

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

AND

SUZANNE STAIERT, DANIEL DOMENICO,
AND JASON GELENDER,
Respondents.

Attorney for Respondents 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

▲ COURT USE ONLY ▲

Case No. 14SA100

OPENING BRIEF OF RESPONDENTS WILLMENG AND LOTUS

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 5006 words.

Respectfully submitted,

/s/ Elizabeth A. Comeaux

*Original signature on file at the office of
Elizabeth A. Comeaux, Attorney at Law*

Table of Contents

I.	STATEMENT OF THE ISSUES	1
II.	STATEMENT OF THE CASE.....	1
III.	STATEMENT OF THE FACTS	2
IV.	SUMMARY OF THE ARGUMENT	3
V.	STANDARD OF REVIEW.....	4
VI.	ARGUMENT.....	5
A.	#75 Contains One Single Subject	5
1.	Legal Standard.....	5
2.	The Title Board’s Determination Met the Legal Standard.....	6
3.	Petitioners’ Challenges Are Without Merit.	12
a.	The Right to Local Self-Government is the Single Subject.....	12
b.	Securing the right to local self-government by enacting local laws is a necessary implementation provision.....	12
c.	The enforcement provisions of section 3 are necessarily connected and interdependent with all other provisions.....	14
B.	The Title Board Properly Set Title.	15
1.	Legal Standard.....	15
2.	Petitioner’s Challenges Are Without Merit.	16
a.	Petitioners Impermissibly Ask the Court to Determine #75’s Legal	

Meaning.	16
b. Petitioners’ Misinterpret #75’s Purpose.	18
c. The Title and Submission Clause Clearly Express #75’s Intent and Meaning Without the Use of Defined Terms.....	21
3. The Title Board’s Determination Met the Legal Standard.....	23
VII. CONCLUSION.....	24

Table of Authorities

Cases

<i>In re # 24 see In Re Title, Ballot Title, and Submission Clause for 2009-2010</i>	
<i>In re Proposed Initiative 2009–2010 No. 45, 234 P.3d 642</i>	5, 6, 9, 16, 19
<i>In re Proposed Initiative for 1997-98 # 74, 962 P.2d 927 (Colo. 1998)</i>	7
<i>In re Proposed Initiative for 1999-2000 # 200A, 992 P.2d 27 (Colo. 2000)</i>	7
<i>In Re Public Rights in Waters II, 898 P.2d 1076 (1995)</i>	13, 14
<i>In Re Title and Ballot Title and Submission Clause for 2005-2006 #55, 138 P.3d 273 (Colo. 2006)</i>	6
<i>In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990)</i>	15
<i>In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative Petitions, 907 P.2d 586 (Colo.1995)</i>	6
<i>In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #255, 4 P.3d 485 (Colo. 2000)</i>	17
<i>In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #265, 3 P.3d 1210 (Colo. 2000)</i>	23
<i>In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001–02 No. 43, 46 P.3d 438 (Colo. 2002)</i>	5, 14
<i>In re Title, Ballot Title and Submission Clause, and Summary for 1999-A, 992 P.2d 27 (Colo. 2000)</i>	10
<i>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 (Colo. 1982)</i> ...4	

<i>In re Title, Ballot Title and Submission Clause, for 2007–2008, No. 17, 172 P.3d 871 (Colo. 2007)</i>	5
<i>In re Title, Ballot Title, & Submission Clause for 2007-2008# 62, 184 P.3d 52 (Colo. 2008)</i>	24
<i>In Re Title, Ballot Title, and Submission Clause for 2009-2010, 218 P.3d 350 (Colo. 2009) (“In Re #24”)</i>	6, 15
<i>In re Title, Ballot Title, and Submission Clause for 2011-2012 #3, 274 P.3d 562 (Colo. 2012)</i>	10, 11
<i>In re Title, Ballot Title, Submission Clause for 2009–2010 No. 45, 234 P.3d 642 (Colo. 2010)</i>	4
<i>In re Title, Ballot Title, Submission Clause, and Summary Adopted March 20, 1996 by the Title Bd. Pertaining to Proposed Initiative “1996–6,” 917 P.2d 1277 (Colo. 1996)</i>	4
<i>In re Title, Ballot Title, Submission Clause, and Summary, Adopted April 4th 1990, Pertaining to the Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990)</i>	17
<i>In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-(a), 3 P.3d 1219 (Colo. 2000)</i>	13
<i>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 (Colo. 2000)</i>	7
<i>Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994)</i>	17
<i>Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990)</i>	15, 17

