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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▲**
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PROPONENTS' OPENING 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 contains **7205** words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

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 Opening 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

This case is an appeal of a ballot title setting by the Title Board pursuant to §1-40-107(2), C.R.S. (Colo. 2015). The text of the measure as well as the Title, Ballot Title, and Submission Clause (hereinafter "titles") were certified by the Title Board on January 8, 2016.

On December 2, 2015, Proponents filed Proposed Initiative 2015-2016 #40 ("#40") with the Colorado Secretary of State. The Title Board conducted a hearing on December 16, 2015 and heard statements both from the undersigned on behalf of Proponents, and from Richard C. Kaufman on behalf of the American Petroleum Institute. The Title Board set titles for the measure, in explicit reliance on this Court's single subject and clear title determination in 2014SA100 concerning an

almost identical measure, 2013-2014 #75. On December 23, 2015, the Title Board received two motions for rehearing, one submitted by Tracee Bentley of API's Colorado office (Colorado Petroleum Council) and Stan Dempsey, president of the Colorado Petroleum Association, and the other by Douglas Kemper, executive director of the Colorado Water Congress.

The Title Board considered the motions on January 6, 2016, reiterating its single-subject ruling and making some revisions to the title already set. Petitioners Bentley and Dempsey (hereinafter "Objectors") then filed this petition on January 13, 2016, contesting the Board's denial of the remainder of their petition.

Proponents made their record at all relevant sessions of the Title Board's single subject determination and title as set is within the Title Board's discretion and should stand.

In Case 2014SA100, this Court upheld the Title Board's determination of single subject and clear title for a nearly identical measure, 2013-2014 #75 ("#75"). Proponents failed to obtain the required number of signatures to put the measure before the voters in that election cycle. Current Proponents, supporters of #75, have made minor clarifying changes to the measure, submitting it to the

review and comment process initially as 2015-2016 #37, now designated 2015-2016 #40.

As in #75, the measure proposes to amend the Colorado Constitution by adding section 32 to article II, the Bill of Rights, to include a right to local self-government.

Section 1 explains that the people have an inherent and inalienable right of local community self-government in each county and municipality. Summarized by the Title Board as a right to local self-government, this right is the single subject, and all remaining provisions are necessarily and properly connected to each other and to the overall purpose of securing the right.

Section 2 implements the right by specifying the manner in which it must be exercised. Section 3 addresses enforcement by creating a shield from preemption or nullification in certain circumstances specified in the measure.

To exercise the right to local self-government that is the subject of the measure, local people follow the requirements of Section 2. Acting through direct

or representative democracy[1] as available in their municipality[2] or county, they enact local laws that establish and secure local rights of natural persons, their local community and nature, with priority over any competing "rights" of corporations and other business entities.[3] Their local laws secure these local rights using prohibitions on conduct that would violate local rights, and other means such as local enforcement methods that rely on local police powers.[4] Section 2 specifically authorizes local laws that secure the priority of local rights by altering or eliminating competing "rights" of corporations and other business entities operating, or seeking to operate, in the community.

Proponents' intent in Section 2, provided in the review and comment process, is that the right that is the subject of the measure must be exercised, if at

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[1] The power of the initiative is not available to people living in statutory counties outside the boundary of a municipality. *See*, proponents' opening brief at 13 and Title Board's answer brief at 7 in *2013-2014 #75.* Colo. Const. art. V, §1 (9).

[2] As provided in C.R.S. §31-1-101 (6), "municipality" embraces the terms town, city, and home-rule city-and-county. *See* proponent testimony at the C.R.S. §1-40-105 review and comment meeting on #37, attached hereto as Exhibit 1, pp. 1-2 ¶ 3.

[3] The word "shall" is presumed to connote "mandatory." *Pearson v. District Court, 18th Jud. Dist.,* 924 P.2d 512, 516 (Colo. 1996).

