

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: February 3, 2016 4:31 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #40 (“Right of Local Community Self-Government”)</p> <p>Petitioners: TRACEE BENTLEY AND STAN DEMPSEY</p> <p>v.</p> <p>Respondents: JEFFERY DEAN RUYBAL AND MERRILY D. MAZZA</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; SHARON EUBANK; AND FREDERICK R. YARGER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner: Richard C. Kaufman, No. 8343 Matthew K. Tieslau, No. 47483 RYLEY CARLOCK & APPLEWHITE 1700 Lincoln Street, Suite 3500 Denver, Colorado 80203 Telephone: (303) 863-7500 Facsimile: (303) 595-3159</p>	<p>Case Number: 16SA11</p>
<p>PETITIONERS’ OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

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

Specifically, the undersigned certifies that:

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

- It contains _____ words.
- It does not exceed 30 pages.

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

For the party raising the issue:

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 issues was raised on rule on.

For the party responding to the issue:

It contains under a separate heading, a statement of whether each party agrees with the opponent'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 and C.A.R. 32.

s/Matthew K. Tieslau

TABLE OF CONTENTS

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW..... 1

II. STATEMENT OF THE CASE 1

III. STATEMENT OF FACTS..... 3

IV. SUMMARY OF THE ARGUMENT..... 4

V. ARGUMENT..... 6

 A. Initiative #40 Impermissibly Contains Multiple Subjects..... 6

 1. Standard of Review and Preservation of Issue 6

 2. Initiative #40 Violates the Colorado Constitution and State Statute by Containing Multiple Subjects 6

 a. Legal Standard 6

 b. The Title Board’s Determination Failed to Meet the Legal Standard..... 8

 B. Initiative #40 Violates the Single Subject Requirement for a Clear Title..... 13

 1. Standard of Review and Preservation of Issue 13

 2. Initiative #40’s Provisions are so Vague that the Title does not Encompass and Reflect the Purpose of the Proposal 14

 a. Legal Standard..... 14

 b. The Title Board’s Determination Failed to Meet the Legal Standard 15

VI. CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases

Hayes v. Ottke

293 P.3d 551 (Colo. 2013)	6, 13
<i>In re Title for 1999–2000 No. 258(A)</i>	
4 P.3d 1094(Colo. 2000)	14
<i>In re Title for Title and Ballot Title and Submission Clause for 2005–2006 No.55,</i>	
138 P.3d 273, 280 (Colo. 2006)	11, 16, 17
<i>In re Title, Ballot Title & Submission Clause, Summary Clause for 1997–1998</i>	
<i>No. 74</i> 962 P.2d 927, 929 (Colo. 1998).....	9
<i>In re Title, Ballot Title and Submission Clause for 2007–2008, No. 17</i>	
172 P.3d 871, 874 (Colo. 2007)	8, 10, 17
<i>In re Title, Ballot Title, and Submission Clause for 2009–2010, No. 24</i>	
218 P.3d 350, 353 (Colo. 2009)	7, 14
<i>In re Title, Ballot Title, Submission Clause for 2009–2010 No. 45</i>	
234 P.3d 642 (Colo. 2010)	6, 7, 14
<i>In re Title, Ballot Title, Submission Clause for 2011–2012 No. 45</i>	
274 P.3d 576 (Colo. 2012).....	7
<i>In re Title, Ballot Title, Submission Clause, Summary for 1999–2000 No. 29</i>	
972 P.2d 257 (Colo. 1999)	13, 15
<i>In re Title, Ballot Title, Submission Clause, Summary for 2005–2006 No. 73</i>	
135 P.3d 736 (Colo. 2006)	8,13

Statutes

C.R.S. § 1-40-105(1).....	1
C.R.S. § 1-40-106(3)(b)	14, 19
C.R.S. § 1-40-106(3)(c)	2
C.R.S. § 1-40-106.5	2
C.R.S. § 1-40-106.5(2).....	7
C.R.S. § 1-40-107(1)(a)	2
C.R.S. § 1-40-107(2)	1, 3, 6, 13

Constitutional Provisions

Colo. Const. art II, Section 3.....	12
-------------------------------------	----

Colo. Const. art. II.....	3
Colo. Const. art. V, Section 1(5.5).....	passim
Colo. Const. art. XIX, section 2(3).....	7

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board lacked jurisdiction to set title because the Proposed Initiative impermissibly contains multiple subjects in violation of the Colorado Constitution and applicable statutes.
2. Whether the Title Board erred in setting a title that is so vague that the title does not encompass and reflect the purpose of the proposal and is misleading to voters.

II. STATEMENT OF THE CASE

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

Jeffery Dean Ruybal and Merrily D. Mazza (hereinafter “Proponents”) are the designated proponents of Proposed Initiative 2015–2016 #40 (“Right of Local Community Self-Government”) (hereinafter “Initiative”). Proponents submitted a final version of the Initiative to the Secretary of State on December 2, 2015 for purposes of having the Title Board set title. *See* Final 2015-2016 #40, attached as Exhibit A. The Secretary of State or his designee is a member of the Title Board. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal Services on December 16, 2015.

The Title Board considered the Initiative at its December 16, 2015 meeting and set the following title:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, communities, and nature and the power to define or eliminate the right and powers of corporations or business entities to prevent them from interfering with those rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

See Ballot Title Setting Board, Proposed Initiative 2015 –2016 #40 (December, 16, 2015), attached hereto as Exhibit B.

