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SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
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") MIZRAIM S. CORDERO AND SCOTT PRESTIDGE Petitioners, v. CLIFTON WILLMENG AND LOTUS, Proponent Respondents, AND SUZANNE STAIERT, DANIEL DOMENICO, AND JASON GELENDER, Title Board Respondents.	**COURT USE ONLY** Case No. 14SA100
Attorney for Proponents Willmeng and Lotus: Name: Elizabeth A Comeaux Address: 1663 Steele St #901 Denver, CO 80206 Telephone: 720-379-7864 FAX: 720-379-7864 call ahead E-mail: EAComeaux.Atty@outlook.com Atty. Reg.#: 08674	
PROPONENTS' ANSWER BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 57, C.A.R. 32, AND C.A.R. 28, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g) and C.A.R. 32.

It contains 2846 words.

Respectfully submitted,

/s/ Elizabeth A. Comeaux
Original signature on file at the office of
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I. Summary of the Argument

The Title Board correctly determined single subject as "a right to local self-government." All provisions of the measure are necessarily and properly connected to that single subject and to each other.

The titles clearly and succinctly set forth the subject of the measure. The titles reflect the central elements of the measure in a simple, unbiased, and straightforward manner that enables voters of average intellect to decide whether or not to vote for it.

II. Standard of Review

The standard of review set forth in Proponents Opening Brief, and more fully elaborated at pages 3-4 and 9-12 of the Title Board's Opening Brief, is accurate. The *de novo* standard asserted by Petitioner is not applicable.[1] The actions of the Board are presumptively valid. *In re Petition on Campaign &*

[1] This case does not require interpretation of expedited statutory deadlines to protect the right of the people to get their initiatives before the electorate in timely fashion, as in *In re Ballot Title 1999-2000 No. 219*, 999 P2d 819, 820-822 (Colo. 2000) (only one rehearing petition allowed), or *Hayes v. Ottke*, 293 P.3d 551, 554 (Colo. 2013) (both designated representatives required to attend rehearing), which applied the standard used in *Sperry v. Field,* 205 P.3d 365, 367 (Colo. 2009) (construing personal injury interest statute).

Political Fin., 877 P.23 311, 313 (Colo. 1994). The reviewing court is required to engage all legitimate presumptions in favor of the propriety of the Board's actions. *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010). The Court will only overturn the Title Board's finding that an initiative contains a single subject in a clear case. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo. 1982). The Court accords "great deference" to the Title Board in setting title. *In re Title, Ballot Title, Submiss. Clause, and Summary for 2005-2006 #73*, 135 P.3d 736, 738 (Colo. 2006). *("In re Issue Committee Contributions").*

III. The Board Correctly Determined Single Subject.

A. #75 Has One Single Subject.

#75 recognizes the inherent,[2] inalienable right of the people to local self-government, explaining the source of the right in the language of Art. II, § 1 of the Colorado Constitution. This is a "pre-constitutional fundamental right to self-determination among people acting collectively to protect their local

[2] Petitioners do not dispute that the right is "inherent." Petitioner's Opening Brief, p. 14-15.

communities." Tr. of March 19, 2014 hearing, Pet. Ex. F, at 30[19-23].[3] As authorized by Art. II, § 2, Colo. Const., #75 would change the form of government in Colorado in a manner narrowly tailored to address the primary obstacle to the right:

> This is the problem that local communities are running across. When they want to assert their view of their own inalienable right of self-determination in their local home communities, they are told that the combination of business and government prevents them from exercising it. Tr. of April 2, 2014 rehearing, Pet. Ex. E, at 16[11-15].
>
> [W]hat they're running up against is some sort of knot of webbed relationships of power that are shared by government and – in this example, industry – that are not shared by the people whose rights are then affected. Tr. of March 19, 2014 hearing, Pet. Ex. F, at 16[11-15].

To address this intertwined problem, #75 provides intertwined implementation and enforcement provisions that are necessarily and properly interconnected with each other and with the right to local self-government. Thus, Section 1 *recognizes* the right, Section 2 addresses how it is *implemented*, and Section 3 shows how it is *enforced*. Section 4 provides that the measure is self-executing as to the recognition of the people's inherent, inalienable right, leaving

[3] Correcting typographical error transcribing "constitutional" as "conditional" in Petitioner's Opening Brief at p.8 – based on audio marker approximately 27:05-28:05, Title Board – March 19, 2014 – Part II, available at http://www.sos.state.co.us/pubs/info_center/audioArchives.html.

to the people the proactive steps of enacting local laws that would implement and enforce the right.