[4] Exhibit 1, p.4 ¶7.

all, through local enactments that specify and secure local rights for members of the local living community, with priority over any locally-competing "rights of property organized as corporations and other business entities."[5] This interpretation is the same as proponents provided the Court in #75.[6]

Section 3 provides for enforcement of the local laws enacted under Section 2 by shielding them from preemption or nullification by state, federal, or international law, so long as the local law neither restricts fundamental rights nor weakens legal protections for natural persons, their local communities, or nature.

Section 4 likewise addresses enforcement by a standard "self-executing and severable" clause.

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[5] Exhibit 1, p.2 ¶5.a. and d.

[6] "This is the problem that local communities are running across. When they want to assert their view of their own inalienable right of self-determination in their local home communities, they are told that the combination of business and government prevents them from exercising it. Tr. of April 2, 2014 rehearing, Pet. Ex. E, at 16[11-15]. What they're running up against is some sort of knot of webbed relationships of power that are shared by government and – in this example, industry – that are not shared by the people whose rights are then affected. Tr. of March 19, 2014 hearing, Pet. Ex. F, at 16 [11-15]." *2013-2014 #75* Proponents' Answer Brief, p.8. *See also,* testimony of proponent Willmeng in conversation with Board member Domenico, *2013-2014 #75* Pet. Ex. F, at 19 [1] – 20 [10]. Exhibits available in Case 14SA100, Petitioner's Supporting Documents, https://www.courts.state.co.us/Courts/Supreme_Court/2013Initiatives.cfm

Thus, the people may exercise their inherent and inalienable right of local community self-government by enacting local laws that raise the "ceiling" – without lowering the "floor" – of existing rights and protections for natural persons, their local communities, and nature, and by prioritizing these local rights over any locally-competing corporate "rights" through locally enforceable laws that secure these local rights. If they meet these requirements, their locally-enacted rights are immunized at the local level from preemption or nullification by state, federal or international law.

As testified in the process leading up to this Court's review both in 2013-2014 #75 and 2015-2016 #40, Proponents drafted this measure[7] to secure the right of local self-government from the well-known entanglement of corporate "rights" with state government preemption of local laws. For example, as alluded to in Proponents' presentation to the Title Board on December 16, 2015, corporate "free

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[7] The Court defers to proponents' intent in reviewing *action by the Title Board*. *In the Matter of the Title, Ballot Title, and Submission Clause for 1999-2000 #25*, 974 P.2d 458, 465 and *Garcia v. Chavez, In the Matter of the Title … 2001-2002 #21 and #22 ("English Language Education")*, 44 P.3d 213, 216-17 (Colo. 2002); *In re Proposed Initiative on Water Rights*, 877 P.2d 321, 327 (Colo. 1994) ("However, when courts construe a constitutional amendment *that has been passed* through a ballot initiative, any intent of the proponents not adequately expressed in the language of the measure will not govern that construction.") (Emphasis added).

speech" in the form of money has dominated state lawmaking, and corporations call upon those resulting state laws and the power of state government to enforce their agendas on unwilling local community majorities with little if any regard for the rights of living local community members. As the state legislature is dominated by corporate money a/k/a "free speech," the people are effectively governed by corporate boards who control state government enforcement mechanisms by activating the enforcement mechanisms in laws they lobbied to pass. A similar process is underway at the federal and international level, driven by the judicial doctrine of corporate "rights."[8] Proponents maintain that American democracy requires that this inherent and inalienable right of the people be held inviolable by any level of government, as well as by those creatures of government called corporations.[9] At the very least, democracy in Colorado is robust enough to handle a public debate and a vote of the people on the measure.

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[8] This judicial doctrine, typified by *Citizens United v. FEC,* 558 U.S. 310 (2010), is arguably not required by the text of the federal constitution, which nowhere mentions corporations, and has never been held by a precedential opinion to obliterate the people's inherent and inalienable right of local community self-government.

[9] Throughout this brief, use of the term "corporation" includes other business entities that are considered juridical "persons" as distinct from "natural persons."

Thus Proponents submit this measure to secure the people's inherent and inalienable right of local community self-government.

