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COLORADO SUPREME COURT 2 East Fourteenth Avenue, Fourth Floor 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 2015-2016 #40 ("Right of Local Community Self-Government") **Petitioners: TRACEE BENTLEY AND STAN DEMPSEY** v. **Respondents: JEFFERY DEAN RUYBAL AND MERRILY D. MAZZA** **and** **Title Board: SUZANNE STAIERT; SHARON EUBANK; AND FREDERICK R. YARGER**	**▲COURT USE ONLY▲**
Attorney for Respondent Proponents: Elizabeth A. Comeaux #8674 Libby Comeaux Law LLC P. O. Box 8433 Denver, CO 80201 720-379-7864 EAComeaux.Atty@outlook.com	Case No: 2016SA11

PROPONENTS' ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It does not exceed 30 pages.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Elizabeth A. Comeaux

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Respondents Jeffery Dean Ruybal and Merrily D. Mazza, registered electors and proponents of 2015-2016 #40, by and through undersigned counsel, respectfully submit their Answer Brief pursuant to the Court's January 14, 2016 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

Proponents incorporate the Statement of the Case in their Opening Brief and supplement it with the following.

Exhibit 1 faithfully presents Proponents' public statement in response to the Legislative staff's questions at the review and comment hearing on September 8, 2015, which fulfilled a prerequisite to bring the final version of #40 to the Title Board.[1]

[1] Colo. Const. art. V, §1(5); C.R.S. §1-40-105. One purpose of the public recorded review and comment hearing is to allow the public to understand the implications of a proposed initiative at an early stage in the process. *In re 1999-00 #256 (Managed Growth),* 12 P.3d 246, 251 (Colo.2000).

As presented on the record in the process leading up to this Court's review both in 2013-2014 #75 and 2015-2016 #40, Proponents drafted this measure[2] to secure the right of local self-government from the well-known entanglement of government with enforcing corporate "rights" over the majority will of local communities seeking to exercise local democracy.

The Title Board[3] considered two motions for rehearing on January 6, 2016. Proponents provided answers to the single-subject objection of Douglas Kemper, who after some clarification on the record determined not to present a petition to this Court on that issue. The Title Board addressed Mr. Kemper's concerns with the title in a manner to which both Proponents and Objectors herein consented. Objector's Exhibit E.

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[2] The Court defers to proponents' intent in reviewing action by the Title Board. *See* Proponents' Opening Brief, p.6, n.7.

[3] The Title Board's hearings for both 2013-2014 #75 and 2015-2016 #40 are posted at http://www.sos.state.co.us/pubs/info_center/audioArchives.html (audio recording of hearings) and http://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/index.html (text) and reveal how heavily the #40 Title Board relied on the #75 Court's approval of the nearly identical measure in Case 2014SA100, referred to herein as *In re 2013-2014 #75*.

SUMMARY OF THE ARGUMENT IN ANSWER

The Court reviews the Title Board's exercise of its authority for abuse of discretion. The Court overturns the Title Board's single subject determination only in a clear case. A showing that the various provisions of the measure are necessarily and properly connected to each other and to the single subject satisfies the test and assures that there is no surreptitious measure coiled up in the folds that will surprise or defraud the voters. (*Infra* at 7-8, 22-23)

The Title Board did not abuse its discretion in determining single subject summarized as "a right to local self-government." Objectors concede that this subject is "central," and that Section 2 furthers "this same subject" (*Infra* at 9).

Objectors ask the Court to revisit two challenges to single subject that the 2014 Court rejected in upholding the Title Board's ruling in #75. First, Objectors ask the Court to rule that securing locally-enacted rights by limiting locally-competing corporate "rights" is a separate subject, based on the 2007 Court's rejection of #17 as containing a "surreptitious" provision and the 2006 Court's rejection of #55 as containing a "hidden" second subject. Proponents, *infra* at 10-17, distinguish both cases and show how neither of them supports a "surreptitious"

or “hidden” characterization of the corporate “rights” provision. By contrast, Proponents show *infra* at 14-15 that the 2007 Court’s institutional value of consistency favors this Court’s decision consistent with the 2014 Court’s approval of #75. Likewise, a close reading of the 2006 Court’s examination of #55 actually supports the Title Board’s single subject determination in #40. *Infra* at 16-17.