Implementation and enforcement provisions directly tied to the single subject do not create separate subjects. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A) (English Language Education in Public Schools)*, 4 P.3d 1094, 1097 (Colo. 2000); *In re Proposed Initiative for 1999-2000 #200A*, 992 P.2d 27, 30-32 (Colo. 2000); *In re Proposed Initiative for 1997-98 #74*, 962 P.2d 927, 929 (Colo. 1998). An initiative that contains several interrelated purposes does not violate the single subject requirement. *In Re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 278 (Colo. 2006) *("In re Non-Emergency Services to Illegal Immigrants").* All that is required is that they be interrelated, rather than separate, unconnected, or incongruous. *In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010) *("In re Right to Health Care Choice").* Alternate methods of accomplishing the same result do not violate the single subject requirement. *In the Matter Of the Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996*, 920 P.2d 798, 802 (Colo. 1996) *("In Re Enhanced Emissions Testing").*

The mere fact that a provision conflicts with or supersedes existing federal or state constitution or statutes does not make it a separate subject. *E.g., In the Matter of the Title, Ballot Title, and Submission Clause for 2011-2012 #45*, 274 P.2d 576, (Colo. 2012) (upholding initiative including three distinct changes to state constitution as single subject "public control of water"); *Matter of Petition for Amend. To Const.*, 907 P.2d 586, 591 *and* 593 (Colo. 1995) *("In re Petitions")* (reviewing text of initiative shows that it was approved despite its provision superseding constitutional and statutory provisions).

> The mere fact that a constitutional amendment may affect the powers exercised by the 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 respects if adopted by the voters.

In the Matter of the Title, Ballot Title, and Submission Clause, and Summary for 2005-2006 #73, 135 P.3d 736, 740 (Colo. 2006) *("In re Pay-to-Play") (Citation omitted).*

Neither the Board nor the Court may interpret a measure or construe its future legal effects. *In re Title, Ballot Title and Submission Clause for 2007-2008,*

#57, 185 P.3d 142, 145 (Colo. 2008). The Court must await a later case, after the measure is enacted by the voters, to consider whether its provisions are constitutional and enforceable. *In re Proposed Initiative 1999-2000 #200A,* 992 P.2d 27, 30 (Colo. 2000) *("In re Woman's Right-To-Know Act").*

B. Petitioner's objections are without merit.

1. Section 2's recognition that local enactments are *how* the people exercise their right to local self-government does not create a separate subject.

The Title Board unanimously adopted the single subject after considerable discussion clarifying that the right belongs to the people, and the role of local governments answers the question *how* the people exercise their right. Tr. of March 19, 2014 hearing, Pet. Ex. F, at 29[21] – 33[7]; Tr. of April 2, 2014 rehearing, Pet. Ex. E, at 25[22] – 26[11].

Petitioners strain to assert that the people's use of their local governments to exercise their right by enacting local laws is an additional subject, on the grounds that an inherent right is self-executing. Petitioner ignores the intertwined obstacles above noted that make it necessary for the people to enact local laws that specify and secure their rights against interference.

Contrary to Petitioner's argument, the people's recourse to local governments to enact local laws does nothing to change existing structures for enacting local laws.[4] People in home rule jurisdictions have the option of enacting local laws through initiative or through influencing their elected officials; those in statutory jurisdictions have only the second option. Nothing in Section 2 can be described as "repealing the requirements of the Home-Rule Amendment" or removing the decision to become a home-rule jurisdiction from the people, as argued by Petitioner's Opening Brief at pages 7 and 13.

2. Section 2's recognition that local enactments are *how* the people exercise their right to local self-government does not create a separate subject.

Petitioners continue their above argument, challenging the merits, effect, and constitutionality of allowing local enactment of "fundamental" rights. This argument is premature, out of scope, and fails to establish an additional subject. *Matter of Petition for Amend. to Const.*, 907 P.2d 586, 591 *and* 593 (Colo. 1995).

Similarly, Petitioners incorrectly argue that local enactments limiting the rights of business entities as provided in Section 2 (b) create a second subject.