On December 23, 2015, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the proposed Initiative violated the one subject requirement contained within the Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5; that the Initiative’s title did not accurately reflect the subject matter of the Initiative as required by C.R.S. § 1-40-106(3)(c); and that the Initiative’s title failed to note critical provisions of the measure which rendered the title misleading. *See* Motion for Rehearing, attached hereto as Exhibit C. On December 23, 2015, a separate Petitioner, Douglas Kemper, filed an additional Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a) alleging similar concerns. *See* Motion for Rehearing, attached hereto as Exhibit D. The Title Board considered both Petitioners’ Motions at its January 6, 2016 meeting. The

Motions for Rehearing were granted to the extent that the Title Board made changes to the titles but were denied in all other respects. The title as set by the Title Board at the January 6, 2016 hearing was as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish, protect, and secure rights of natural person, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and exempting such local laws from preemption or nullification by any federal, state, or international law if the local laws do not restrict fundamental rights or weaken legal protections for natural persons, their local communities, or nature.

See Ballot Title Setting Board, Proposed Initiative 2015–2016 #40 (January 6, 2016), attached hereto as Exhibit E (hereinafter “Title”).

As the Initiative does not comply with the single-subject requirement and the Title continues to be misleading notwithstanding the Title Board’s changes, Petitioners timely submitted this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2).

III. STATEMENT OF FACTS

If adopted, the Initiative would amend the Bill of Rights, article II of the Colorado Constitution to grant “the people . . . an inherent and inalienable right of local community self-government in each county, city, town and other municipality.” Ex. A, p.1. The Initiative would also grant both the people of the

state and governments of the state the power “to enact local laws that protect health, safety, and welfare.” *Id.* Such local laws may protect “health, safety, and welfare” by recognizing or establishing, in addition to the peoples’ right to self-government, rights of: (1) natural persons; (2) local communities; and (3) nature. *Id.* Natural persons, local communities, and nature are not defined within the Initiative. These additional rights may be secured by “prohibitions and other means deemed necessary by the community.” *Id.* The Initiative also allows that such rights be secured through “measures to establish, define, alter, or eliminate competing rights, powers, privileges, immunities, or duties of corporations and other business entities operating or seeking to operate, in the community.” *Id.* The Initiative also separately exempts from nullification any local laws adopted pursuant to the Initiative. *Id.* In sum, the Initiative seeks to achieve the following: establish a right in the people to local community self-government; allow for the creation of rights for natural persons, local communities, and nature; allow for the establishment, definition, alteration, and elimination of corporate or business entities’ rights, powers, privileges, immunities, or duties; and exempt all actions creating or eliminating rights under the Initiative from nullification.

IV. SUMMARY OF THE ARGUMENT

The Title Board lacked jurisdiction to set title for Initiative 40 because, when read as a whole, the Initiative contains multiple unrelated subjects. In addition to

the facially obvious subject of establishing a right in individuals to local self-government, the Initiative also contains subjects regarding modifying existing rights and duties of business entities, and modifying the long established preemption and nullification hierarchies of Colorado and Federal jurisprudence. Because the latter two subjects are unrelated to a right to local self-government they violate the single subject requirement, and thus the Title Board lacked jurisdiction to set title.

In the alternative, to the extent the Court finds that the Initiative includes only one subject, the provisions of the Initiative are so vague and incomprehensible that the Title and ballot submission clause as set by the Title Board are materially confusing and misleading to voters. The Initiative fails to define or explain the scope of important terms such as “rights of natural persons, their local communities, and nature,” and “other means deemed necessary,” which are critical to understanding the import and breadth of the Initiative. Additionally, the provisions dealing with laws affecting business entities rights and redefining preemption and nullification doctrines are both too complex and far reaching to be capable of accurate expression in the Initiative’s Title and submission clause.

As such, the Court should remand this matter to the Board with directions to strike the Title and return the Initiative to the Proponents.

V. ARGUMENT

A. Initiative #40 Impermissibly Contains Multiple Subjects.

1. Standard of Review and Preservation of Issue

The Court reviews “statutes governing the Board’s authority to act *de novo*.” *Hayes v. Ottke*, 293 P.3d 551, 554 (Colo. 2013). When reviewing a challenge to the Title Board’s decision to set the title and ballot title and submission clause for an initiative, the Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title, Submission Clause for 2009–2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010). The Court will not consider the initiatives efficacy, construction, or future application, but necessarily must examine the initiative’s text in order to review the Title Board’s action. *Id.*

Petitioners’ raised the single subject requirement in Petitioners’ Motion for Rehearing on December 23, 2015. *See* Ex. C, p.1-2. Petitioners’ further presented this issue to the Court pursuant to C.R.S. § 1-40-107(2). *See* Petition for Review of Final Action (January 13, 2016), attached hereto as Exhibit F, at p. 3.

2. Initiative #40 Violates the Colorado Constitution and State Statutes by Containing Multiple Subjects

a. 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.” Furthermore, the legislature has directed that “[i]t is the intent of the general

assembly that section 1(5.5) of article V and section 2(3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.” C.R.S. § 1-40-106.5(2).

The single subject requirement protects voters from an all-or-nothing decision as voting on an initiative that joins multiple, separate subjects poses a danger of voter surprise and fraud. *In re Title, Ballot Title, and Submission Clause for 2009–2010, No. 24*, 218 P.3d 350, 353 (Colo. 2009). An initiative that carries out “one general, broad objective or purpose” will not violate this constitutional rule. *In re No. 45*, 234 P.3d at 646. Additionally, an initiative may contain several purposes as long as they are interrelated and directly tied to the initiative’s central focus in such a way that they avoid the single-subject requirement. *Id.* Contrastingly, “[a] proponent's attempt to characterize a proposed initiative under ‘some overarching theme’ will not save the measure if it contains separate and unconnected purposes.” *In re Title, Ballot Title, Submission Clause for 2011–2012 No. 45*, 274 P.3d 576, 581 (Colo. 2012).