Proponents respond to Objectors’ second single-subject challenge by showing that Objectors read the exemption provision more broadly than the measure intends or requires. Like #75 and other noteworthy measures reviewed by the 2014 Court, this provision has limited application and serves to implement and enforce the single subject. *Infra* at18.

Proponents conclude their single subject defense by listing pertinent cases where the Court has upheld the Title Court’s exercise of its authority to determine single subject, in measures structured similarly to #40, beginning with almost identical 2013-2014 #75. *Infra* at 19-20.

The measure admittedly seeks to alter an aspect of our form of government. In that way, as it other ways, it is similar to prior measures approved by the Court. Only rights-based local enactments securing the rights of “their own local

community, an entity that comprises a continuum of nature including humans" can effectively counteract the current problem in jurisprudence implicated by the interwoven doctrines of corporate "rights" and preemption / nullification by higher levels of government. It should not be surprising if a change of perspective or paradigm in the public gives rise to an effort to alter the form of government, as has been upheld before within the discipline of single subject. *Infra* at 17, 21, 25.

Whether the measure is a good idea or a bad one is for the people to decide. The Title Board had no difficulty recognizing the single subject as "a right to local self-government" and the various provisions as interconnected and inter-related, rather than disconnected or incongruous. Objectors' attempt to have the Court revisit stale arguments cannot distort the solid defense of the Title Board's action presented by Proponents. *Infra* at 21.

At the January 6, 2016 rehearing, the Title Board worked from a title very similar to the title approved by this Court in 2013-2014 #75. With the consent of Objectors herein, the Title Board included additional language in the title, tracking the provisions and language of the measure in more detail. Objectors nevertheless argue that no fewer than five problems of vagueness still make the title unclear.

They seek action by this Court that is either not ripe for review by this Court, or that would cause the Court to step outside its role into the role of the electorate. This Court has long maintained that it will not use its review power to judge the merits of a measure. *Infra* at 23-27.

Objectors' five challenges to clear title repeat their misleading characterizations of the measure's provisions and raise one challenge that they waived during the rehearing. Proponents rebut each challenge and conclude with a reminder that the Title Board is not expected to explain to the voters the effects of the measure and how it will interact with other statutory and constitutional provisions. *Infra* at 23-27.

Most troubling, Objectors misrepresent the standard of review. The *de novo* standard allowed the Court in *Hayes v. Ottke,* 293 P.3d 551, 554 (Colo. 2013) to resolve a conflict over whether the Title Board had the authority *to act.* This Court is too astute to be misled to replace the *abuse of discretion* standard that applies to reviewing the *actions* of the Title Board. *Id.* ("The issue here, however [*i.e.* in *that* case], concerns the Title Board's statutory authority to act in the first instance, not *whether it abused its discretion in exercising that authority*.") (Emphasis added.)

This issue in *this* case, quite obviously, is whether the Title Board abused its discretion in *exercising* its authority.

III. ARGUMENT

A. The Title Board Properly Determined Single Subject.

1. Standard of Review and Preservation of the Issue.

In their opening brief, Objectors present two objections to the Title Board's single subject determination; Proponents agree that Objectors preserved these two, and only these two, objections.

Objectors incorrectly state the standard of review. The authority of the Board to act is not at issue. At issue is whether the Title Board properly exercised its authority. The Court reviews the Title Board's exercise of its authority under an *abuse of discretion* standard. *Hayes v. Ottke*, 293 P.3d at 554.[4]

The Court will overturn the Title Board's finding that an initiative contains a single subject only in a clear case. *In re 2013-2014 #89*, 328 P.3d 172, 176 ¶8

[4] *Hayes* reviewed the authority of the Title Board to act when only one designated representative appeared for hearing, rather than the two required. 293 P.3d at 553 ¶4.