[4] Pet. Opening Brief, p. 12-13; *see also*, Tr. of March 19, 2014 hearing, Pet. Ex. F, at 29[21] – 33[7]; Tr. of April 2, 2014 rehearing, Pet. Ex. E, at 25[22] – 26[11].

First, local governments already have regulatory authority to limit the rights of business entities through zoning and other powers. *E.g.*, § 29-20-101 *et seq.*, C.R.S. Second, to the extent that Section 2 (b) supersedes some aspects of the state's existing authority to regulate business entities, the provision is narrowly tailored to create a necessary and proper solution to the first prong of the intertwined problem that #75 addresses. *Matter of Petition for Amend. to Const.*, 907 P.2d 586, 591 *and* 593 (Colo. 1995).

Finally, Petitioners prematurely raise the constitutional question whether Section 2(b) violates equal protection. The Court is not allowed to address this question prior to enactment by the electorate. *In re Proposed Initiative 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000) *("In re Woman's Right-To-Know Act").* Superseding a constitutional provision does not in itself create a separate subject. *In the Matter of the Title, Ballot Title, and Submission Clause, and Summary for 2005-2006 #73*, 135 P.3d 736, 740 (Colo. 2006).

3. Section 3's enforcement provision does not create a second subject.

Petitioners next challenge #75's way of addressing the second prong of the intertwined problem. Section 3 shields certain[5] local enactments from preemption by other layers of government, whether based on interpretation of the Home-Rule Amendment (Colo. Const., Art. XX, §6)[6] or otherwise. If not shielded as set forth in Section 3, securing local rights would be preempted, thus interfering with the implementation of the initiative.

Whether Section 3's shield from federal and international preemption will be upheld is a question that must wait to be resolved until after enactment of #75 by the voters. *In re Proposed Initiative 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000) *("In re Woman's Right-To-Know Act").* The fact that Section 3 is necessarily and properly connected with the single subject and all other provisions makes it consistent with single subject, contrary to Petitioner's arguments. *In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010) *("In re Right to Health Care Choice"),* and cases there cited. A provision that would supersede state or federal law does not by that fact alone create a second subject. *In re Title, Ballot Title for 2011-2012 #3,* 274 P.3d

[5] Section 3 shields only local laws enacted pursuant to Section 2 that meet the requirements of Section 3 (a) and (b).
[6] State preemption pursuant to interpretations of the home-rule amendment is styled "statewide concern" or "mixed local and statewide concern." *E.g., City & County of Denver v. State,* 788 P.2d 764 (Colo. 1994) and its progeny.

562, (Colo. 2012) (upholding initiative with wide-ranging changes to state and federal law that comprehensively create "Colorado public trust doctrine" as new legal regime governing single subject "the public's rights in waters of natural streams"). The case cited by Petitioner is distinguishable, as that initiative would have repealed a constitutional section construed as a home rule power that had no logical connection with the single subject of judicial qualifications; it did not "share a unifying or common objective with those provisions changing the qualifications of judicial officers." *Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-1998 No. 64*, 960 P.2d 1192, 1198 (Colo. 1998). #75 does not repeal the Home-Rule Amendment, despite Petitioner's argument. The reference in Section 3 to the Home-Rule Amendment is logically connected with the right to local self-government because it shares the unifying or common objective of implementing and enforcing that right.

4. There is no "logrolling" in #75.

Logrolling is defined as:

> …the practice of jumbling together in one act incongruous subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits.

Colorado Criminal Justice Reform v. Ortiz, 121 P.3d 288, 291 (Colo. App. 2005). *See also, Bruce v. City of Colorado Springs,* 200 P.3d 1140, 1145 (Colo. App. 2008) (finding logrolling under City's municipal single-subject ordinance which is "substantially similar" to the state standard).

But as shown repeatedly above, each provision of #75 is necessarily and properly connected to each other and to the single subject, rather than being disconnected and incongruous. Petitioner's assertion of "logrolling" has no merit.