When determining whether an initiative meets the single subject requirement, a court “must review the initiative as a whole rather than piecemeal and examine individual statements in light of their context.” *In re No. 45*, 234 P.3d at 646.

b. The Title Board’s Determination Failed to Meet the Legal Standard

The Initiative as set by the Title Board contains multiple, distinct and separate purposes that are not tied to one broad, general purpose and are not interrelated in such a way as to be directly related to the Initiative’s central focus. In order to determine that the Initiative indeed has multiple subjects, it is necessary to look to the plain language of the Initiative for the possibility of multiple subjects. *In re Title, Ballot Title, Submission Clause for 2005–2006 No.73*, 135 P.3d 736, 738 (Colo. 2006); *see also In re Title, Ballot Title and Submission Clause for 2007–2008, No. 17*, 172 P.3d 871, 874 (Colo. 2007) (“We apply the general rules of statutory construction and accord the language of the measure its plain meaning”).

By the Initiative’s title and plain language, its central purpose is to create a right to local community self-government. *See* Ex. A, p.1 (“Section 32: Right of Local Community Self-Government”); Ex. B, p.1 (“An amendment to the Colorado constitution concerning a right to local self-government. . .”). Thus, in order to meet the single subject matter requirement of article V., section 1(5.5) of the Colorado Constitution, the multiple provisions of the Initiative must have a “necessary and proper relationship” to the subject of a right to local community

self-government. *In re Title, Ballot Title & Submission Clause, Summary Clause for 1997–1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998).

Examining the Initiative’s provisions, at least three distinct and separate subjects can be observed. First, the Initiative presents a subject surrounding the creation of an “inherent and inalienable right of local community self-government.” Ex. A, p. 1. It achieves this by adding a new section to article II of the Colorado Constitution, which is otherwise known as the Bill of Rights. Alone, this provision would not be problematic as it encompasses the clear, stated subject of the Initiative, which is the right to local-community self-government.

Next, the Initiative furthers this same subject by creating a power in both people and governments of the state “to enact laws that protect health, safety, and welfare.” *Id.* at p. 2. This power to effectuate laws can be carried out in a myriad of ways including: recognizing rights; securing rights through prohibitions; establishing, defining, altering, or eliminating rights, powers, privileges, immunities, or duties of corporations and business; and a catchall of “other means deemed necessary.” *Id.*

Importantly, a new, second subject, is buried inside of this power to effectuate laws, which establishes a completely new ability for the people and local governments to legislate to change *rights, powers, privileges, immunities, or duties of corporations and business*. Self-government is unrelated to the ability to

“superimpos[e] onto existing constitutional and statutory provisions the duty to resolve every conflict between” businesses’ and corporations’ rights, powers, privileges, and immunities in favor of local governments. *In re No. 17*, 172 P.3d at 876.

In *In re No. 17*, this Court dealt with an initiative with the stated subject of reorganizing and consolidating existing environmental protection and natural resource conservation agencies for the purpose of efficiency. *Id.* However, this Court found upon an examination of the initiative that there was a second distinct subject hidden within the initiative that redefined the constitutional and statutory balance between economic interests and public ownerships under a public trust doctrine. *Id.* This Court noted that any “initiative that joins multiple subjects 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.” *Id.* at 875. Similar to *In re No. 17*, this Initiative hides the separate subject regarding new constitutional and statutory hierarchies on businesses within the “coils” of a provision purporting to allow local governments the ability to enact self-governing laws. As such, this provision alone is enough to invalidate the Initiative.

In re No. 17 was not the only time this Court has dealt with initiatives that purport to modify the rights of a group outside the scope of the stated subject of an initiative. In *In re Title for Title and Ballot Title and Submission Clause for 2005–*

2006 #55, 138 P.3d 273, 280 (Colo. 2006), this Court examined two unrelated purposes that were grouped under the single stated subject of restricting non-emergency services. The Court focused on the “target group” of the initiative, which consisted of persons not lawfully present in Colorado. *Id.* The two unrelated subjects this Court found within the initiative were decreasing taxpayer expenditures benefitting the target group, and denying access to other unrelated administrative services. *Id.* Key to this Court’s analysis in concluding that the second purpose was unrelated was the fact that persons outside of the target group would be affected by the initiative. *Id.* at 281. In other words, although the initiative focused on restricting administrative services to those not lawfully in Colorado, this Court noted that the initiative could affect access to services for persons who were lawfully in the state. *Id.* Thus, there was a risk that those voting for the initiative could curtail services for persons lawfully in the state while only having the intention of culling services for non-legal residents.

Similarly, this Initiative appears to simply establish a right to self-government in a “target group” that consists of individuals and local government. However, this Initiative in fact affects entities outside of the target group, namely businesses, by creating an entirely new hierarchy between constitutional provisions, local law, and state law regarding their fundamental rights, privileges, and immunities. This is well beyond the stated scope of the Initiative: self-

government. Furthermore, the ability for a local government to enact laws affecting a fundamental right, such as the inalienable right to “posse[ss] and protec[t] property” as enumerated in article II, Section 3 of the Colorado Constitution, is also beyond the stated subject of local community self-government.

Finally, this Initiative establishes a third, distinct subject in the provision detailing that no local laws adopted by local governments “shall be subject to preemption or nullification by international, federal, or state law.” Ex. A, p. 3. Almost identically to the provision above, this would rework the hierarchy of federal, state, and local laws in a manner well beyond the stated subject of allowing local communities to self-govern. By establishing local law as supreme over state and federal law, this Initiative would attempt to rework long established preemption case law and the Supremacy Clause of the U.S. Constitution.

Allowing localities to self-govern through the creation of their own local laws, and rearranging the long established balance of power between federal, state, and local governments are not related subjects. While voters may be receptive to the concept of providing local autonomy through local governance, it is likely that they would not realize they were also voting to potentially limit virtually any state or federal law on which they currently rely. It is exactly this type of voter surprise or fraud that the single subject requirement is meant to protect against.