(Colo. 2014); *In re 2013-2014 #90*, 328 P.3d 155, 158 ¶7 (Colo. 2014); *In re 2013-2014 #85*, 328 P.3d 136, 141 ¶8 (Colo. 2014); *In re 2011-2012 #45*, 274 P.3d 576, 579 ¶8 (Colo. 2012); *In re 2011-2012 #3*, 274 P.3d 562, 565 ¶6 (Colo. 2012).

2. Legal Standard

Regarding the first power reserved by the people, that of the initiative,[5] "No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title." Colo. Const. art. V, §1(5.5) (effective January 19, 1995). The Title Board has authority to determine single subject in connection with its prior authority to set clear title. C.R.S. §1-40-106; *In re 1999-2000 #25*, 974 P.2d 458, 462 (Colo. 1999).

The Title Board must liberally construe the single-subject requirement so as to "avoid unduly restricting the initiative process." *E.g.*, *In re 1997-1998 #74*, 962 P.2d 927, 929 (Colo. 1998). The Title Board's original instruction is to follow this Court's precedent with respect to the original 1876 single-subject requirement in

[5] Colo. Const. art. V, §1(2).

bills,[6] C.R.S. §1-40-106.5 (3). That precedent requires that the matters encompassed by a bill be "necessarily or properly connected" to each other and to the single subject, rather than "disconnected or incongruous." *In re 1999-2000 #25 ($25 Tax Cut)*, 974 P.2d at 462-63 (Colo. 1999) (historical review by Rice, J.).[7]

3. Objectors' Challenges Are Without Merit.

Before asserting their two challenges, Objectors concede that "a right to local self-government" is central to this measure. Objectors' Opening Brief at 8-9. They concede that Section 2 of the measure "furthers this same subject" by its provisions on local enactments. *Id.* at 9. Provisions that further the same subject are "necessarily and properly connected" to that subject. *Infra* at 19. The central purpose of #40, as repeatedly documented by Proponents, is to secure the right to local self-government that the measure describes.

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[6] Colo. Const. art. V, §21.

[7] By legislative convention, the single subject determined by the Title Board is found just before the first comma in the title. Office of Legislative Legal Services, *Colorado Legislative Drafting Manual*, ¶ 2.1.5 (revision 12/22/2015).

But after conceding the above, Objectors here again argue that the corporate "rights" provision[8] and the exemption provision[9] constitute separate subjects.

Objectors ask the 2016 Court to reach a different decision from the 2014 Court, relying at pages 10-12 on two cases to support their contention that the corporate "rights" provision is a second subject: *In re 2007-2008 #17,* 172 P.3d 871 (Colo. 2007) and *In re 2005-2006 #55,* 138 P.3d 273 (Colo. 2006).

At the top of page 10, Objectors misconstrue #40's Section 2 power to limit locally-competing corporate "rights" as imposing a "*duty* to resolve *every* conflict" in that manner. *Compare,* 179 P.3d at 876. They strain for this interpretation in order to garner support from the 2007 Court's review of #17 for their argument that this provision "poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative." *Compare,* 179 P.3d at 875.

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[8] *In re 2013-2014 #75* Petition ¶1.d, rejected by the 2014 Court.

[9] *Id.,* Petition ¶1.c. (federal and state preemption) and Petitioners' Op. Br. At 13 (Supremacy Clause), rejected by the 2014 Court.

But nothing in Section 2 creates a "duty" to resolve "every" conflict by adjusting corporate powers. Section 2 requires the people, if they want to exercise the right to local self-government described in this measure, to follow certain steps. It does not even require the people ever to exercise the right. It certainly does not require them to exercise it in such a way that they obliterate all corporate "rights" and powers for all time. If a local enactment tried that approach, this Court would have a specific enactment before it immediately with a constitutional challenge of overbreadth. That case is not before the Court at this time. The measure contemplates local enactments specifying certain local rights and limiting corporate "rights" only to the extent necessary to secure those specific local rights.