III. SUMMARY OF THE ARGUMENT

The Title Board correctly found that #40 contains a single subject – a right to local self-government. All provisions of #40 are necessarily and properly connected to this subject and to each other, for the overall purpose of securing the right. The Colorado Supreme Court has consistently held that implementation and enforcement provisions directly tied to an initiative's central focus are not separate subjects. The powers and requirements enumerated in Section 2 are necessary to #40's implementation and the provisions in Sections 3 and 4 are necessary to its enforcement, and these provisions are inter-related and dependent on each other.

The titles for #40 as set by the Title Board fairly and accurately reflect the proposed initiative. They are based on the Title Board's comprehension of the single subject and this Court's approval of the Board's action in a nearly identical prior measure. They explain succinctly the major provisions of the measure. The title is not required to address all possible future effects of the measure, nor is the measure ripe for constitutional review. Neither petition signers nor voters will be misled by the title.

The Board's action is entitled to great deference and should be upheld. The minor changes in language compared to 2013-2014 #75 have merely clarified the intent of the measure consistently with the proponents' arguments before this Court in 2014, and the Court's usual deference to its own prior rulings should make this current analysis straightforward, Objectors' refashioned arguments notwithstanding.

This Court should uphold the Title Board's finding of single subject and the title as set by the Board.

IV. STANDARD OF REVIEW OF TITLE BOARD ACTION

The undersigned has not found a succinct statement in the cases of the standard of review as required by the Certificate of Compliance at the beginning of this brief. Perhaps the best that can be stated mirrors the Title Board's assertion at page 3 of its Answer Brief in 2013-2014 #75 that the standard of review is *not* de novo.

The standard of review is detailed below in a recent opinion of this Court:

> When reviewing a challenge to the Title Board's decision, " we employ all legitimate presumptions in favor of the propriety of the [Title] Board's actions." *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010). As such, we liberally construe the

single subject requirement and " only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *In re Title, Ballot Title, & Submission Clause for 2011-2012 No. 3*, 2012 CO 25, ¶ 6, 274 P.3d 562; *In re Title, Ballot Title, Submission Clause, & Summary Adopted March 20, 1996, by the Title Bd. Pertaining to Proposed Initiative 1996-6,* 917 P.2d 1277, 1280 (Colo. 1996). Similarly, when reviewing the Titles for clarity and accuracy, we only reverse the Title Board's decision if the Titles are "insufficient, unfair, or misleading." *In re 2009-2010 No. 45,* 234 P.3d at 648.

[¶9] In addition to being limited by the deferential standard that we afford the Title Board's decisions, our review is also limited to two narrow inquiries. First, we analyze the plain language of the initiative to determine whether it comports with the requirement that the proposal only contain a single subject. *In re 2011-2012 No. 3*, ¶ 8. Second, we analyze the Titles to determine if they are " fair, clear, accurate, and complete." *Id*. In conducting each of these inquiries, we employ the general rules of statutory construction and give the words and phrases their plain and ordinary meaning. *In re Title, Ballot Title, & Submission Clause for 2007-2008 No. 17*, 172 P.3d 871, 874 (Colo. 2007).

[¶10] Crucially, when reviewing the Title Board's decision, we do not consider the merits of the proposed initiative. *In re 2011-2012 No. 3*, ¶ 8. Nor do we review the initiative's "efficacy, construction, or future application," as those issues do not come up unless and until the voters approve the amendment. *In re 2009-2010 No. 45*, 234 P.3d at 645; *In re Title, Ballot Title, Submission Clause, & Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000) ("[T]he initiative's efficacy, construction, or future application . . . is a matter for judicial determination in a proper case should the voters approve the initiative.").