Because the Initiative contains multiple subjects in violation of the single subject requirement found within article V, section 1(5.5) of the Colorado Constitution, Petitioners request that the Court remand this matter to the Board with directions to strike the Titles and Summary, and to return the Initiative to the Proponents.

B. Initiative #40 Violates the Single Subject Requirement for a Clear Title.

1. Standard of Review and Preservation of Issue

The Court reviews “statutes governing the Board’s authority to act *de novo*.” *Hayes*, 293 P.3d at 554. The Court will reverse the board’s action in a setting title and submission clause “if they contain a material and significant omission, misstatement, or misrepresentation.” *In re Title, Ballot Title, Submission Clause, Summary for 1999–2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999). In doing so, the Court will first “engage all legitimate presumptions in favor of the propriety of the Title Board’s action.” *Id.* It has also been said that the Court “will only reverse the Board’s decision if the titles are insufficient, unfair, or misleading.” *In re No. 73*, 135 P.3d at 740.

Petitioners’ raised the clear title deficiency in Petitioner’s Motion for Rehearing on December 23, 2015. *See* Ex. C, p. 2-3. Petitioners’ further presented this issue to the Court pursuant to C.R.S. § 1-40-107(2) in their Petition for Review of Final Action. *See* Ex. F, p. 4.

2. Initiative #40's Provisions are so Vague that the Title does not Encompass and Reflect the Purpose of the Proposal.

a. Legal Standard

Article V, section 1(5.5) of the Colorado Constitution requires that:

No measure shall be proposed by petition containing more than one subject, *which shall be clearly expressed in its title*; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

Colo. Const. art. V, § 1(5.5) (emphasis added).

The Board is charged with setting a title that fully, fairly, and accurately informs voters of the central elements of the measure so as to enable them to make a thoughtful decision about its merits. C.R.S. § 1-40-106(3)(b); *see also In re Title for 1999–2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). Titles and submission clauses should enable voters “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 No. 45.*, 234 P.3d at 648 (quoting *In re No. 24*, 218 P.3d at 356). The requirement of a fair and accurate title is intended to prevent “surreptitious measures” and imposes on the Title Board the duty to “apprise the people of the subject of each measure by the title” in order to prevent “surprise and fraud from being practiced upon voters.” *In re No. 29*, 972 P.2d at 261. The title

need not be perfect, but “the Title Board's chosen language must not mislead the voters.” *Id.*

b. The Title Board’s Determination Failed to Meet the Legal Standard.

The Title as set by the Title Board does not accurately describe the Initiative and is misleading to voters. As described in Petitioners’ Motion for Rehearing and in their Petition for Review of Final Action, many of the provisions of the Initiative are so vague that the Title cannot effectively and clearly convey the central purpose of the Initiative, and in fact some critical provisions of the Initiative are entirely omitted from the Title and submission clause. Specifically, the Title of the Initiative fails to comply with the clear title requirement in the following ways: (1) the “inherent and inalienable right of local self-government” is undefined and so vague that the term cannot properly be conveyed in the Title; (2) the terms “rights of natural persons, their local communities, and nature” are undefined and unexplained so that they cannot accurately be represented by the Title; (3) the securement of rights through “other means deemed necessary” is so amorphous as to be incapable of being clearly represented in the Title; (4) as discussed *supra*, the provisions limiting businesses’ rights and reorganizing the hierarchy of laws within the state and federal government through preemption and nullification are so nebulous that they cannot possibly be represented clearly and accurately in the

Title; and (5) to the extent the Title omits these provisions, it is materially misleading.

The final ballot title and submission clause as designated and fixed by the Board is:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish, protect, and secure rights of natural person, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and exempting such local laws from preemption or nullification by any federal, state, or international law if the local laws do not restrict fundamental rights or weaken legal protections for natural persons, their local communities, or nature.

Ex. E, p. 1.

While this submission clause mirrors the language of “inherent and inalienable right of local self-government” and “rights of natural persons, their local communities, and nature,” it is materially misleading in that neither of the terms are defined by application or scope within the Initiative. In *In re Title and Ballot Title and Submission Clause for 2005–2006 #55*, discussed in Section A(2)(b) above, this Court examined an initiative which included the term “non-emergency services.” 138 P.3d at 280. The term was not defined by the initiative, and in its review this Court noted that it was required to engage in a limited analysis of how the General Assembly or courts might “enforce” the initiative and

the term. *Id.* at 279-80. Despite this limited analysis, this Court noted that “in failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative fails to inform voters of the services its passage would affect.” *Id.* at 282. This reasoning came in part from the conclusion that because the term “non-emergency services” could encompass such a wide range of services, it was “impossible for a voter to be informed as to the consequences of his or her vote” in relation to the term. *Id.*

Similarly, the Initiative before the Court never defines what the “inherent and inalienable right of local self-government” and “rights of natural persons, their local communities, and nature” could possibly entail. While this Court cannot engage in a detailed analysis of how local governments or persons within those governments may interpret these terms, it is certain that such vague terms as “rights of natural person” and “nature” could encompass a plethora of meanings. *See In re No. 17*, 172 P.3d at 874 (“While we do not determine an initiative’s efficacy, construction, or future application, we must examine the proposal sufficiently to enable review of the Title Board’s action.”). To some voters, nature could refer only to the land and air in their locality, to others it may encompass natural waters as well. Still others may be left utterly confused, as the notion that “nature” possesses rights on the order of those that citizens possess is without a foothold anywhere in Colorado or American jurisprudence. As such, these terms

cannot be accurately represented in the submission clause and are materially misleading.