Statutes

§ 1-40-106(3)(b), C.R.S. (2009)..... 15
§ 1-40-107(2), C.R.S. (2013)..... 1

Constitutional Provisions

Colo. Const. Art. II, § 2..... 12, 13
Colo. Const. Art. II, § 3..... 12, 13
Colo. Const. Art. II, § 28..... 12, 13
Colo. Const. Art. V, § 1(5.5) 5, 15
Colo. Const. Art. XX, § 6.....2, 9, 19

Respondents Clifton Willmeng and Lotus, registered electors and proponents of #75, by and through undersigned counsel, respectfully submit their Opening Brief pursuant to the Court's April 14, 2014 Order.

I. STATEMENT OF THE ISSUES

- A. Did the Title Board properly find single subject?
- B. Did the Title Board properly set title?

II. STATEMENT OF THE CASE

This case is an appeal of a ballot title setting by the Title Board pursuant to § 1-40-107(2), C.R.S. (2013).

On March 5, 2014, proponents Clifton Willmeng and Lotus ("Proponents") filed Proposed Initiative #75 ("#75") with the Colorado Secretary of State. The Title Board conducted a hearing on March 19, 2014 and found that #75 contained only a single subject and set the title and ballot title and submission clause (collectively "titles") for the measure. On March 26, 2014, petitioners Mizraim S. Cordero and Scott Prestidge ("Petitioners") submitted a motion for rehearing. The Title Board held a rehearing on April 2, 2014. The Board granted the motion in part and set the title. Petitioners filed this appeal on April 9, 2014.

III. STATEMENT OF THE FACTS

#75 amends the Colorado State Constitution to add section 32 to article II to include a right to local self-government. Section 1 explains that the people have an inherent and inalienable right to self-government. The right to local self-government is a single subject and all of #75's provisions are necessarily and properly connected. Section 2 delineates powers interrelated with, and necessary to, implementing the right to local self-government. Section 2 explains that the right to local self-government includes: (a) "[t]he power to enact local laws protecting health, safety, and welfare by establishing fundamental rights of individuals, their communities, and nature . . ." and (b) "[t]he 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 . . .". Sections 3 and 4 contain provisions necessary to securing and enforcing the right to local-self-government. Section 3 provides that, within certain limitations, local laws adopted pursuant to Section 2 "shall not be subject to preemption" nor "limitation pursuant to section 6 of article XX of this constitution". Without Section 3, it would be difficult, if not impossible, for the

people to enforce local laws implementing the right to local self-government.

The titles set by the Title Board correctly and fairly express the true intent and meaning of #75 and will not mislead the public. The titles track #75's structure, using similar, and often identical, language. The titles start by explaining that #75's subject is "the right to local self-government". They then inform voters of #75's intent: "declaring that the people have an inherent right to local self-government in counties and municipalities". Consistent with Section 2, the titles next explain that the right to local self-government "includ[es] 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". Finally, consistent with Section 3, the titles explain that #75 "declar[es] that such local laws are not subject to preemption by any federal, state, or international laws."

IV. SUMMARY OF THE ARGUMENT

The Title Board correctly found that #75 contains a single subject – a right to local self-government. All provisions of #75 are necessarily and properly connected to this purpose and to each other. The Colorado Supreme Court has

consistently held that implementing and enforcement provisions directly tied to an initiative's central focus are not separate subjects. The powers enumerated in Section 2 are necessary to #75's implementation and the provisions in Sections 3 and 4 are necessary to its enforcement.

The title and submission clauses for #75 as set by the Title Board fairly and accurately reflect the proposed initiative. Neither petition signers nor voters will be misled.

The Title Board's action is entitled to great deference and should be upheld.