Every provision of #75 is necessarily and properly connected to the single subject and to every other provision. *In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 #45,* 234 P.3d 642, 646 (Colo. 2010) *("In re Right to Health Care Choice")*, and cases there cited. Implementation and enforcement provisions directly tied to the initiative's single subject will not, in and of themselves, constitute separate subjects. *In re Title, Ballot Title, Submission Clause,* 135 P.3d 736, 738 (Colo. 2006) *("In re Pay-to-Play").*

The Title Board's determination of single subject will not be set aside unless a proposed measure relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other. *E.g., In re Petitions,* 907 P.2d at 591 and 593 (Colo. 1995).

The Title Board acted properly in finding single subject, and the Court must defer to its action.

IV. The Title Board correctly set Title.

The Title Board set a title that is clear, succinct, and comprehensible to voters of average intellect so as to give them sufficient unbiased information from which to determine whether or not to vote for the measure. Petitioner's objections are without merit.

The title clearly states that "the people have an inherent right to local self-government in counties and municipalities." The title advises voters that the right belongs to the people. Voters are familiar with the fact that rights are for people and that *how* people protect their rights is to get laws passed.[7] So the juxtaposition of the phrase "in counties and municipalities" with the declaration of the people's right raises no confusion as to *how* the people would get their local laws passed. The Title Board's action setting title for #75 contains no misleading omission such as found in the case cited in Petitioners' Opening Brief at page 18. In that case, the Court held title misleading for notifying voters that parents would be able to

[7] The portion of the transcript quoted by Petitioners' Opening Brief at page 17 must be read in context of the whole discussion. March 19 hearing, Pet. Ex. F, at 29[21] – 33[7].

choose a bilingual program for students, while failing to notify them that there would be no parental choice in school districts that opted not to offer a bilingual program, an option the measure provided to school districts. *See, In re Title for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000).

Nor is the case cited by Petitioner at page 19 on point. In that case, the Title Board acknowledged it could not comprehend a single subject for the proposed "Amend TABOR" initiative; therefore no title could clearly state a single subject. *See, In re Title, Ballot Title & Submission Clause, and Summary for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999). Here, #75's Title Board correctly determined #75 to have a single subject whose intent and meaning can be – and was – adequately stated in the title crafted by the Board.

Petitioners at page 20 next claim that the phrases "inherent and inalienable right to local self-government" and "fundamental rights [for] individuals, communities and nature" are so overbroad and dubious that it is impossible for voters to ascertain the actual effect or intent of the measure. However, the terms are simple and common terms. People in a democracy expect that their inherent and inalienable right to self-government will be recognized and secured, and that they exercise that right in their local communities as well as in other levels of

government. "Fundamental" is a well-understood term that colloquially means "forming a necessary base or core; of central importance" and "a central or primary rule or principle on which something is based."[8] Similarly, "individuals, communities, and nature" are common terms. These terms are clear enough to give voters of average intelligence notice of the measure's provisions. The Board is not required to explain the relationship between the initiative and other statutes or constitutional provisions. *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485, 499 (Colo. 2000).

Matter of Title, Ballot Title, Sub. Clause, 877 P.2d 848 (Colo. 1994), cited by Proponents' Opening Brief at p. 20, stands for the proposition that a title stating a proposition that directly contradicts the contents of the measure is misleading. There, the title set by the Board conveyed that the obscenity initiative would *expand* the right of free expression in the area of obscenity, when in fact it would *restrict* it. This prohibition is similar to the one in *In re Ballot Title 1999-2000 No. 104*, 987 P.2d 249, 259 (Colo. 1999) *("In re Judicial Personnel")*, where the phrase "not to exceed five per cent" tricked the voters to understand its meaning in context as the more typical opposite, "of at least five percent." The title set in #75

[8] Google search on 5/18/2014, https://www.google.com/search?q=fundamental&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a&channel=sb

contains no such direct contradiction of the meaning of the measure. The Court will not set aside a title as misleading unless it is clearly misleading. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary,* 898 P.2d 1071, 1073 (Colo. 1995) *(In re "Unsafe Work Environment").*

Conclusion

Based on the above, this Court must find that the initiative contains a single subject, and that its ballot title has been properly set.

Respectfully submitted this 19th day of May, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of May, 2014, a true and correct copy of the foregoing **OPENING BRIEF OF RESPONDENTS WILLMENG AND LOTUS** was served via the Integrated Colorado Courts E-Filing System (ICCES) on:

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Pursuant to C.R.C.P. 121 § 1-26, a duly signed copy is on file at the office of Elizabeth A. Comeaux, Attorney at Law.