In the Matter of the Title, Ballot Title, and Submission Clause for 2013-2014 #89, 328 P.3d 172, 176 (Colo. 2014) (holding that making state and local governments trustees of the environment, requiring them to conserve it, and enforcing more

restrictive local laws over conflicting state laws were not separate subjects, but rather "mechanisms for carrying out the objective" that Colorado's environment be the common property of all Coloradans). *Accord, In re Title, Ballot Title, & Submission Clause for 2011-2012 No. 3,* 274 P.3d 562 (Colo. 2012) ("Public's Rights in Waters of Natural Streams"), noting:

> We will sufficiently examine [the measure] to determine whether or not it violates the constitutional prohibition against initiative proposals containing multiple subjects. [*In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43, 46 P.3d 438, 443 (Colo. 2002)*]; see also *Colo. Const. art. V, §1(5.5)*. We will also examine the Titles as a whole to determine if they are fair, clear, accurate, and complete. *In re Proposed Initiative 2009-2010 No. 45, 234 P.3d at 649*; *In re Title, Ballot Title, and Submission Clause for 2007-2008 No. 62, 184 P.3d 52, 58 (Colo.2008)*.

The "sufficiently examine" rubric appears to have originated in *Matter of Title, Ballot Title, and Submission Clause, Summary for 1997-98 No. 30,* 959 P.2d 822, 825 (Colo. 1998)[10] along with this caution in footnote [2]:

> It is neither appropriate nor possible for the court to attempt to predict all of the effects of an amendment at the pre-election stage. … We must engage in some substantive inquiry but avoid predicting legal consequences.

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[10] The *1997-98 No. 30* Court held that a tax cut and new criteria for voter approval of revenue and spending increases under TABOR were two separate subjects. 959 P.2d at 827.

The actions of the Board are presumptively valid. *In re 1999-2000 #25*, 974 P.2d at 465 (affirming Title Board's refusal to set title when proponents had not heeded prior Court ruling, on nearly identical measure, that certain provisions introduced separate subjects).

The Court generally upholds its prior decision on a nearly identical measure as *stare decisis*, limiting its review of the current proposal to any additional provisions, which it reviews consistently with its original decision. *In re 2001-02 #43*, 46 P.3d at 444.[11] Departing from this rule would be "disingenuous"[12] and conflict with the Court's objectivity in the context of its limited scope of review.

V. ARGUMENT

A. The Title Board Properly Identified Single Subject.

1. Standard of Review; Legal Standard.

As noted *supra* at 9-10, the standard of review is described in case precedent in a manner that emphatically distinguishes it from a de novo standard. Proponents

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[11] *See also, In re 1999-2000 #25*, 974 P.2d at 466 ("Our decisions in these [prior related] cases serve as controlling precedent.").

[12] 46 P.3d at 444.

are on record in support of the Title Board's action, as shown for example by statements at the end of the January 6, 2016 Title Board hearing.

In the Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #90, 328 P.3d 155 (Colo. 2014) described the single subject standard as follows, beginning with article V, section 1(5.5) of the Colorado Constitution, which provides:

> 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.

See also §1-40-106.5(1)(a), C.R.S. (2013) (addressing the constitutional single subject requirement).

[¶11] The single subject requirement serves two functions: (1) " [t]o forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits"; and (2) " [t]o prevent surreptitious measures and apprise the people of the subject of each measure, that is, to prevent surprise and fraud from being practiced upon voters." § 1-40-106.5(1)(e). Thus, " the subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous." *In re Title, Ballot Title & Submission Clause for 2011-2012 No. 3*, 274 P.3d 562, 565, 2012 CO 25, ¶ 9 (internal quotation marks and citation omitted). An

> initiative violates the single subject requirement where it relates to more than one subject and has at least two distinct and separate purposes. *Id*. (citing *People ex. rel. Elder v. Sours,* 31 Colo. 369, 403, 74 P. 167, 177 (1903)). Conversely, a proposed initiative that " tends to affect or carry out one general objective or purpose presents only one subject," and " provisions necessary to effectuate the purpose of the measure are properly included within its text." *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 256,* 12 P.3d 246, 253 (Colo. 2000).
>
> **[¶12]** Because the Title Board " is vested with considerable discretion in setting the title [and] ballot title and submission clause," in reviewing actions of the Title Board, "we must liberally construe the single-subject requirements for initiatives." *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative "1996-17",* 920 P.2d 798, 802 (Colo. 1996) (per curiam).
>
> We also liberally construe the single subject requirement to "avoid unduly restricting the initiative process." *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 24,* 218 P.3d 350, 353 (Colo. 2009).