V. STANDARD OF REVIEW

In reviewing a challenge to the Title Board's decision, the Court "employ[s] all legitimate presumptions in favor of the propriety of the [Title] 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).

In addition, the Title Board has considerable discretion in setting the titles for a ballot initiative. *In re Title, Ballot Title, Submission Clause, and Summary*

Adopted March 20, 1996 by the Title Bd. Pertaining to Proposed Initiative “1996–6,” 917 P.2d 1277, 1280 (Colo. 1996). The Court will only reverse the Title Board's designation if the titles are “insufficient, unfair, or misleading.” *In re Proposed Initiative 2009–2010 No. 45*, 234 P.3d at 648. The Court is prohibited from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001–02 No. 43*, 46 P.3d 438, 443 (Colo. 2002). In determining whether the initiative contains multiple subjects and if the title is fair, clear, accurate, and complete, the Court employs the general rules of statutory construction and accords the proposed initiative’s language and its titles their plain meaning. *In re Title, Ballot Title and Submission Clause, for 2007–2008, No. 17*, 172 P.3d 871, 874 (Colo. 2007).

VI. ARGUMENT

A. #75 Contains One Single Subject

??. **Legal Standard** Article V, section 1(5.5) of the Colorado Constitution requires that “[n]o measure shall be proposed by petition containing more than one subject.” The Court construes the single-subject requirement liberally to avoid unduly restricting the initiative process. *In Re Title, Ballot Title, and Submission*

Clause for 2009-2010, 218 P.3d 350, 353 (Colo. 2009) (“*In Re #24*”). In order to determine whether an initiative carries out a single purpose, the Court reviews the initiative as a whole and examines individual statements in light of their context. 218 P.3d at 353.

To run afoul of the single-subject requirement, the proposed initiative must have at least two distinct and separate purposes that are not dependent upon or connected with each other. *In Re #45*, 234 P.3d at 645. An initiative that tends to carry out one general, broad objective or purpose does not violate this constitutional rule. *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative Petitions*, 907 P.2d 586, 590 (Colo.1995) (upholding an initiative that constituted “a single, if quite general, subject”). 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).

2. The Title Board’s Determination Met the Legal Standard.

#75’s purpose is to secure the right to local self-government. Its provisions are directly connected and related to this purpose. Section 2 delineates powers interrelated with, and necessary to, implementing the right to local self-

government. Section 2 explains that the right to local self-government includes:

(a) “[t]he power to enact local laws protecting health, safety, and welfare by establishing fundamental rights of individuals, their communities, and nature . . .”

and (b) “[t]he 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....”

The Colorado Supreme Court has consistently held that implementing provisions that are directly tied to the initiative’s central focus are not 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) (holding that implementation details and enforcement measures that are "directly tied to the initiative's central focus do not constitute a separate subject" (internal quotation marks omitted)); *In re Proposed Initiative for 1997-98 # 74*, 962 P.2d 927, 929 (Colo. 1998) ("An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation. As long as the

procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject.”). Here, the power to enact the types of local laws described in Section 2 is directly tied to #75’s purpose of securing the right to local self-government. Indeed, the power to enact local laws is *how* the people express their right to local self-government. The right to local self-government is intertwined with, and, in fact, inseparable from, the ability to enact local laws establishing fundamental rights that protect the health, safety, and welfare of individuals, their communities, and nature. A right to local self-government without a means to implement it would be meaningless. Similarly, the right to local self-government is directly tied to the power to enact local laws preventing corporations and other business entities from interfering with “such locally-enacted fundamental rights of individuals, their communities, and nature”. By its express language, Section 2 is directly tied to the ability to implement local laws establishing fundamental rights which, in turn, is directly tied to implementing the right to local self-government. To protect their fundamental rights, the people must be able to limit corporate power to prevent interference with local laws.

Sections 3 and 4 also contain provisions necessary to securing and enforcing

the right to local-self-government. Section 3 provides that, within certain limitations, local laws adopted pursuant to Section 2 “shall not be subject to preemption” nor “limitation pursuant to section 6 of article XX of this constitution”. Without Section 3, it would be difficult, if not impossible, for the people to enforce local laws implementing the right to local self-government. Section 4 is a standard procedural clause providing that the provisions are self-executing and severable.

