DATE FILED: May 19, 2014 4:30 PM

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

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

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #75 ("RIGHT TO LOCAL SELF-GOVERMENT")

Petitioners:

Mizraim Cordero and Scott Prestidge,

v.

Respondents:

Clifton Willmeng and Lotus

and

Title Board:

Suzanne Staiert, Daniel Domenico, and Jason Gelender.

▲ COURT USE ONLY ▲

Case No. 2014SA100

JOHN W. SUTHERS, Attorney General
SUEANNA P. JOHNSON, Assistant Attorney General, Atty. Reg. No. 34840*
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720-508-6155
FAX: 720-508-6042
E-Mail: Sueanna.Johnson@state.co.us
*Counsel of Record

ANSWER BRIEF OF THE TITLE BOARD

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 1,990 words.

The brief complies with C.A.R. 28(k).

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. , p.), not to an entire document, where the issue was raised and ruled on.

/s/ Sueanna Johnson

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

CONSTITUTIONAL PROVISIONS

Suzanne Staiert, Daniel Domenico, and Jason Gelender, as members of the Ballot Title Setting Board (the "Title Board"), by and through undersigned counsel, hereby submit their Answer Brief.

STATEMENT OF THE CASE

The Title Board incorporates its Statement of the Case from its Opening Brief.

STATEMENT OF THE FACTS

The Title Board incorporates its Statement of the Facts from its Opening Brief.

SUMMARY OF THE ARGUMENT

The title does not contain multiple subjects. The central purpose of the measure establishes the right to local self-government. The remainder of the measure implements that right by allowing local governments to enact laws that affect the health, safety, and welfare of their individuals, community or nature, or enact laws that may establish, define, alter, or eliminate the rights of corporate entities who conduct business in that community. The local laws may not be

preempted by state, federal or international law, however preemption is limited in a manner that does not affect fundamental rights or laws secured or provided by federal, state, or international entities. The implementations provisions are related and necessary to the central purpose of #75.

The title is fair, clear, and accurate. The title clearly identifies that the people have an inherent right to local self-government. It would be stating the obvious that the people exercise that right through their local government officials. And although the title includes phrases and terms taken directly from the measure, the Title Board may not interpret or provide an explanation for those phrases or terms that are not defined in the measure. The title should be upheld.

ARGUMENT

I. Initiative #75 contains a single subject.

A. The standard of review and preservation of the issue on appeal.

The Title Board concurs with the standard of review set forth by the Petitioners and Proponents with supplementation of statements made in its own Opening Brief at 3-4, except as noted herein. The Title Board does not agree that this is a case where the statutes governing the authority of the Title Board are at issue. Therefore *de novo* review of the single subject is not the proper standard of review. The Title Board agrees that the Petitioners preserved the issue for appeal.

B. There are not distinct subjects in Initiative #103.

The Petitioners overstate the effect of this measure in order to find a single subject violation. The measure establishes an inalienable individual right to local self-government and then implements that right by setting forth the scope and limits. The Petitioners' argument that the measure contains multiple subjects should be rejected.

First, the Petitioners argue that the measure contains multiple subjects because it establishes the inalienable right to local self-government while also expanding local government power. They argue that because rights contained in the Bill of Rights are self-executing, the expansion of local governments to enact laws is a separate subject. Pet'r Opening Brief at 8-9. Currently, there are rights contained in the Bill of Rights in which further implementing legislation is specifically authorized or required. *See e.g.* Colo. Const., art. II, § 16a (the General Assembly is authorized to define the terminology for the Victim Rights Amendment); Colo. Const., art. II, § 19 (defining the criminal violations for which the right to bail may not be extended); Colo. Const., art. II, § 30 (the General Assembly may establish procedures to implement the right to vote or petition on annexations). Self-execution of a right is irrelevant to whether a measure contains multiple subjects. #75 does not contain a separate subject, as it empowers local governments to enact laws, an implementation provision that is necessary and related to effectuate and exercise the right of local self-government recognized in the measure. *See Kemper v. Hamilton (In re Title, Ballot Title &*

Submission Clause 2011-2012 #3), 274 P.3d 562, 565 (Colo. 2012) (a measure contains a single subject if the matters encompassed are "necessarily and properly connected" to each other rather than "disconnected or incongruous.")

Second, the Petitioners contend that a local government's ability to establish and eliminate rights is separate from the right to local self-government. Pet'r Opening Brief at 9-10. The right to local self-government is meaningless if it does not include a mechanism by which that entity may exercise that right. Sections 2(a) and (b) of the measure sets forth the parameters for the local communities to exercise that right by enacting laws that "protect[] the health, safety, and welfare" of those individuals, communities and nature, and enacting laws that "establish[], define[], alter[], or eliminate[] the rights, powers, and duties of corporations and other business entities seeking to operate in the community." Whether this has an effect or consequence that is objectionable to the Petitioners is beyond the scope of this Court's single subject review. *See In re Title v. John Fielder*, 12 P.3d, 246, 254 (Colo. 2000) (the Court noted that it has never held that "just because a

proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single subject requirement); *Outcelt v. Bruce*, 959 P.2d 822, 825, fn. 2 (Colo. 1998) (the Court noted that it is neither appropriate nor possible to attempt to predict all the effects of an amendment in the pre-election phase).