In re 2013-2014 #90, 328 P.3d at 159-60 (affirming single subject where measure would expand local governments' authority to regulate oil and gas development, providing that local laws would govern if more restrictive than conflicting state laws and would not be interpreted as a “taking” under state constitution).

A proposed initiative may be broad. Breadth alone does not violate the single subject requirement if the provisions of a proposal are connected. *In re 2013-2014 #89,* 328 P.3d at 177 ¶12; *In re 1999-00 #256,* 12 P.3d at 254 (per curiam). And alternate ways to accomplish the same result do not defeat single subject. *In re 1996-17,* 920 P.2d at 802 (per curiam).

The Court's examination of a measure must uphold single subject when the various provisions are properly connected with each other and with the central focus of the measure. *In the Matter of the Title, Ballot Title, and Submission Clause for 2011-2012 #45 (Public Control of Water),* 274 P.3d 576, 581 ¶19 (Colo. 2012) ("[T]he proposed subsections necessarily and properly relate to one another by together creating a new water appropriation doctrine centered on the concept of a dominant public water estate."); *In re 2001-2002 #21 and #22 ("English Language Education"),* 44 P.3d at 219 (subsidized tutoring program, as well as constraints on employment and indemnification, did not create separate subject); *In the Matter of the Title, Ballot Title, and Submission Clause for 1999-2000 #258(A) (English Language Education in Public Schools),* 4 P.3d 1094, 1098-99 (Colo. 2000) (altering the school district's power, placing limits on bilingual programs, and creating a cause of action for enforcement are connected to central focus and therefore not separate subjects). "Whether a proposed initiative is a 'bad idea' is not the test of whether it meets the single subject requirement." *In re 2013-2014 #90,* 328 P.3d at 161.

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

As set forth in the Statement of Facts, incorporated in this discussion, #40's purpose is to secure the right to local self-government. Its provisions are directly connected and related to this purpose and to each other.

The Court has consistently held that implementation and enforcement provisions that are directly tied to the initiative's central focus are not separate subjects. *E.g., In re #89,* 328 P.3d at 176; *In re 2009-2010 No. 45,* 234 P.3d at 646; *In re 1999-2000 200A,* 992 P.2d at 31).

Here, the power to enact the types of local laws described in Section 2 is directly tied to #40's purpose of securing the right to local self-government. Indeed, the power to enact local laws is *how* the people exercise their right to local self-government. The right to local self-government is intertwined with, and, in fact, inseparable from, the ability to enact local laws establishing and securing rights that protect the health, safety, and welfare of natural persons, their local communities, and nature. A right to local self-government without a means to implement it would be meaningless.

Similarly, the right to local self-government is directly tied to the power to enact local laws preventing corporations and other business entities from interfering with locally-enacted rights of natural persons, their local community,

and nature. By its express language, Section 2 is directly tied to the ability to implement local laws establishing rights which, in turn, is directly tied to implementing the right to local self-government. To exercise their right to local self-government by enacting local rights-based laws, the people must be able to limit legal doctrines that would interfere with such local laws.

Sections 3 and 4 also contain provisions properly connected to securing and enforcing the right to local self-government. The limited exemption from preemption provided in Section 3 is necessarily and properly connected to the people's enforcement of local laws that implement the right to local self-government. And Section 4 is a standard procedural clause providing that the provisions are self-executing and severable.

This Court has upheld the Title Board's determination of single subject in the nearly identical prior version of #40.[13] The Court rejected Objectors' attempt to parse the right to local self-government into multiple subjects. *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #75*

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[13] Text of #75, Ex. A in *2013-2014 #75* Supporting Documents to Petitioners' Opening Brief at 2/97. *See* n. 6, *supra.*

("Right to Local Self-Government"), Order Affirming Title Board, Case No. 14SA100 (May 22, 2014).