A similar analysis applies to the term “other means deemed necessary.” This term is open ended to the point that no voter weighing in on the Initiative could possibly understand the full extent of this provision. Furthermore, it is not reflected in the Title of the Initiative. A plain reading of the Title and submission clause could lead a voter to thinking that the right of local governments to enact laws is limited only to the enumerated purposes stated:

“ . . . the power to enact laws to establish, protect, and secure rights of natural persons, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights . . . ”

Ex. E, p. 1.

Nowhere within this Title is there any indication that the power to “enact laws . . . recognizing or establishing rights” may be established using any “other means deemed necessary by the community.” Ex. A, p. 1. Thus, to the extent that the Title does not reflect this undefined and theoretically unlimited discretionary lawmaking authority it is materially misleading.

Additionally, the language quoted above details that laws made affecting corporations or business entities are limited to the extent those entities would interfere with the newly established rights of natural persons, communities, or

nature. However, it is impossible to understand that limitation as nature is an undefined term, and thus no voter could fully comprehend the import of that provision.

Finally, as discussed previously, the provision allowing laws limiting businesses' rights and reorganizing the hierarchy of laws within the state and federal government through preemption and nullification are so amorphous that they cannot possibly be represented clearly and accurately in the Title. As written, the Title only notes that local laws would be exempted "from preemption or nullification," when the reality is that the Initiative effectively attempts to rewrite basic federal constitutional concepts such as supremacy and preemption. Ex. E, p. 1. The average voter is unlikely to understand that the preemption provisions of the Initiative have the potential for such far reaching effects in regards to preemption, and as such, the Title is materially misleading.

Because the Title and submission clause are materially misleading and lack description of key provisions of the Initiative in contradiction to the requirements found within article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106(3)(b), Petitioners request that the Court remand this matter to the Board with instructions to amend the Title consistent with the concerns set forth in this section.

VI. CONCLUSION

WHEREFORE, for the reasons set forth above, Petitioners respectfully request that the Court find that the Initiative does not contain a single subject and remand this matter to the Title Board with direction to return the Initiative to Proponents. In the alternative, Petitioners request that the Court remand the matter to the Title Board with the instructions to amend the title consistent with the concerns set forth above.

Respectfully submitted this 3rd day of February, 2016.

RYLEY CARLOCK & APPLEWHITE

By: s/Matthew K. Tieslau

Matthew K. Tieslau

Richard C. Kaufman

Attorneys for Petitioners

Tracee Bentley and Stan Dempsey

CERTIFICATE OF SERVICE

I certify that on this 3rd day of February, 2016, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was filed and served thru ICCES addressed to the following:

Elizabeth Comeau
1663 Steele Street, Ste. 901
Denver, CO 80206
EACommeaux.atty@outlook.com

Suzanne Staiert
Colorado Department of State
1700 Broadway, Suite 200
Denver, CO 80203

Sharon Eubanks
Office of Legislative Legal Svs.
200 E. Colfax, Rm 091
Denver, CO 80203

Frederick R. Yarger
Solicitor General
1300 Broadway
Denver, CO 80203

s/ Ann I. Palius

RECEIVED 7:01 A.M.
DEC 02 2015

Colorado Secretary of State

2015-2016 #40
DATE FILED: February 3, 2016 4:28 PM
Final

Be it Enacted by the People of the State of Colorado

In the constitution of the state of Colorado, **add** section 32 to article II as follows:

SECTION 32. RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT

(1) 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 OF LOCAL COMMUNITY SELF-GOVERNMENT IN EACH COUNTY, CITY, TOWN, AND OTHER MUNICIPALITY.

(2) THAT RIGHT SHALL INCLUDE THE POWER OF THE PEOPLE, AND THE POWER OF THEIR GOVERNMENTS, TO ENACT LOCAL LAWS THAT PROTECT HEALTH, SAFETY, AND WELFARE BY RECOGNIZING OR ESTABLISHING RIGHTS OF NATURAL PERSONS, THEIR LOCAL COMMUNITIES, AND NATURE, AND BY SECURING THOSE RIGHTS USING PROHIBITIONS AND OTHER MEANS DEEMED NECESSARY BY THE COMMUNITY, INCLUDING MEASURES TO ESTABLISH, DEFINE, ALTER, OR ELIMINATE COMPETING RIGHTS, POWERS, PRIVILEGES, IMMUNITIES, OR DUTIES OF CORPORATIONS AND OTHER BUSINESS ENTITIES OPERATING, OR SEEKING TO OPERATE, IN THE COMMUNITY.

(3) NOTWITHSTANDING SECTION 16 OF ARTICLE XIV OR SECTION 6 OF ARTICLE XX OF THIS CONSTITUTION, LOCAL LAWS ADOPTED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL NOT BE SUBJECT TO PREEMPTION OR NULLIFICATION BY INTERNATIONAL, FEDERAL, OR STATE LAW, PROVIDED THAT:

(A) SUCH LOCAL LAWS DO NOT RESTRICT FUNDAMENTAL RIGHTS OF NATURAL PERSONS, THEIR LOCAL COMMUNITIES, OR NATURE SECURED BY LOCAL, STATE, OR FEDERAL CONSTITUTIONS, OR BY INTERNATIONAL LAW; AND

(B) SUCH LOCAL LAWS DO NOT WEAKEN PROTECTIONS FOR NATURAL PERSONS, THEIR LOCAL COMMUNITIES, OR NATURE PROVIDED BY STATE, FEDERAL, OR INTERNATIONAL LAW.

(4) ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE.

