

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 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,

TITLE BOARD

Respondents.

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Case No. 2014SA100

OPENING BRIEF OF 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 does not exceed 30 pages.

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 raise and ruled on.

/s/Maurice G. Knaizer

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Suzanne Staiert, Daniel Domenico and Sharon Eubanks, as members of the Ballot Title Setting Board (hereinafter “Title Board”), thereby submit their Opening Brief.

STATEMENT OF THE ISSUES

Does Proposed Initiative 2013-2014 #75 contain a single subject?

Do the title and ballot title and submission clause set by the Title Board for Proposed Initiative 2013-2014 #75 correctly and fairly express the true intent and meaning of the proposed initiative?

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. (Colo. 2013)

On March 5, 2014, proponents Clifton Willmeng and Lotus filed Proposed Initiative 2013-2014 #75 (“#75”) with the Colorado Secretary of State. The Title Board conducted a hearing on March 19, 2014 and set titles for the measure. On March 26, 2014, the Petitioners Mizraim Cordero and Scott Prestidge (“Petitioners”) submitted a motion for rehearing. The Title Board considered the motion on April, 2, 2014. It

granted the motion in part and set the titles. The Petitioners then filed this appeal on April 9, 2014.

STATEMENT OF THE FACTS

#75 amends the Colorado Constitution by adding section 32 to article II. Section 1 of the measure begins with a declaration that “all political power is vested in and derived from the people.” The power includes the “inherent and inalienable right to local self-government, in each county, city, town and other municipality.”

Section 2 describes the “right to local self-government.” The right includes “the power to enact local laws that (1) protect the “health, safety and welfare” through the establishment of “the fundamental rights of individuals...”(2) that “establish[], defin[e], alter[], or eliminat[e] the rights, powers and duties of corporations and other business entities operating or seeking to operate in the community” and (3) prevent the rights and powers of such entities from “interfering with such locally-enacted fundamental rights of individuals, their communities, and nature.”

Section 3 of the measure states that laws adopted pursuant to the measure cannot be pre-empted by any international, federal, or state laws, or be subject to any limits on proposing laws under the home rule provisions of Colo. Const. art. XX, § 6. However, any local laws passed pursuant to the provisions of #75 cannot limit the rights of individuals, their communities or nature, nor weaken any protections for individuals, their communities, or nature provided by state, federal or international law.

ARGUMENT

I. The Measure Contains One Subject.

A. Summary of the Argument

#75 meets the single subject requirement. The single subject is the right to local self-government.

B. Standard of Review

The Colorado Constitution prohibits the Title Board from setting the title of a proposed initiative if the initiative contains more than one subject. *In re Title, Ballot Title and Submission Clause for 2007-2008 #61*, 184 P.3d 747, 749 (Colo. 2008). An initiative violates the single

subject requirement if (1) it relates to more than one subject, and (2) has two or more distinct purposes which are not dependent upon or connected with each other. *Id.* at 750; *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 57 (Colo. 2008).

The single subject requirement serves two functions: (1) it ensures that an initiative depends upon its own merits for passage, and (2) it precludes the likelihood of surprise and fraud upon the voters by preventing surreptitious measures. *Id.* The subject of the initiative should be capable of being clearly expressed in the initiative's title. *In re Title, Ballot Title and Submission Clause and Summary for 2005-2006 #73*, 135 P.3d 736, 738 (Colo. 2006). A proposed initiative may be broad. Breadth alone does not violate the single subject requirement if the provisions of a proposal are connected. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000)

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

#75 has one subject: the explicit recognition of an inalienable right of persons to local self-government. It details the parameters of the right.

#75 sets forth the rationale for the proposal and the powers of local governments. It states both the source of authority to establish a right to local self-government and the limits of local self-government. It provides that “all political power is vested in and derived from the people” and that “all government of right originates from the people.” These statements are an acknowledgment and a restatement of the source of political and governmental power within Colorado. Colo. Const. art. II, § 1 (“All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.”) They reiterate that all governments in Colorado must answer to the people. *Hudson v. Annear*, 101 Colo. 551 558, 75 P.2d 587, 589 (1938). All persons have “certain natural rights, essential and inalienable

rights.” Colo. Const. art. II, § 3. The people have the right to alter their form of government. Colo. Const. art. II, § 2.