In that same session, as noted above, the Court upheld the Title Board's determination of single subject with this same analysis. *In re 2013-2014 #89,* 328 P.3d at 176) ("mechanisms for carrying out the objective" do not create separate subjects). *See also, In re 1999-2000 #200A,* 992 P.2d at 30-32 (holding that implementation details and enforcement measures that are "directly tied to the initiative's central focus do not constitute a separate subject" (internal quotation marks omitted)); *In re Proposed Initiative for 1997-98 #74,* 962 P.2d 927, 929 (Colo. 1998) ("An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject.")

#40 is also analogous to initiatives establishing coherent and connected legal regimes. For instance, when considering an initiative about "the public's rights in the waters of natural streams," the Court undertook a detailed analysis of the initiative's multiple provisions and found that "[f]ar from being 'disconnected and incongruous,' the proposed subsections of Initiative 3 have the single distinct

purpose of describing a new legal regime – the "Colorado public trust doctrine" – that would govern "the public's rights in waters of natural streams." *In re 2011-2012 #3,* 274 P.3d at 567 (citation omitted). The Court found that various subsections were "necessarily and properly connected to the subject of the 'public's rights in waters of natural streams' because they describe[d] the proposed doctrine's legal relationship to existing contract, property, and appropriative rights." *Id.* The Court explained:

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

Id.

The same analysis applies to the right to local self-government expressed in #40. Sections 2, 3, and 4 are necessarily and properly connected to the subject of "the right to local self-government" because (1) they delineate the powers necessary to enacting a legal regime recognizing the right to local self-government' and (2) describe how local laws enacted pursuant to the right to local self-government will interact with the existing doctrine of preemption and with

fundamental rights already secured by the Colorado and U.S. constitutions or international law.

The Title Board met the standard for determining single subject.

3. Objectors' Challenges Are Without Merit.

a. Objector's Challenges (1) through (3) Have No Merit.

To begin, "the people"[14] are the holder of inherent and inalienable rights throughout the Colorado Bill of Rights. "The people" are the source of all legitimate political power and the origin of government, which is founded upon their will only. Colo. Const. art. II, § 1. They have the right to alter and abolish their constitution and form of government. Colo. Const. art. II, § 2. They have certain natural, essential and inalienable rights, not all of which are enumerated. Colo. Const. art. II, §§ 3, 28. The Congress considered these essentials of the Declaration of Independence "not repugnant to the Constitution of the United States."[15] So there is nothing unusual for #40 to recognize, in the Bill of Rights,

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[14] Petition for Review, p. 3 ¶ A. (1) complains that the right "is vested in a group rather than an individual." *Compare* Petition for Review 2013-2014 #75, p.4 ¶ 1.a.

[15] Enabling Act (Gen. St. 1883, p. 28) and Congress' acceptance of Colorado as a state.

"*the people's* inherent, inalienable right of local community self-government." Indeed, summarized by the Board as "a right to local self-government," this provision constitutes #40's single subject.

Objectors proceed to parse every word and phrase in their effort to persuade the Court to find a second subject. "Health, safety, and welfare" references nothing more than the existing police power through which local laws are typically enacted,[16] a necessary reference for implementation of the right. Reviewing those prior cases that determined whether a bill of the legislature was a single subject and that must guide the Court in evaluating proposed initiatives,[17] Objectors would be hard pressed to find any case holding "health, safety, and welfare" a second subject. "Natural persons" merely clarifies that the right cannot be claimed by juridical "persons" such as corporations and other business entities, while "local communities" and "nature" are both contextually defined by the political boundaries of counties and municipalities in Section 1. Implementing a right to local self-government necessarily requires enacting local laws regarding these

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[16] Petition, p. 3 ¶ A. (2). *See 2013-2014 #75* Petition, p.7 ¶2. h. "Such authority already exists."

[17] *In re 1999-2000 #25,* 974 P.23 at 460 ¶II.A.

three aspects of local community life.[18] The Court rejected a similar challenge when deciding *In Re Proposed Ballot Initiative on Parental Rights,* 913 P.2d 1127, 1131 (Colo. 1996) (rejecting argument that establishing inalienable parental rights to control their children in "four distinct areas: upbringing, education, values, and discipline" violates the single subject requirement). The Court's approval of #75's single subject implicitly recognized the connection of this provision to the single subject, a right to local self-government.