So Objectors' effort to tag along with #17's overly broad "duty" interpretation does not hold. Nor does it support their argument that the corporate "rights" provision is hidden or surreptitious. Comprising more than ten percent of the text of the measure and almost 25 percent of the text of the title, this provision is plainly visible to voters. It is a central feature necessarily and properly related to the single subject and central purpose and clearly expressed in the title. It is hardly "coiled up in the folds," nor does it present the danger of "surprise" or "fraud" upon the voters.

When the 2007 Court reviewed *#17*, it was in the context of a tradition of *stare decisis*, because the Court had rejected prior measures seeking to return the public trust doctrine to Colorado jurisprudence without a proper relation to a single subject. 172 P.3d at 872-73. The 4-3 majority construed *#17* as primarily devoted to reorganizing numerous state agencies into one new department of environmental conservation for the purpose of efficiency. 172 P.3d at 876. When they examined the lengthy measure seeking a surreptitious second subject (172 P.3d at 875), they found a "buried" provision[10] that they inferred would have returned the public trust doctrine to Colorado in derogation of their prior decisions. Consistent with the Court's earlier ruling on the public trust doctrine, the majority rejected the public trust provision as a separate subject not dependent upon or necessarily connected with the main subject. *Id.*

[10] "Conflict between economic interest and conservation stewardship responsibilities to, and for, the public's resources and resource conservation values shall be resolved in favor of public ownerships and public values." 172 P.3d at 874 and 884-85.

The 2007 Court's concern for consistency[11] bore fruit when the Court reviewed a subsequent public trust measure. *In re 2011-2012 #3,* 274 P.3d at 564. There, the Court upheld a public trust doctrine provision as necessarily and properly connected to the subject set by the Title Board, "the public's right in the water of natural streams." 274 P.3d at 566 ¶¶12 and 15.

To belabor the point, the 2007 Court's analysis of #17 does not support Objector's argument that #40's corporate "rights" provision (or the "exemption provision" for that matter) is a separate subject. The Court's institutional value of consistency cuts *in favor of* single subject in #40, not against it, because the 2014

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[11] See discussion of *stare decisis* in Proponents' Opening Brief at 12, citing noncontroversial decisions (*en banc,* no dissent): *In re 2001-02 #43,* 46 P.3d 438, 444 (Colo. 2002); *In re 1999-2000 #25,* 974 P.2d at 466. Granted, *In re 2005-2006 #55* took a different view, construing the statutory proceeding as requiring re-review even if identical language were presented to the Court recurring times. C.R.S. §1-40-107(2); 138 P.3d at 276. However, although the *#55* Court re-reviewed a similar *measure,* it addressed for the first time *the issue* whether the Title Board properly found single subject. The previous ruling had addressed only the issue of clear title, whereas the Court in *In re 2013-2014 #75* resolved both the clear title issue and the single subject issue (and the latter, against the same two challenges presented by Objectors here). *Compare,* 138 P.3d at 276. The Court's effort to produce consistent results in reviewing similar measures continues, as illustrated by the discussion in the text accompanying this note.

Court *upheld* single subject against the same objection(s). And, to carry forward Objector's analogy to #17, once the Court was presented with a measure that properly interconnected public trust doctrine with the single subject, it was structured in parallel to #40. For example, it subordinated contract, property, and water rights to the public's right in water and authorized future legislative enactments to further the new public right. *In re 2011-2012 #3,* 274 P.3d at 564 ¶2 and 567-68 ¶20. Similarly, #40 authorizes future local enactments to further the subject right by subordinating corporate "rights" to locally-enumerated rights, as necessary to secure those enumerated local rights.