Designated Representatives

Jeffery Dean Ruybal
224 North 6th
Windsor, CO 80550-5020
Home phone: (970) 686-5836
Cell (970) 402-4972
dneruy@aol.com

Merrily D. Mazza
581 Wild Ridge Lane
Lafayette, CO 80026
Cell (720) 556-1286
merrily.mazza@comcast.net

Ballot Title Setting Board

Proposed Initiative 2015-2016 #40¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws?

Hearing December 16, 2015:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:55 a.m.

¹ Unofficially captioned “**Local Governance**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

DATE FILED: February 3, 2016 4:28 PM

Ballot Title Setting Board**Proposed Initiative 2015-2016 #40¹**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws?

*Hearing December 16, 2015:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:55 a.m.*

¹ Unofficially captioned “**Local Governance**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

DATE FILED: **DEC 23 2015** *Jm*
February 3, 2016 4:28 PM

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

COLORADO SECRETARY OF STATE

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2015-2016 #40

MOTION FOR REHEARING

Registered electors, Tracee Bentley and Stan Dempsey, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2015-2016 No. 40. As set forth below, Ms. Bentley and Mr. Dempsey respectfully object to the Title Board's setting of title and the ballot title and submission clause on the following grounds:

TITLE AND SUBMISSION CLAUSE

On December 16, 2015, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

The Title Board set the ballot title and submission clause as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws?

GROUND FOR RECONSIDERATION

I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE COLORADO CONSTITUTION AND STATUTES.

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See* Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5; *In re Title, Ballot Title, Submission Clause*, 974 P.2d 458, 463 (Colo. 1999) (a proposed initiative violates the single subject rule where it "has at least two distinct and separate purposes which are not dependent

upon or connected with each other.”). The Board set title for Initiative No. 40 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- (1) Establishes an “inherent and inalienable” right of local self-government in the “people” which defines this right as one which is vested in a group rather than an individual. (#40, §1);
- (2) Establishes authority in local government to enact laws to protect health welfare and safety. (#40, § 2);
- (3) Establishes three separate legal regimes that allow local governments to define the “rights of natural persons, their local communities, and nature.” (#40, § 2);
- (4) Establishes a new constitutional and legal framework that allows local governments to enact laws affecting not just business entities, but every single subject of law contained in the Colorado Revised Statutes, including but not limited to water rights (Title 37), courts and procedure (Title 13), domestic relations (Title 14), and post-secondary education (Title 23). (#40, § 2);
- (5) Establishes a new preemption between state and local governments. (#40, § 3);
- (6) Includes the unrelated concept of “nullification” which is a separate subject (*Id.*);
- (7) Amends Article VI of the United States Constitution by making local government ordinances the “supreme Law of the Land.” (#40, §3);
- (8) Amends Article I, Sections 8, 9 and 10 of the United States Constitution by transferring to local government the authority over the subjects covered in that section. (#40, §3); and
- (9) In like manner, it alters Article V of the United States Constitution *sub silentio* by effecting a new procedure by which to amend the same.

These subjects are not connected or interdependent and therefore the Title Board lacks jurisdiction to set a title.

II. THE INITIATIVE’S PROVISIONS ARE SO VAGUE THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.

Colorado Revised Statute §1-40-106(3)(c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion over its meaning and purpose. *Aisenberg v.*

Campbell, 987 P.2d 249, 253 (2000). The Title set for Initiative No. 40 violates this statutory provision in the following ways:

- (1) The measure purports to establish and recognize an “inherent and inalienable right of local self-government” which remains undefined and so vague that the title cannot effectively and clearly include the meaning of these terms.
- (2) The measure purports to allow local governments or the people to broadly enact any local laws to protect health, safety, and welfare, without definition or limit.
- (3) The measure purports to establish and recognize “rights of natural persons, their local communities, and nature.” The scope of these rights are undefined and unexplained in the title.
- (4) The measure purports to secure those “rights” through “prohibitions and other means deemed necessary.” The title cannot encompass such ambiguous and ill-defined terms as “prohibitions” and, particularly, “other means.”
- (5) As explained above in Section I, the measure encompasses every aspect of law contained in the Colorado Revised Statutes. The title does not (and likely could not) address the enormous breadth of the measure.
- (6) The measure, as explained in Section I above, amends at least three separate Articles of the United States Constitution. As set, the title does not even mention the United States Constitution and is therefore confusing and misleading.

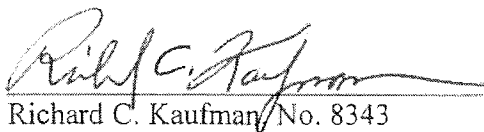
III. THE TITLE FAILS TO NOTE CRITICAL PROVISIONS OF THE MEASURE AND IS THEREFORE MISLEADING.

- (1) The title does not include the concept of “health, welfare and safety” found in section 2. That section defines, at least in part, the scope of authority granted to local government and the people to enact local ordinances. Failing to mention this important new authority renders the title misleading.

Based on the foregoing, Ms. Bentley and Mr. Dempsey respectfully request the Title Board conduct a re-hearing on the title set for Initiative 2015-2016 #40.