The Colorado Supreme Court has declined to find a single subject violation in nearly identical circumstances. In *In re 2009-2010 #45*, 234 P.3d 642, the Court considered whether a proposed amendment to the Colorado Constitution entitled “Right to health care choice” violated the single subject requirement. The initiative established a right to health care choice, implemented by prohibiting state law from requiring individuals to participate in any health insurance plan. The initiative also exempted certain emergency medical treatment from its effects. The Court read the initiative’s broad statement of principle regarding the “right to health care choice” in connection with its implementing provisions and held that it did not violate the single subject requirement. *Id.* at 646-47. The Court rejected petitioners’ attempt to parse the right to health care choice into multiple subjects.

Similarly, in *In re Title, Ballot Title and Submission Clause, and Summary for 1999-A, 992 P.2d 27* (Colo. 2000), the Court considered an initiative that required a woman's voluntary and informed consent before a physician may perform an abortion. The measure included implementation provisions requiring the delivery of certain information to a woman concerning the abortion procedure prior to its scheduled occurrence and annual reporting by physicians to the Colorado Department of Health. The Court held that the initiative did not violate the single subject requirement because the "implementation provisions [were] directly tied to the initiative's ascertainable central focus: 'ensuring a woman's 'voluntary and informed consent'.'" *Id.* at 31.

#75 is also analogous to initiatives establishing coherent and connected legal regimes. In *In re Title, Ballot Title, and Submission Clause for 2011-2012 #3, 274 P.3d 562* (Colo. 2012), for instance, the Court considered an initiative about "the public's rights in the waters of natural streams." The Court undertook a detailed analysis of the initiative's multiple provisions and found that "[f]ar from being 'disconnected and incongruous', the proposed subsections of Initiative 3 have the single distinct purpose of describing a new legal regime – the "Colorado public trust doctrine"- that would govern "the public's rights in waters of natural

streams.” *Id.* at 567 (citation omitted). The Court found that various subsections were “necessarily and properly connected to the subject of the ‘public's rights in waters of natural streams’ because they describe[d] the proposed doctrine's legal relationship to existing contract, property, and appropriative rights.” *Id.* The Court explained:

Subsection (3) states that the new public right to water of natural streams would be “superior to rules and terms of contracts or property law.” Then, subsections (4) and (5) necessarily and properly describe how the “superior” public right to the water of natural streams will interact with usufruct water rights and with streambed and stream bank access. Subsections (6) and (7) necessarily delineate the procedures for enacting and enforcing the new public trust regime to “protect the public's right and interest in water.”

Id.

The same analysis applies to the right to local self-government expressed in #75. Sections 2, 3, and 4, are necessarily and properly connected to the subject of “the right to local self-government” because: (1) they delineate the powers necessary to enacting a legal regime recognizing the right to local self-government; and (2) describe how local laws enacted pursuant to the right to local self-government will interact with the existing doctrine of preemption and with fundamental rights already secured by the Colorado and U.S. constitutions or

international law.

The Title Board met the standard for determining single subject.

3. Petitioners' Challenges Are Without Merit.

a. The Right to Local Self-Government is the Single Subject.

Petitioners first note that this¹ right of the people to local self-government is placed in the Colorado Bill of Rights.² The people's right to local self-government is a legacy of democracy. Colo. Const., Art. II, §§ 2, 3, and 28. It declares and secures the right against interference. An individual right that can only be expressed collectively, this right to local self-government cannot be expressed at all without necessary implementation and enforcement provisions.

b. Securing the right to local self-government by enacting local laws is a necessary implementation provision.

Petitioners³ construe the implementation provisions of section 2 as separate subjects. This is not so. The implementation provisions are interdependent with each other and with the enforcement provisions of section 3, and all are necessary to secure the right which is the overall theme of #75. They therefore

1

Another initiative by the people to secure a right to local self-government is found in Colo. Const., Art. XX, § 6, which focuses primarily on the governmental functions that the state would otherwise perform, although it does provide for local citizen initiatives.