Objectors cite *In re 2005-2006 #55,* 138 P.3d at 280, at pages 11-12 of their Opening Brief to argue by analogy that, because corporations are a group outside the group whose rights #40 would secure, the corporate "rights" provision is a second subject. Objectors misread #40 as well as the case they cite. There, the measure would have amended the state constitution to restrict the provision of non-emergency state services to those lawfully present. Because the measure "does not thereafter *define* 'non-emergency' and 'services,' *categorize* the types of services to be restricted, or set forth the *purpose* or purposes of restricting non-emergency services," 138 P.3d at 279 (emphasis added), the majority concluded that it did not

give enough of a *description* of "non-emergency services" to guide the General Assembly's future enactments that were essential to implementation and enforcement of the measure. Inferring proponents' central purpose as reducing taxpayer expenditures for non-emergency services such as *medical and social services* that would benefit the welfare of a group defined as persons not lawfully present in the state, the majority foresaw a potential circumstance in which those outside the group could suffer a similar fate and construed this possibility as a second subject. Specifically, because the measure provided for citizen enforcement, and because the term "non-emergency services" was insufficiently described in the measure, the majority thought it could have led to citizen pressure for the legislature to limit *administrative* services, such as recording real estate transactions involving persons beyond the "unlawfully present" group. This lack of any description of "non-emergency services" in the measure led the majority to set aside the traditional rubric of refraining from interpreting the effect and application of the measure until a later case presents specific facts.[12] It underlay the majority's

[12] *E.g., In re 2013-2104 #90*, 328 P.3d 155, 161 ¶21 (Colo. 2014): "[I]n determining whether a proposed initiative comports with the single subject requirement, we do not address the merits of the proposed initiative or predict how

conclusion that there was potentially a separate hidden subject, should those events possibly ensue, 138 P.3d at 282, and not be challenged in court for overbreadth.

By contrast, #40 *does* articulate sufficient guidance for the future local enactments necessary to implement and enforce its overall purpose of securing the right to local self-government described in the measure. It provides a contextual *definition* of the right by showing in Section 2 how it must be exercised. Section 2 also specifies by *category* and *purpose* the local enactments that implement the right. Section 2 enactments must specifically address the *category* of local rights for the *purpose* of securing the specifically-named rights of the living members of the community against locally-competing corporate "rights" to the extent

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it may be applied if adopted by the electorate. *In re Title, Ballot Title & Submission Clause for 2007-2008 No. 62,* 184 P.3d 52, 58 (Colo. 2008)." Similarly, at 160 ¶17: "Indeed, '[t]he effects this measure could have on Colorado . . . law if adopted by voters are *irrelevant* to our review of whether [the proposed initiative] and its Titles contain a single subject.' *In re 2011-2012 No. 3,* ¶ 20 n.2, 274 P.3d at 568 n.2" (emphasis added). *See also, In re 2013-2014 #89,* 328 P.3d at, 178 ¶17: "Not only is the effect of an initiative outside of the scope of our review, *In re 1999-2000 No. 256,* 12 P.3d at 257, but the mere fact that an initiative may create a change does not mean that it violates the single subject requirement, *see id.* at 254 (holding that the proposal does not necessarily violate the single subject requirement just because it 'makes policy choices that are not inevitably interconnected')." Questions of legal and constitutional impact or enforceability must await construction by the courts "in a proper case should the voters approve the initiative." *In re 1999-2000 #200A,* 992 P.2d at 30.

"necessary." These descriptive requirements easily meet the #55 majority's reticence to abide by the traditional rubric. In reviewing #40 for single subject, this Court can confidently rely on the traditional rubric and wait for an appropriate case with specific facts and local enactments before ruling on the interpretation, effect, and enforceability of the measure.

At the top of page 12, Objectors highlight a specific corporate "right" – that of possessing and protecting property – and claim that it is unconnected to the single subject. But this is not the conclusion this Court made in *2011-2012 #3*, where subordinating property rights was deemed a properly connected means of implementing the proposed public right in the waters of natural streams. 274 P.3d at 567 ¶16. And it is not the conclusion that the 2014 Court made when upholding #75's single subject. Proposed Initiative #40 provides for a local enactment that could establish and secure local rights – including specific local rights of specific aspects of nature – to the extent necessary to secure the people's inherent and inalienable right of local self-government. It envisions a rights-based analysis by a future Court that must then give weight, not only to corporate "rights," but also to the locally-enacted rights of the local community.