Respectfully submitted this 23rd day of December, 2015 by:

RYLEY CARLOCK & APPLEWHITE



Richard C. Kaufman, No. 8343

Sarah K. Pallotti, No. 45077

1700 Lincoln Street, Suite 3500

Denver, Colorado 80203

Phone: (303) 813-6745

Fax: (303) 595-3159

rkaufman@rcalaw.com

spallotti@rcalaw.com

*Attorneys for Tracee Brantley
and Howard Stanley Dempsey*

Objectors' addresses:

Tracee Bentley
301 Immigrant Trail
Severance, CO 80550


Howard Stanley Dempsey
3110 Alkire Street
Golden, CO 80401

CERTIFICATE OF SERVICE

I, Richard C. Kaufman, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2015-2016 #40** was sent this day, December 23, 2015, via first class U.S. mail, postage pre-paid and via email to the proponents at:

Jeffery Dean Ruybal
224 North 6th
Windsor, CO 80550-5020
dnery@aol.com

Merrily D. Mazza
581 Wild Ridge Lane
Lafayette, CO 80026
merrily.mazza@comcast.net


Richard C. Kaufman

RECEIVED

DATE FILED: February 3, 2016 4:28 PM

DEC 23 2015 3:36 PM

BEFORE THE BALLOT TITLE SETTING BOARD, STATE OF COLORADO

COLORADO SECRETARY OF STATE

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #40

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2015-2016 #40

Petitioner, Douglas Kemper, a registered elector of the State of Colorado, by and through his counsel, Burns, Figa & Will, P.C., hereby requests a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Titles") set by the Title Board on December 16, 2015, for Initiative 2015-2016 #40 (the "Initiative"), which would amend the Colorado constitution. Reconsideration is requested because the titles are confusing, misleading, and do not reflect the intent and meaning of the amendment, in violation of C.R.S. § 1-40-106, and because the Initiative contains multiple subjects.

I. The Initiative contains multiple subjects.

Petitioner Kemper generally agrees with the identification of multiple subjects by Petitioners Bentley and Dempsey in their motion for rehearing. The Board may not set a title if the Initiative does not contain a single subject.

II. The Title Board set a confusing and misleading title for the Initiative.

At the December 16, 2015 hearing, the Title Board set the following title for the Initiative:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, 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 rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

Colorado law requires that an initiative's title must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. § 1-40-106(3)(b). Furthermore, the title should clearly express the initiative's single subject. *In re Title, Ballot Title, and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 647-48 (Colo. 2010). In setting titles, the Board "shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b). Moreover, "a material omission can create misleading titles." *Garcia v. Chavez*, 4 P.3d 1094, 1098 (Colo. 2000).

As adopted, the Titles are misleading because:

1. The title unfairly implies the measure would only restrict corporations and business entities by omitting mention of the broader authorization in the text of the initiative—for “prohibitions and other means deemed necessary”—which includes prohibitions not only of businesses but also of one local government conducting activities within the boundaries of another. Local governments in Colorado frequently interact in this way; for example, many communities obtain water supplies from outside their own boundaries. The title language does not reflect this material feature of the initiative when describing the local governments’ prohibitive powers only in relation to business entities.
2. The title unfairly implies that the exemption from preemption or nullification is absolute by omitting any mention of the limitation within subsection 3 of the Initiative, which states that local laws shall not be subject to preemption or nullification “*provided that* (A) Such local laws do not restrict fundamental rights of natural persons, their local communities, or nature secured by local, state, or federal constitutions, or by international law; and (B) Such local laws do not weaken protections for natural persons, their local communities, or nature provided by state, federal, or international law.” (Emphasis added).

For these reasons, the Titles do not conform to the statutory requirements of C.R.S. § 1-40-106(3)(b).

WHEREFORE, Petitioner Douglas Kemper respectfully requests a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on December 16, 2015, for Initiative 2015-16 #40.

Respectfully submitted this 23rd day of December, 2015.

BURNS, FIGA & WILL, P.C.

By: 

Stephen H. Leonhardt, #15122

D. Alexander Wenzel, #45007

6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111

**Attorneys for Petitioner
Douglas Kemper**


CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION FOR REHEARING was served via email and U.S. Mail on this 23rd day of December 2015, as follows:

Jeffery Dean Ruybal
224 North 6th
Windsor, CO 80550-5020
dneruy@aol.com

Merrily D. Mazza
581 Wild Ridge Lane
Lafayette, CO 80026
merrily.mazza@comcast.net

Richard C. Kaufman
1700 Lincoln Street, Suite 3500
Denver, CO 80203
rkaufman@realaw.com


Michelle G. Trujillo

DATE FILED: February 3, 2016 4:29 PM

Ballot Title Setting Board**Proposed Initiative 2015-2016 #40¹**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish, protect, and secure rights of natural persons, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and exempting such local laws from preemption or nullification by any federal, state, or international law if the local laws do not restrict fundamental rights or weaken legal protections for natural persons, their local communities, or nature.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish, protect, and secure rights of natural persons, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and exempting such local laws from preemption or nullification by any federal, state, or international law if the local laws do not restrict fundamental rights or weaken legal protections for natural persons, their local communities, or nature?

*Hearing December 16, 2015:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:55 a.m.*

*Rehearing January 6, 2016:
Motion for Rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.
Hearing adjourned 2:10 p.m.*

¹ Unofficially captioned “Local Governance” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: February 3, 2016 4:29 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #40 (“Right of Local Community Self-Government”)</p> <p>Petitioners: TRACEE BENTLEY AND STAN DEMPSEY</p> <p>v.</p> <p>Respondents: JEFFERY DEAN RUYBAL AND MERRILY D. MAZZA</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; SHARON EUBANK; AND FREDERICK R. YARGER</p>	
<p>Attorneys for Petitioner:</p> <p>Richard C. Kaufman, No. 8343 Matthew K. Tieslau, No. 47483 RYLEY CARLOCK & APPLEWHITE 1700 Lincoln Street, Suite 3500 Denver, Colorado 80203 Telephone: (303) 863-7500 Facsimile: (303) 595-3159</p>	<p>Case Number:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #40 (“RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT”)</p>	

Tracee Bentley and Howard Stanley Dempsey (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set forth in Initiative 2015-2016 #40 (“Right of Local Community Self-Government”) (hereinafter “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #40

Jeffery Dean Ruybal and Merrily D. Mazza (“Proponents”) are the designated proponents of the Proposed Initiative. Proponents submitted a final version of the Proposed Initiative to the Secretary of State on December 2, 2015, for purposes of having the Title Board set title. The Secretary of State or his designee is a member of the Title Board. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal services on December 16, 2015.