2 Petition for Review, p. 4, ¶ 1.a.

3 Petition for Review, p. 4, ¶ 1.d.

meet the standard set by *In Re Public Rights in Waters II*, 898 P.2d 1076, 1078-79 (1995), and followed, *e.g.*, in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-(a)*, 3 P.3d 1219 (Colo. 2000).

Petitioners further misunderstand the subject of the initiative by conflating it with the power of local governmental entities.⁴ #75 recognizes and secures a right of the people to govern themselves by causing the local laws described in section 2 of the measure to be enacted through whatever means are available.⁵ #75 declares a reserved right of the *people*, one that has never been delegated to the state and cannot be delegated to the local governmental entities by the state. It can only come from the people. Colo. Const. Art. II, §§ 2, 3, and 28.

And if the people of a local community do exercise this right, then section 3 provides protection from preemption of “[l]ocal laws adopted pursuant to subsection (2).” Thus, to implement this right of local self-government, the people may utilize their local governments to enact laws “establishing the fundamental rights of individuals, communities, and nature” and curtailing any assertion of rights by commercial and industrial interests that would interfere with these

4 Petition for Review, p. 4, ¶¶ 1.b. and 1.c.

5 People in a home rule municipality or county may enact laws directly through the initiative, or indirectly through their elected representatives. People in a statutory city or county can only use the latter method.

rights.⁶

The questions whether local laws protecting the people's rights as provided in #75 offend the equal protection clause of the state or federal constitution or change the status of entities operating businesses in Colorado are not before the Court in this proceeding.⁷ *In re 2001-02 No. 43*, 46 P.3d at 443.

c. The enforcement provisions of section 3 are necessarily connected and interdependent with all other provisions.

Petitioners⁸ construe the enforcement provisions of section 3 as a separate subject. This is not so. The enforcement provisions are interdependent with each other and with the implementation provisions of section 2, and all are necessary to secure the right which is the overall theme of #75. They therefore meet the *Waters II* standard, *supra*.

Because all the provisions of #75 are necessary, interconnected, and interdependent with one another and with the purpose of establishing and securing this right of the people to local self-government, the single subject requirement has been met. The Title Board properly exercised jurisdiction.

6 Petition for Review, p. 4, ¶ 1.d.

7 Petition for Review, p. 4, ¶ 1.d.

8 Petition for Review, p. 4, ¶ 1.c.

B. The Title Board Properly Set Title.

1. Legal Standard

Article V, section 1(5.5) of the Colorado Constitution requires that the initiative's single subject be clearly expressed in its title. Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re # 24*, 218 P.3d at 356 (quoting *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). § 1-40-106(3)(b), C.R.S. (2009), requires the Title Board to "consider the public confusion that might be caused by misleading titles" and to "avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." The title must "correctly and fairly express the true intent and meaning" of the initiative. C.R.S. § 1-40-106(3)(b). "[T]he summary is not intended to fully educate the people on all aspects of the proposed law [citation omitted] and it 'need not set out in detail every aspect of the initiative.'" *Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1279 (Colo. 1990).

2. Petitioner’s Challenges Are Without Merit.

Petitioners improperly ask the Court to interpret #75’s legal meaning and otherwise misinterpret it. Petitioners’ remaining contentions -- that the title and submission clause fail to define or confusingly interchange certain terms -- are similarly without merit.

a. Petitioners Impermissibly Ask the Court to Determine #75’s Legal Meaning.

In reviewing the title and submission clause for defects, the Court is “not permitted . . . to determine the legal meaning or application of the initiative”. *In re #45*, 234 P.3d at 648. Petitioners impermissibly ask the Court to determine how, if enacted, #75 would be applied. Petitioners’ subparagraph 2 argues that the title and submission clause “is confusing, misleading, and not reflective of the proponents’ intent” because it: (1) “[i]ncorrectly 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”⁹; and (2) [m]isleadingly suggests that the initiative grants local governments absolute immunity from preemption, but fails to inform voters that local laws could still be preempted by

⁹ Petition for Review, p. 5, ¶ 2.c.