Claiming to have found a third subject on page 12, Objectors repeat the challenge – that the 2014 Court rejected – to the limited exemption from preemption and nullification of locally-enacted rights. Construing the exemption provision as "establishing local law as supreme [over] virtually any state or federal law on which [the voters] currently rely," they imagine a danger of surprise and fraud on the public. But the provision does not make local law supreme over all other law. It merely insulates, for enforcement purposes, certain local laws – ones that meet the requirements of Section 2 and Section 3 (a) and (b) – from preemption or nullification. Similar provisions have been deemed within the ambit of the single subject that they help implement and enforce. *E.g., In re 2013-2014 #89,* 328 P.3d at 181 above ¶29, and *In re 2013-2014 #90,* 328 P.3d at 161 ¶19, upholding provisions that the more restrictive and protective law or regulation governs, as implementation of "a public right to Colorado's environment" and "local regulation of oil and gas development," respectively.

4. The Title Board Met the Standard.

The constitution and statutes charge the Title Board to exercise its discretion when determining whether there is a single subject and, if so, how to articulate it.

The dissents that pepper this Court's record of cases demonstrate how often reasonable minds can differ if charged with making that determination themselves. The Court's role is not to substitute judgment for the Title Board, but only to review whether the Board has abused its discretion.

A long line of cases supports the Title Board's determination of single subject in #40.

Case precedent has long deferred to the Title Board's determination of single subject where subordinate provisions serve to implement and enforce the single subject. *E.g., In re 2009-2010 No. 45*, 234 P.3d 642, 646; *In re 2001-2002 #21 and #22*, 44 P.3d 213 219 (Colo. 2002); *In re 1999-2000 #258(A)*, 4 P.3d 1094, 1098-99 (Colo. 2000); *In re 1999-2000 200A*, 992 P.2d 27, 31 (Colo. 2000); *In re 1997-98 #74*, 962 P.2d at 929.

An equally impressive line of cases supports the Title Board's determination of single subject in measures that propose to alter the form of government. In the following cases, single subject has been upheld when various internal provisions support its purpose of altering the form of government. *E.g., In re 2013-2014 #89*, 328 P.3d at 178 ¶16 (challenged subsection "describes a part of the legal

framework necessary to create and protect a public right in the environment); *In re 2011-2012 #45*, 274 P.3d at 581 ¶19 ("cohesive proposal to … create a new water regime"); *In re 2011-2012 #3*, 274 P.3d at 567 ¶16 (Colo. 2012) ("proposed subsections … describing a new legal regime").

The Court has also refrained from disturbing the discretion of the Title Board when it has found a single subject, even though broad, supported by subordinate provisions that were not disconnected or incongruous.[13] *E.g., In re 1999-2000 #256*,12 P.3d 246, 254 (Colo. 2000) (per curiam).

Objectors' selection of #17 and #55 as exemplars illustrates how the Court has sometimes struggled to maintain its limited scope of review. The Court is well aware of the danger of exceeding its role and usurping that of the electorate.[14] This

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[13] Indeed, as documented in Proponents' Opening Brief at 15, the purpose of a "sufficient examination" of the measure is to determine exactly that, whether the subordinate provisions are disconnected or incongruous or, instead, meet the "necessary and proper" test designed to root out incongruous subjects, *cf.*, 172 P.3d at 879 (Eid, J. dissenting).

[14] *E.g., In re 2005-2006 #55*, 138 P.3d at 283 (Coats, J. dissenting, joined by Rice, J.) ("Because I believe the single-subject requirement was adopted to protect voters from deception and fraud rather than to limit their right to make public policy directly by constitutional amendment, I respectfully dissent.")

Court's efforts to avoid such pitfalls are essential to maintaining its constitutional role in the context of separation of powers, the role of the electorate, and the limited scope of review of the Title Board's discretion.