Thus, Objectors' challenges (1) through (3) have no merit.

b. Objectors' Challenges (4) through (7) Have No Merit.

Objectors' challenges (4) and (7) misconstrue Section 3's exemption from preemption as reversing the direction of preemption. Section 3 does not give a local law effect throughout the state, nation, or planet. It merely supports local enforcement of local rights-based laws that elevate the rights of natural persons, their local communities and nature above locally-competing corporate "rights." It

[18] Petition for Review, p.3 ¶ A. (3) misconstrues these as "three separate legal regimes," a familiar refrain from Petition for Review *2013-2014 #75,* p.4 ¶ 1.b. The single "legal regime" established by #40 is an *effective* right of local self-government.

simply shields these local rights-based laws from those doctrines that would otherwise render the implementation of the single subject unenforceable.[19]

It is premature for the Court to decide the impact, legality, or constitutionality of the measure. *In re 2013-2014 #89,* 328 P.3d at 176 ¶10. The Court is not reviewing any local rights-based law enacted in compliance with Section 2 because the people have not yet amended their state constitution to include the measure. The Court cannot indulge in construing the effect or impact of the measure on hypothetical facts.

Section 3's limitation of the preemption doctrine[20] is similar to that upheld in *2013-2014 #89,* 328 P.3d at 178 ¶17. It applies only to those specific local laws that meet the requirements of Section 2 and subsections (a) and (b) of Section 3. As argued to this Court before it upheld 2013-2014 #75, leaving out these limited means of implementing and enforcing the right to local self-government would

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[19] Another way of saying this is that it creates a "carve-out" as stated in Exhibit 1, p.3 ¶ 6.a.

[20] Petition for Review, p.3 ¶ A. (5); *compare* Petition for Review *2013-2014 #75*, p.4 ¶ 1.c.

render the right meaningless.[21] Therefore, limitation of the preemption doctrine is necessarily and properly connected to the single subject.

The measure does not make local laws the supreme law of the land as Objectors' challenge (7) asserts.[22] To the contrary, it merely immunizes the people's inherent and inalienable right from violation by government at any level (or by government's creature, the corporation). By specifying that local measures cannot lessen federal and state protections for people, communities, and nature, the measure clearly does not make local law supreme in all cases. Determining the enforceability of this provision on specific facts must await it enactment by the voters and a proper case.

As to Objectors' quibble in challenge (6) with the near-synonym "nullification" next to "preemption,"[23] Objectors invest "straw men" to distract the Court. Whether the exercise of the right to local self-government would be *obliterated* or merely *replaced* by a conflicting law, the measure simply interrupts

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[21] *2013-2014 #75* Proponents Opening Brief at 7-9.

[22] Petition for Review, p.3 ¶ A. (7), citing U.S. Const. art. VI.

[23] Petition for Review, p.3 ¶ A. (6).

that result so that the local right is secured. These terms do not expand the single subject.

c. Objector's Objections Misconstrue the Measure and Impermissibly Seek Premature Decision on Constitutionality.

Objectors misconstrue the measure as "amending" the federal constitution's commerce,[24] contracts, treaty,[25] amendment[26] and other[27] clauses. As explained above, this invitation to construe the constitutional effect of the measure on hypothetical facts is clearly premature and exceeds the Court's scope of review.

Further, Objectors' challenges rest on the validity and enforceability of Section 2's authorization of local laws limiting corporate "rights" as necessary to secure local rights of living community members. It is this limitation of corporate "rights" that may implicate the federal commerce and other clauses. But it is premature to address the question before enactment of the measure by the voters

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[24] Petition for Review, p.3 ¶ A. (9), citing U.S. Const. art. I, § 8.

[25] Petition for Review, p.3 ¶ A. (9), citing U.S. Const. art. I, § 10.

[26] Petition for Review, p.3 ¶ A. (9), citing U.S. Const. art. V.

[27] Petition for Review, p.3 ¶ A. (9), citing U.S. Const. art. I, § 9.

and the further exercise of the right to local self-government by compliance with the requirements of Section 2.