The Title Board considered and set title for the Proposed Initiative at its December 16, 2015 meeting. On December 23, 2015 Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Proposed Initiative violated the one subject requirement contained within the Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, that the Proposed Initiative’s title did not accurately reflect the subject matter of the initiative as required by the Colorado Revised Statutes Section 1-40-106(3)(c), and that the Proposed Initiative’s title failed to note critical provisions of the measure which rendered the title misleading. On December 23, 2015 a separate Petitioner, Douglas Kemper, filed an additional Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a) alleging similar concerns. The Title Board considered both Petitioner’s Motions at its January 6, 2016 meeting. The Motions for Rehearing were granted to the extent that the Board made changes to the titles but were denied in all other respects.

B. Jurisdiction

Petitioners submit this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board pursuant to C.R.S. § 1-40-107(1) and timely filed this Petition for Review within seven days from the date of rehearing as required by C.R.S. § 1-40-107(2).

Consistent with the requirement set forth in section 1-40-107(2), Petitioners have attached the following documents certified by the Secretary of State: (1) the original version of the Proposed Initiative filed by the Proponents; (2) the original and amended ballot title set for this measure; (3) the Petitioners’ Motions for Rehearing; and (4) the Title Board’s ruling on the Motion. Petitioners respectfully submit that the Title Board erred in denying the Motion for Rehearing and therefore this matter is properly before this Court.

GROUNDS FOR APPEAL

The following is an advisory list of issues and grounds for appeal which will be discussed in fully detail in Petitioner's brief:

A. The Initiative Impermissibly Contains Multiple Subjects in Violation of the Colorado Constitution and Statutes

The Title Board violated Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5 when it set title for the Proposed Initiative. These sections require that every constitutional amendment proposed by initiative be limited to a single subject which shall be clearly expressed in its title. The Proposed Initiative includes the following several, unrelated subjects:

- (1) Establishes an “inherent and inalienable” right of local self-government in the “people” which defines this right as one which is vested in a group rather than an individual. (#40, §1);
- (2) Establishes authority in local government to enact laws to protect health welfare and safety. (#40, § 2);
- (3) Establishes three separate legal regimes that allow local governments to define the “rights of natural persons, their local communities, and nature.” (#40, § 2);
- (4) Establishes a new constitutional and legal framework that allows local governments to enact laws affecting, not just business entities, but every single subject of law contained in the Colorado Revised Statutes, including but not limited to water rights (Title 37), courts and procedure (Title 13), domestic relations (Title 14), and post-secondary education (Title 23). (40, § 2);
- (5) Establishes a new preemption between state and local governments. (#40, § 3);
- (6) Includes the unrelated concept of “nullification” which is a separate subject.
- (7) Amends Article VI of the United States Constitution by making local government ordinances the “supreme Law of the Land.” (#40, §3);
- (8) Amends Article I, Sections 8, 9 and 10 of the United States Constitution by transferring to local government the authority over the subjects covered in that section. (#40 §3);
- (9) In like manner, it amends Art. V of the United States Constitution by limiting its reach.

These subjects are not connected or interdependent and therefore the Board lacked jurisdiction to set title.

B. The Initiative’s Provisions are so Vague that the Title does not Encompass and Reflect the Purpose of the Proposal

The Title Board violated Section 1(5.5) of Article V of the Colorado Constitution when it set title for the Proposed Initiative. This section requires that the ballot title set by the Board clearly and correctly express the subject of the Initiative. The Proposed Initiative title fails to accurately reflect the subject matter in order to avoid confusion in the following ways:

- (1) The measure purports to establish and recognize “inherent and inalienable right of local self-government” which remains undefined and so vague that the title cannot effectively and clearly include the meaning of these terms.
- (2) The measure purports to establish and recognize “rights of natural persons, their local communities, and nature.” The scope of this authority is undefined and unexplained in the title.
- (3) The measure purports to secure those “rights” through “prohibitions and other means deemed necessary.” The title cannot encompass such ambiguous and ill-defined terms as “prohibitions” and “other means.”
- (4) As stated above in the section I, the measure encompasses every area of the law covered in the Colorado Revised Statutes. The title does not mention it and therefore this hidden subject, but extremely important one, is not encompassed in the title.
- (5) The measure, as stated in section I above, significantly amends the United States Constitution. As set, the title does not encompass that concept and subject.

All of the above issues demonstrate that the ballot title set by the Board did not clearly express the subject of the Proposed Initiative and as such the Proposed Initiative should be void as to the issues not clearly expressed.

PRAYER FOR RELIEF

Petitioners respectfully request that after consideration of the parties’ briefs, this Court determine that the Title Board lacked jurisdiction to set title and therefore title setting must be denied. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not clearly reflective of the subject of the Proposed Initiative and thus remand the Initiative to the Title Board with instructions to redraft to the title to accurately and clearly represent the text of the Proposed Initiative.

Respectfully submitted this 13 day of January, 2016.

RYLEY CARLOCK & APPLEWHITE

By: *s/ Richard C. Kaufman*

Richard C. Kaufman, No. 8343

Matthew K. Tieslau, No. 47483

RYLEY CARLOCK & APPLEWHITE

1700 Lincoln Street, Suite 3500

Denver, Colorado 80203

Telephone: (303) 863-7500

Facsimile: (303) 595-3159

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on the 13th day of January, 2016, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #40 (“RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT”)** was electronically filed with the court and served via ICCES, addressed to the following:

Elizabeth Comeau
1663 Steele Street, Ste. 901
Denver, CO 80206
EACommeaux.atty@outlook.com

s/Ann I. Palius