Proposed Initiative #40 is short enough to be read by each voter, and it does not hide its terms from anyone. The voters will not be fooled by the focus of this measure on securing a right to local self-government through rights-based local enactments that prioritize the rights of those in the living local community over the outside powers of government and corporations combined. There is no danger of voter surprise or fraud. Objectors' disagreement with the policy position of the measure should become part of the "Blue Book" contemplated by Colo. Const. art. V, §1(7.5), and will duly be aired in public media and other fora. The Court need not get embroiled in Objectors' core (if hidden) argument that #40 is a "bad idea." Nothing is hidden "coiled in the folds" – rather, all provisions exist in the light of day. The Title Board's finding embeds the conclusion that none of the subordinate provisions are disconnected or incongruous.

The Title Board exercised its discretion. There is no clear abuse of discretion; therefore the Board's determination of single subject must stand.

B. The Title Board Properly Set Title.

1. Standard of Review; Preservation of Issues.

Objectors incorrectly state the standard of review. As discussed *supra* at 6-7, the issue here is whether the Title Board properly exercised its authority. The Court reviews this issue under an *abuse of discretion* standard. *Hayes v. Ottke*, 293 P.3d at 554.

Proponents agree that Objectors preserved the five title objections they renumber and present in their Opening Brief.

2. Legal Standard.

Since 1910 the people have reserved to themselves the "first power" of the initiative, Colo. Const. art. V, §1(2). Since 1993, the Title Board has had the authority to set title in ballot initiatives. *In re 1999-2000 #25,* 974 P.2d at 462. The Title Board's role in setting title is to express the single subject clearly, Colo. Const. art. V, §1(5.5), and follow the Court's precedent in clear title for bills. C.R.S. 1-40-106.5(3). As established early in Colorado:

> 'The generality of a title,' says Judge Cooley, 'is no objection to it so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper

> connection.' Const. Lim. (5th Ed.) 174, 180. It is not essential that the title shall specify particularly each and every subdivision of the general subject. Such a requirement would lead to surprising and disastrous results.

In re Breene, 24 P.3, 4 (Colo. 1890). Thus, the Board first determines single subject. Based on that determination, it then exercises discretion to provide a concise summary of the measure's central features so as to "prevent surreptitious measures" as well as "surprise and fraud" on the voters. C.R.S. §1-40-106.5 (1)(e)(II).

It is the Title Board's role to resolve interrelated problems of length, complexity, and clarity in setting a title.[15] It is not required to explain the meaning or potential effects of the measure. *In re Petition on School Finance,* 875 P.2d 207, 212 (Colo. 1994).

3. Objectors' Challenges Have No Merit.

Objectors renumber their five Petition challenges to the title. At pages 15-16, Objectors' Opening Brief construes the following phrases as vague: (1) "inherent and inalienable right of local self-government," (2) "rights of natural persons, their

[15] See Exhibit E for #40 Title.

local communities, and nature," (3) omission of "other means deemed necessary," (4) the provisions limiting business' rights and reorganizing the hierarchy of laws within the state and federal government through preemption and nullification, finally arguing (5) that the foregoing makes the title material misleading. These challenges have no merit.

"Inherent and inalienable right of local self-government" has a sufficient contextual description in the lines 3-8 of the title to give notice to the voters. Clearly stated as a right of "the people," it uses familiar terms for the Bill of Rights. And a measure with a single subject commonly provides for later enactments that further specify its terms. *E.g.*, *In re 1997-1998 #74,* 962 P.2d at 929 (referenda and initiative proposals were directly tied to the substantive changes that were the central focus of the measure). The challenged term (1) is not vague and gives notice it will be further specified by local enactments.

Similarly, the term "rights of natural persons, their local communities, and nature" (2) is not vague. It too is contextually described in the title. The basic context is the political community specified in the title (line 3) as "counties and municipalities." The contrast between the categories of locally-enacted rights and

corporate “rights” (lines 4-7) provides further description, and those same lines reveal that the purpose of this contrast is “to establish, protect, and secure rights of natural persons, communities, and nature” from interference by the “rights and powers” of corporations. Based on Objectors’ reliance on #55, supra at 14-17, this term is not vague.