#75 then secures this purpose in a narrow manner: expanding legislative powers of local governments within prescribed limits. It does so by limiting the power of international bodies and state and federal governments to preempt local government laws. Currently, Colorado courts recognize that state and federal laws preempt local laws when the laws conflict. *Colorado Mining Ass’n v. Board of County Commissioners of Summit County*, 199 P.3d 718, 730 (2009). #75 reverses that relationship by eliminating the preemptive power of these entities, thereby preventing state, federal or international entities from usurping local government powers and giving to local governments the power to preempt laws promulgated by these governmental entities.

Related to the enhancement of local government powers, #75 authorizes local governments to enact laws governing corporations. Presently, the General Assembly has the power to establish the laws defining, altering or eliminating the rights, powers and duties of corporations and other business entities. The General Assembly has

always had extensive authority to exercise the governmental police power in regulating corporate business. *Platte & Denver C. & M. Co. v. Dowell*, 17 Colo. 376, 382-83, 30 P. 68, 71-72 (1892). For example, the General Assembly could prevent automobile dealerships from selling on Sundays. *Mosko v. Dunbar*, 135 Colo. 172, 181-83, 309 P.2d 581, 586-87 (1957). The proposed initiative shifts this power to local governments.

#75 also discusses limits on local government legislation. Local governments cannot enact laws that restrict designated fundamental rights or weaken protections provided by state, federal or international law.

The Petitioners' statement of the grounds for appeal in their Petition confirms the conclusion that #75 contains only one subject. They contend that the measure (a) establishes "a new, inherent right and inalienable right to local self-government;" (b) empowers "local governments to *enact* laws 'establishing the fundamental rights of individuals, communities and nature"; (c) expands "the authority of local governments to *enact* laws protecting the 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) creates “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.” (Emphasis added) Petition for Review, p. 4.

The structure of the statement is telling. Paragraph (a) of the Petition for Review acknowledges the single subject: the establishment of an inalienable individual right to local self-government. Paragraphs (b)-(d) of the Petition for Review discuss the implementation of the single subject through the enactment of laws.

II. The titles are clear, fair and brief.

A. Summary of the Argument

The titles and submission clause meet the clear title standards established by this Court. They fairly and accurately set forth the major elements of the measure.

B. Standard of Review

The titles must clearly express the single subject of the proposal. The language of the titles cannot obscure the meaning of the measure. The titles must enable all citizens, whether familiar or unfamiliar with the subject matter, to determine whether to support the proposal. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010) (#45). The Title Board must “consider the confusion that might be caused by misleading titles” and “avoid titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.” § 1-40-106(3) (a), C.R.S. (2013). Ballot titles shall be brief. *Id.* The Board is not required to discuss every aspect of a measure, provide specific explanations or discuss every possible effect of the measure on the current statutory scheme. *In re Title, Ballot Title and Submission Clause and Summary for a Petition on Campaign and Political Finance*, 877 P.2d 311, 314, 315 (Colo. 1994) (“*Political Finance*”).

The Court has set forth the following directive for ballot titles:

We direct the board to begin the titles with a clear, general summary of the initiative, followed by a brief description of the major elements of the initiative. The titles, standing alone, should be capable of being read and understood, and capable of informing the voter of the major import of the proposal but need not include every detail.

In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22, 4 P.3d 213, 222 (2002) (#21 and #22).

