch phrases.

Accordingly and pursuant to section 1-40-107(1), C.R.S., the petitioner-opponent requests that his Motion for Rehearing be granted and that the Board reject the Measure for lack of jurisdiction or, alternatively, amend the title and ballot title and submission clause consistent with the concerns set forth above.

Respectfully submitted this 26th day of March, 2014.



Sarah M. Clark, Atty. Reg. #39367  
Michael F. Feeley, Atty. Reg. #12266  
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RECEIVED

MAR 26 2014

Colorado Secretary of State  
S.WARD 4:13 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2013-2014 #75

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**MOTION FOR REHEARING**

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Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Hogan Lovells US LLP, request a rehearing of the Title Board for Initiative 2013-2014 #75 ("Right to Local Self-Government"). As set forth below, Mr. Cordero and Mr. Prestidge respectfully object to the Title Board's setting of title and the ballot title and submission clause on the following grounds:

On March 19, 2014, the Board set the title as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law.

The Board set the ballot title and submission clause as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law?

**GROUND FOR RECONSIDERATION**

**A. The Initiative Impermissibly Contains Multiple Subjects.**

Contrary to the requirement that every constitutional amendment proposed by initiative be limited to a single subject, which shall be clearly expressed in its title (Colo. Const. art. V.,

§ 1(5.5); C.R.S. § 1-40-106.5), the Board set title for initiative #75 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, under the guise of “self-government” the initiative actually includes the following several, unrelated subjects:

- (1) Establishing a new, inherent and inalienable individual right to local self-government within article II of the Colorado Constitution (#75, § (1));
- (2) Empowering local governments to enact laws “establishing the fundamental rights of individuals, communities, and nature” (#75, § 2(a));
- (3) Expanding the authority of local governments to enact laws protecting health, safety and welfare that are not subject to section 6 of article XX of the Colorado Constitution or preemption by any federal, state, or international laws (#75, § 3); and
- (4) Creating a solitary, lesser-protected class for corporations and business entities by granting local governments the authority to redefine, alter or eliminate their rights and powers, and effectively changing the legal status of corporations and business entities operating in Colorado (#75, § 2(b)).

Each of these subjects is not interdependent or connected to the other. The Title Board therefore lacks jurisdiction to set title and title setting should be denied.

**B. The Title and Submission Clause is Confusing, Misleading, and Does Not Reflect the Intent of the Proponents.**

Contrary to the constitutional and statutory requirements for ballot titles as set forth in Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, 107, the Board set a title and submission clause that is confusing, misleading, and not reflective of the proponents’ intent insofar as it:

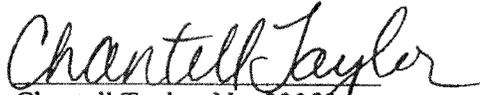
- (1) Provides no definition of what the “right to local self-government” means;
- (2) Provides no definition of the “fundamental rights” local governments are authorized to establish;
- (3) Provides no definition or clarity as to how the “fundamental rights” established by local governments for “individuals, communities and nature” differs or relates to the individual “right of local self-government” or other rights guaranteed by the Colorado and United States constitutions;
- (4) Incorrectly suggests to voters that “communities” and “nature” are capable of holding individual and/or fundamental rights that are independently protected and enforceable under the law;

- (5) Fails to inform voters that the initiative eviscerates the distinction between statutory and home-rule municipalities by effectively granting home-rule powers to all towns, cities, counties and other municipalities;
- (6) Confusingly interchanges the phrases “protect fundamental rights” with “fundamental rights or protections” without defining whether “protections” means something different or in addition to “fundamental rights”;
- (7) Misleadingly suggests that the initiative grants local governments absolute immunity from preemption, but fails to inform voters that local laws could still be preempted by federal law;
- (8) By using the term “weaken any fundamental rights or protections...” the submission clause confusingly conflates the intent of the initiative to subject local laws to preemption if such laws either “restrict fundamental rights” or “weaken protections”;
- (9) Provides conflicting statements as to who holds the “right to local self-government,” stating on the one hand that it is an inherent right of “the people,” but may also be a right held by “individuals, communities, and nature”;
- (10) Fails to clearly identify *who* is granted “the power to enact laws” and “define or eliminate the rights and powers of corporations” – “the people,” or “counties and municipalities” (i.e., are these powers vested in legal residents of a particular county or municipality, citizens of the state, or local governments?);
- (11) Misleads and confuses voters, and misrepresents the intent of the proponents by stating in the submission clause that power is given to enact laws protecting “fundamental rights” when the initiative actually states that the power is to enact laws protecting “health, safety and welfare”; and
- (12) Purports to expand local government authority to establish laws protecting health, safety and welfare notwithstanding the fact that through its constitutional and statutory police powers, such authority already exists.

Based on the foregoing, Mr. Cordero and Mr. Prestidge request a re-hearing of the Title Board for Initiative 2013-2014 #75. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents and therefore the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Cordero and Mr. Prestidge respectfully request that the Title Board amend the title consistent with the concerns set forth above.

Respectfully submitted this 26<sup>th</sup> day of March, 2014 by:

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## Ballot Title Setting Board

### Proposed Initiative 2013-2014 #75<sup>1</sup>

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; and declaring that such local laws are not subject to preemption by any federal, state, or international laws.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; and declaring that such local laws are not subject to preemption by any federal, state, or international laws?

*Hearing March 19, 2014:*

*Single subject approved; staff draft amended, title set.*

*Hearing adjourned 12:23 p.m.*

*Hearing April 2, 2014:*

*Motion for Rehearing denied except to the extent that the Board made changes to the titles.*

*Hearing adjourned 12:59 p.m.*

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<sup>1</sup> Unofficially captioned “**Right to Local Self-Government**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.