federal law”.¹⁰

Petitioners thus ask the Court to determine whether certain provisions of #75 are legally enforceable. The question of #75’s legal application and enforceability is not before the Court. If Petitioners wish to challenge #75’s legal effect, they must do so after its enactment. *Proposed Initiative on Surface Mining*, 797 P.2d at 1281-82 (“Whether the amendment can prohibit surface mining for aggregate on federal land is a question appropriately reserved for litigation under the amendment should it be adopted.”). Moreover, it is well-settled that titles are not “misleading because they do not refer to the Initiative’s possible interplay with existing state and federal laws”. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000#255*, 4 P.3d 485, 498 (Colo. 2000); *see also Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on Campaign & Political Fin.*, 877 P.2d 311, 313 (Colo. 1994) (title need not state all possible future effects of the measure, or how the proposed law affects other statutory and constitutional provisions).

The Court has consistently rejected the type of argument Petitioners make here. In *In re Title, Ballot Title, Submission Clause, and Summary, Adopted April*

¹⁰ Petition for Review, p. 5, ¶ 2.f.

4th 1990, Pertaining to the Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990), for instance, the petitioner argued that the title did “not accurately reflect the practical effect of the proposed amendment”. *Id.* at 1280. The petitioner contended that the title improperly suggested that only surface mining in designated areas along the Front Range which “may scar the land” would be prohibited when, in all practicality, the proposed amendment would “prohibit all aggregate surface mining in certain areas along the front range.” *Id.* The Court rejected petitioner’s argument, finding that the title accurately tracked the proposed amendment’s language and described its purpose. *Id.* The Court reasoned: “Regardless of the actual legal effect the proposed amendment will have, its language prohibits surface mining which ‘may scar the land’ in certain areas along the Front Range. The ballot title is fair and accurate because it repeats the operative words ‘may scar the land.’” *Id.* The same is true here. The title and submission clause uses the same language as #75 and “describes exactly” its purpose. *Id.*

b. Petitioners’ Misinterpret #75’s Purpose.

Petitioners argue that the title and submission clause: (1) [f]ails 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”;¹¹ and (2) “[p]urports 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.”¹² Petitioners impose their own incorrect legal interpretation and then, again, impermissibly ask the Court to interpret #75’s legal meaning. When reviewing a proposed initiative’s title for defects, the Court is “not permitted . . . to determine the legal meaning or application of the initiative”. *In re 2009-2010#45*, 234 P.3d at 648. It would be improper for the Court to consider #75’s effect on statutory municipalities at this juncture.

Moreover, a reading of #75’s plain language shows that it does not modify the home-rule provision. Initiative #75 is different from the home-rule amendment (section 6 of article XX of the Colorado Constitution). In home-rule jurisdictions, the people have the power to enact local rights directly, by initiative and referendum, while in non home-rule jurisdictions, the people may only act through elected representatives. The right to local self-government exists regardless of

¹¹ Petition for Review, p. 5, ¶ 2.d.

¹² Petition for Review, p. 5, ¶ 2.h.

whether a jurisdiction is “home-rule”. The issue is not who is acting – the people directly or the people through local elected officials – but from where the power to act is derived. As Initiative #75 explains, “all political power is vested in and derived from the people. . .” The Initiative’s purpose is clear from its plain language and the title and submission clause set by the Title Board is not misleading. The Title Board correctly understood #75’s purpose in setting the title and submission clause.

Petitioners similarly misinterpret #75 in arguing that it misleads voters into thinking that they are *expanding* local government authority to establish laws protecting health, safety and welfare.¹³ The ballot title and submission clause describes the right to local self-government as “including the power to enact laws to establish and protect fundamental rights of individuals, communities and nature . . .” Nowhere does it mention health, safety, and welfare. A voter could not be misled into thinking #75 expands a local government’s authority in this realm.¹⁴ Thus, even if it were proper for the Court to entertain Petitioners’ argument regarding the initiative’s legal meaning with respect to local government authority

¹³ Petition for Review, p. 5, ¶ 2..h.

¹⁴ Petitioners’ argument likewise has no basis in #75’s actual text. #75 describes the people’s power to enact local laws protecting health, safety and welfare. It does not address or purport to expand local government’s authority in this realm.