When the Court reviews a challenge to the clear title requirement of a ballot title setting, it employs all legitimate presumptions in favor of the propriety of the Board's decision. #45, 234 P.3d at 645. The Court will examine the text to determine whether the titles and submission clause are consistent with the standards established in statute. The Court will not determine the efficacy, construction or future application of the proposal, if passed. *Id.*

The clear title requirement does not mandate that details of the single subject must be expressed in the initial clause. Rather, the Title Board meets its obligations if the initiative's single subject is "clearly

expressed in its titles.” #45, 234 P.3d 642, 647 (Colo. 2010) Thus, the Court will review the language used throughout the titles. If the language of the titles, read as a whole, adequately conveys the meaning of a measure, the Court will affirm the decision of the Title Board. *Id.* at 648. Titles are sufficient if they provide voters with a “reasonably ascertainable expression of the initiative’s purpose.” *Id.*

The Title Board is not required to explain the relationship of the proposed measure to existing laws that are not in the text of the measure. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #255*, 4 P.3d 485, 498 (Colo. 2000) (titles are not “misleading because they do not refer to the Initiative’s possible interplay with existing state and federal laws”); see also, *Political Finance*, 877 P.2d at 315.

The Court has recognized that the Title Board has the difficult task of balancing the competing interests of the proponents against concerns raised by opponents and other members of the public. *In re Matter of the Title, Ballot Title and Submission Clause for Proposed Initiatives Nos. 67, 68 and 69*, 2013 CO 1, 293 P.3d 551, 554 (Colo.

2013). The Title Board's decisions are presumptively valid. The Title Board has considerable discretion in setting ballot titles. The Court does not demand that the Title Board set the best possible titles. It will reverse the Title Board's action only if the titles are insufficient, unfair or misleading. *In re Ballot Title 2011-2012 No. 45*, 2012 Co 26, 274 P.3d 576, 582 (2012).

C. The Petitioners' Challenges Are Without Merit.

The Petitioners raise eight challenges in their Petition. These challenges will be addressed in order.

Three of Petitioners' challenges contend that the titles are deficient because they do not provide definitions (1) of "what the 'right to local self-government' means and who holds the right" (Petition for Review, p. 5, ¶ 2(a)); (2) "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....'" (Petition for Review, p. 5, ¶ 2(b)); and (3) of

“protections” and “fundamental rights.” (Petition for Review, p. 5,

¶ 2(e))

These challenges are without merit. The measure itself does not include definitions of these terms. If a proposed measure does not contain a definition, the Title Board cannot supply a definition. Rather, the “definition must await future construction.” *In re Proposed Initiative on Water Rights*, 877 P.2d 321, 327 (Colo. 1994).

Petitioners also challenge the legal efficacy or effect of #75’s substantive provisions. Petitioners contend that the titles:

1. “Incorrectly suggest[] to voters that ‘communities’ and ‘nature’ are capable of holding individual and/or fundamental rights that are independently protected and enforceable under the law.” (Petition for Review, p. 5, ¶ 2(c)) Petitioners do not argue that #75 does not accurately reflect the content of the measure. Rather, they argue that as a matter of law, communities and nature cannot hold such rights.

2. “Fail[] 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

municipalities.” (Petition for Review, p. 5, ¶ 2d)) Petitioners state that the titles must inform the voters of this legal result.

3. “Misleadingly suggest that the initiative grants local government absolute immunity from preemption, but fails to inform voters that local laws could still be preempted by federal law.” (Petition for Review, p. 6, ¶ 2(f)) Petitioners state that the titles must note that federal preemption law would still apply.

4. “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 also exists.” (Petition for Review, p. 6, ¶ 2(h)) Petitioners argue that the titles must discuss the impact of the measure on existing law.

This Court has consistently held that neither the Court nor the Title Board 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 (2008) (#57). Each of these objections goes to the legal impact of the measure. This determination must await construction by the courts “in a proper case should the voters approve

the initiative.” *In re Proposed Initiative 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000).

Next, Petitioners state that the titles “fail[] to clearly identify who is ‘granted the power to enact laws’ and ‘define or eliminate the rights and powers of corporations’”. (Petition for Review, p. 6, ¶ 2(g)) However, Petitioners do not argue that #75 includes this identification. Instead, they appear to impose on the Title Board the duty to interpret the measure. The Title Board is not authorized to do so. #57, 185 P.3d at 145.

CONCLUSION

The Title Board requests that the Court approve the titles.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Opening Brief of the Title Board upon all parties herein by Integrated Colorado Courts E-filing System (ICCES) or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 28th day of April, 2014 addressed as follows:

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