Objectors opine, at the bottom of their page 17, that our jurisprudence has little precedent for the rights of nature, and that the public has “no” concept of the term. Objectors’ challenge reveals their own policy disagreement with a major shift in awareness among many voters. A correspondence between a paradigm shift and a Proposed Initiative that would alter the form of government should come as no surprise. The public can understand a local enactment specifying, as a right of natural persons, a right to live in a community where nature’s own rights are respected. And the term “rights of nature” is made of three words, each of which are in common usage. Objectors, Proponents, and the Court will have to wait for a local enactment for further specificity. Where a title clearly represents the central features of a measure, and the measure has a single subject, it is not necessary for the title to define how the measure if enacted might affect existing legal or constitutional provisions. *E.g.*, 875 P.2d at 212.

At the rehearing of January 6, 2016, Objectors waived[16] their challenge (3) (omission of "other means deemed necessary") noted at their page 18. The title is not required to include every single term in the measure. *In re Breene*, 24 P. at 4. The Title Board expressly discussed their view that this phrase was subsumed in the title's inclusion of a central feature of the measure ("the power to enact laws to establish, secure, and protect rights") and offered the opportunity for those present to object. Objectors did not do so. The Title Board did not abuse its discretion in summarizing the central features of the measure for the voters. *Id.*

Objectors' challenge (4) revisits, at their page 19, the corporate "rights" limitation and preemption exemption objections refuted in the context of single subject, *supra* at 10-18. Proponents' Opening Brief at pages 31-32 rebutted this objection in the context of title, and the 2014 Court rejected this general challenge as well.[17] And a title is not unclear or misleading simply because it does not refer

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[16] Text refers to markers 13:30 to 28:00 (approximately) on the audio recording of the January 6, 2016 rehearing, http://www.sos.state.co.us/pubs/info_center/audioArchives.html .

[17] *See*, *In re 2013-2104 #75* Petition ¶2.f., rejected by the 2014 Court.

to the initiative's possible interplay with existing state and federal laws, including constitutional provisions. *In re 2013-2014 #85,* 328 P.3d at 145 ¶25.

Objectors' challenge (5) in which they reprise the reprise of the reprise of Petitioners' argument in #75,[18] alleges that the title is materially misleading because it does not explain the effects of the measure and how it will interact with other statutory and constitutional provisions, both state and federal, after local enactments implement it, if ever. Titles are not expected to do this. The Title Board did not abuse its discretion.

4. The Title Board Met the Standard.

As set forth in the Title Board's briefs in 2013-2014 #75, the Title Board properly set title.

The title for #40 describes the ways in which the right to local self-government may be exercised through the categories of local laws that may be passed and the purpose they must fulfill. The language of the title, read as a whole, adequately conveys the meaning of the measure. *In re 2009-2010 #45,* 234 P.3d at

[18] *In re 2013-2014 #75,* Petition ¶2, rejected by the 2014 Court.

648. Titles are sufficient if they provide voters with a "reasonably ascertainable expression of the initiative's purpose." *Id.* Titles are not "misleading because they do not refer to the Initiative's possible interplay with existing state and federal laws." *In re 2013-2014 #85*, 328 P.3d at 145 ¶25. The Title Board cannot supply a definition in the title that is not contained in the

measure; rather, the definition must await future construction. *In re Water Rights,* 877 P.2d 321, 327 (Colo. 1994).

Reasonable minds can always differ over how precisely to express the principal features of any measure. But that is not the standard of review. The Board did not abuse its discretion.

IV. CONCLUSION

The Title Board acted within its discretion in properly finding single subject and setting clear title. Proponents seek affirmance of the Title Board's action so that they may bring this policy debate to the voters where it belongs.

Dated February 23, 2016

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on this 23rd day of February, 2016, I electronically filed a true and correct copy of the foregoing **PROPONENTS' ANSWER BRIEF** with the Clerk of Court via the Colorado ICCES program which will send notification of such filing and service upon the following counsel of record:

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