– which it is not – Petitioners’ argument is without merit.

c. The Title and Submission Clause Clearly Express #75’s Intent and Meaning Without the Use of Defined Terms.

Petitioners argue that the title and submission clause for #75 is confusing and misleading because it: (1) “[p]rovides no definition of what the ‘right to local self-government’ means and who holds that right”;¹⁵ (2) “[p]rovides 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;’”¹⁶ and (3) “[f]ails 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.’”¹⁷

Section 1 of #75 describes the origins of the right to local self-government: “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.” Section 2 goes on to explain that the right to local self-government includes the power to enact local laws to establish and secure fundamental

¹⁵ Petition for Review, p. 5, ¶ 2.a.

¹⁶ Petition for Review, p. 5, ¶ 2..b.

¹⁷ Petition for Review, p. 5, ¶ 2..g.

rights...” The title and ballot title and submission clause track #75’s language in describing the *people’s* “inherent right to local self-government” as “including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature . . .”

It is clear from both #75’s language and the language of the title and submission clause that *the people* hold the right to self-government. The title and submission clause describes the people’s inherent right to self-government and the powers associated therewith. The title and submission clause fairly and accurately reflects #75’s meaning and intent. The phrase “right to self-government” needs no further definition to be understood by voters.

The same is true for “fundamental rights”. The title and submission clause clearly reflects #75’s intent to secure the people’s power to enact local laws to protect fundamental rights. “Fundamental rights” are not a new concept and the meaning of that term is commonly understood. As made clear by #75 and as reflected in the title and submission clause, the local laws enacted will further define “fundamental rights” and “fundamental rights” belong to “individuals, communities, and nature.” The enactment of local laws protecting fundamental rights secures and advances the right to local self-government. Voters can

understand the meaning and intent of #75 without any further definition of these terms. *See In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #265*, 3 P.3d 1210, 1215 (Colo. 2000) (“the failure to define the foods that must be labeled in the titles does not render the titles misleading to the voters.”).

Finally, Petitioners’ contention that the title and submission clause must define who is granted the power to enact local laws – the people or counties and municipalities – is without merit.¹⁸ Petitioners confuse the question of *who* holds the power with *how* that power is exercised. The title and submission clause clearly reflects #75’s purpose of securing the people’s right to local self-government and the powers associated with that right. Whether the people exercise these powers directly, such as through initiative, or through the local municipality depends on whether they are in a statutory or home-rule jurisdiction. The title and submission clause need not explain through what means the people will enact local laws as this is not a key part of, or even expressed in, #75. As discussed above, the question of how #75 will be applied is not before the Court.¹⁹

¹⁸ Petition for Review, p. 5, ¶ 2.g.

¹⁹ Petition for Review, p. 5, ¶ 2.e. is not addressed because it refers to a phrase “fundamental rights or protections” that is not found in the title set by the Board.

3. The Title Board's Determination Met the Legal Standard.

In exercising its drafting authority, the Title Board is entitled to great deference. *In re Title, Ballot Title, & Submission Clause for 2007-2008* #62, 184 P.3d 52, 60 (Colo. 2008). The Title Board set a clear, fair, accurate and complete title and submission clause that expresses #75's true intent and meaning.

VII. CONCLUSION

For the reasons set forth above, Respondent Proponents respectfully request that the Court affirm the actions of the Title Board.

Respectfully submitted this 29th day of April, 2014.

/s/ Elizabeth A. Comeaux
Elizabeth A. Comeaux #8674
1663 Steele St #901
Denver, CO 80206

Attorney for Respondents
CLIFTON WILLMENG AND LOTUS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of April, 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:

HOGAN LOVELLS US LLP
Chantell Taylor, #33059
Elizabeth H. Titus, #38070
1200 Seventeenth Street, Suite 1500
Denver, Colorado 80202

Attorneys for Petitioners
Mizraim S. Cordero and Scott Prestidge

and

JOHN W. SUTHERS, ATTORNEY GENERAL
Maurice G. Knaizer #05264
Special Assistant Attorney General
Public Officials Unit
State Services Section

Attorneys for Title Board

/s/ Elizabeth A. Comeaux

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.