Third, the Petitioners argue that reallocation of government authority and preemption of certain local laws from federal or state laws constitute separate subjects. As a consequence of this change in preemption, the Petitioners argue that #75 would "effectively eliminate the distinction between home-rule and nonhome-rule municipalities." Pet'r Opening Brief at 13. There is nothing in the plain language of the measure that purports to abolish the distinction between home-rule and statutory cities or counties. *Kemper v. Hamilton (In re Title, Ballot Title, and Submission Clause for 2011-2012 #45)*, 274 P.2d 576, 581, fn. 2 (Colo. 2012) (the Court refrains from analyzing the merits or potential effects of the measure, but confines its single subject review to the plain language of the measure). As the Proponents indicate, the measure

allows for local governments to enact laws effectuating the right to local self-government through either initiatives or elected representatives, depending upon whether the entity is a home-rule or a statutory city or county. Proponent Opening Brief at 13. As such, the measure does not "fundamentally change[] the nature of government," as dramatically as Petitioners contend. Pet'r Opening Brief at 14. Assuming the measure does in fact affect powers contained in Colo. Const., XX, § 6, "the mere fact a constitutional amendment may affect the powers exercised by government under pre-existing constitutional provisions, does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respect if adopted by the voters." *In re Title,* 44 P.3d 213, 218 (Colo. 2002).

Likewise, this Court has previously held that local preemption does not constitute a separate subject. *See Amundson v. Travis (In re Title, Ballot Title & Submission Clause)*, 962 P.2d 970 (Colo. 1998) (found a measure contained a single subject that included a provision that local regulations relating to hog farms could be more restrictive

than state law). Sections 3(a) and (b) of the measure limit the preemption of local laws by indicating that such local laws may not restrict fundamental rights secured by the U.S. Constitution, Colorado Constitution, or international law, or weaken protections for individuals, their communities or nature that are provided by state, federal or international law. As such, the Petitioners contention that the measure "purports to eliminate the application of the Supremacy Clause" of the U.S. Constitution is incorrect. Pet'r Opening Brief at 13.

Finally, the Petitioners argue that the expanded authority for local governments combined with the right to local self-government constitutes improper "log rolling." *Id.* at 14-15. This argument presupposes that the measure contains multiple subjects that are distinct from the central purpose. As discussed above, as well as in the Title Board's Opening Brief, since the measure contains a single purpose with implementing provisions, this argument should be rejected.

II. The title for the Initiative is fair, clear, and accurate.

A. The standard of review and preservation of the issue on appeal.

The Title Board concurs with the standard of review set forth by the Petitioners and Proponents with supplementation of statements made in its own Opening Brief at 9-12. The Title Board agrees that the Petitioners preserved the issue for appeal.

B. The title sufficiently informs voters of the principal features of the measure.

The Petitioners argue that the title fails to inform voters that a new right is established and that it contains several undefined and vague terms. Pet'r Opening Brief at 16, 19. Both arguments should be rejected.

First, the Petitioners argue that the title conflates that an individual right to local self-government is established but fails to identify who holds the right and how that right is exercised. *Id.* at 18. They further argue that the title fails to identify a new inalienable right

is recognized. *Id.* The Petitioners fail to quote a portion of the final title in their Opening Brief, which states: "An amendment to the constitution concerning a right to local self-government, and, in connection therewith, *declaring that the people have an inherent right to local self-government counties and municipalities*[.]" (emphasis added). The title properly identifies that a right is established and that such right belongs to the people.

Likewise, the title describes the ways in which the right may be exercised through the types of local laws that may be passed. There is no confusion that the people exercise that right to enact local laws through their elected representatives or an initiative process depending upon whether the local community is a home-rule or statutory city or county. *See In re the Title v. Buckley*, 972 P.2d 257, 265 (Colo. 1999) (the Title Board does not need to restate the obvious in the title). As such, *how* the right is exercised need to be included in the title.

Second, the Petitioners argue that the phrases "inherent inalienable right to local self-government," "fundamental rights," and "individuals, communities and nature" contained in the title require

further explanation because they are so broad "it is impossible for voters to ascertain the actual effect or intent of the measure." Pet'r Opening Brief at 20. These phrases come directly from the measure. The phrases contained in the title are not defined in the initiative. If a proposed measure does not contain a definition, the Title Board cannot supply a definition. *See Title v. Swingle*, 877 P.2d 321, 327 (Colo. 1994) (excluding the word "strong" before "public trust doctrine" in the title was not fatal, as the measure did not define the term in the measure). Rather, the "definition must await future construction." *Id.*

In *Hayes v. Lidley (In re Title, Ballot Title & Submission Clause)*, 218 P.3d 350, 356 (Colo. 2009), an objector argued that a title was misleading because it did provide more information about what the word "guarantee" meant in the measure. The objector argued that "guarantee" is a legal term of art, as voters may think their right to a secret ballot in employee representation elections is "guaranteed" when that standard may not match the legal reality. *Id.* In rejecting this argument, the Court stated that the objector was requiring the Court "to conclude the text and titles of the Initiatives are misleading vis-à-vis

future legal interpretation and implementation" and that the objector was "essentially inviting [the Court] to interpret the legal scope of the Initiative's 'guarantee,' and then require the interpretation to be spelled out in the title." *Id.* The Petitioners here are essentially making the same argument raised and rejected in *Hayes*. Because the language of the measure would require further interpretation, Petitioners' argument should fail.

CONCLUSION

Based on the foregoing authorities and reasons, this Court should affirm the actions of the Title Board and approve the title for #75.

Respectfully submitted this 19th day of May, 2014.

JOHN W. SUTHERS
Attorney General

/s/ *Sueanna P. Johnson*
SUEANNA P. JOHNSON, 34840*
Assistant Attorney General
Public Officials Unit
State Services Section
Attorneys for the Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that, on this 19th day of May, 2014, I duly served this **ANSWER BRIEF OF THE TITLE BOARD** on all parties via ICCES, addressed as follows:

Chantell Taylor
Elizabeth Titus
Hogan Lovells US LLP
1200 Seventeeth Street #1500
Denver, CO 80202

Elizabeth Comeaux
1663 Steele St.
Suite 901
Denver, CO 80206

/s/ *Sueanna Johnson*