This Court has a history of rejecting such premature challenges, for example:

> The objectors also allege that subsection (5) is an effort to amend articles IV (executive department), V (legislative department), VI (judicial department), and XII (officers), without explicitly amending those articles. However, the mere fact that a constitutional amendment may affect the powers exercised by government under pre-existing constitutional provisions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respect if adopted by the voters. *In re Ballot Title 1999-2000 # 258(A)*, 4 P.3d at 1098 (concluding that the previous proposed initiative for English language education in public schools did not contain multiple subjects). We agree with the title board that this provision is not a separate subject.

In Re 2001-2002 #21 and #22, 44 P.3d at 216.

B. The Title Board Properly Set Title.

1. Standard of Review; Legal Standard.

As noted *supra* at 9-10, the standard of review is described in case precedent in a manner that emphatically distinguishes it from a de novo standard. Proponents are on record in support of the Title Board's action, as shown for example by

statements at the beginning of the December 16, 2015 Title Board hearing and at the end of the January 6, 2016 Title Board hearing.

In re 2013-2014 #90, 328 P.3d at 162 described the applicable legal standard for clear title as follows:

> **[¶23]** The Colorado Constitution dictates that an initiative's single subject shall be clearly expressed in its title. See Colo. Const. art. V, § 1(5.5); *In re Title, Ballot Title & Submission Clause for 2011-2012 No. 45*, 274 P.3d 576, 581, 2012 CO 26, ¶ 21. The title and submission clause should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010) (internal quotation marks and citations omitted). When it sets a title, the Title 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." §1-40-106(3)(b), C.R.S. (2013).[4] The title " shall correctly and fairly express the true intent and meaning" of the initiative. *Id.*
>
> **[¶24]** The Title Board is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause. *In re Title, Ballot Title & Submission Clause, & Summary Clause for a Petition on Sch. Fin.,* 875 P.2d 207, 212 (Colo. 1994). The Title Board's duty in setting a title is to summarize the central features of a proposed initiative; in so doing, the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme. See *id*.
>
> **[¶25]** When reviewing a challenge to the title and ballot title and submission clause, we employ all legitimate presumptions in favor of the propriety of the Title Board's actions. *In re 2009-2010 No. 45*, 234 P.3d at 645. We will not consider whether the Title Board set the best possible title.

Id. at 648. Rather, the title must fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board. *In re 2011-2012 No. 45*, ¶ 22, 274 P.3d at 582.

2. Objector's Challenges Are Without Merit.

Objectors' appeal to an asserted "vagueness" defeating title recalls this Court's rejection of title in an important case that summarized the history and limited scope of the single subject and clear title review. *In re 1999-2000 #25,* 974 P.2d 458 (Colo. 1999). This case reiterated the Board's dual mission

> to assist potential proponents in implementing their right to initiate laws, while concurrently protecting the voters against confusion and fraud. Likewise, the Board must give deference to the intent of the proposal as expressed by its proponent, without neglecting its duty to consider the public confusion that might result from misleading titles. However, if the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters. This is especially true in light of the limited scope of our review of actions taken by the Board. For example, we may not address the merits of a proposed initiative, nor may we interpret its language or predict its application.

974 P.2d at 465.

Unlike the Title Board reviewing 1999-2000 #25, the Title Board reviewing 2015-2016 #40 was easily able to comprehend the single subject. Compare, 974 P.2d at 459 ("[T]he Board has acknowledged that it cannot comprehend the

initiative well enough to state its single subject in the title."). Unlike 1999-2000 #25, #40 does not repeat provisions that this Court in a prior decision held to be separate subjects. Compare, 974 P.2d at 465 ¶D. To the contrary, #40 is nearly identical to #75 which this Court upheld as single subject. The vagueness asserted by Objectors, which was present in 1999-2000 #25, is simply not here present.

Title objections (1) and (2) replicate objections raised in *2013-2014 #75* which this Court overruled in deciding that case.[28]

Objectors' title objection (1)[29] expresses dissatisfaction with the manner in which the measure's implementation and enforcement provisions contextually define the right of local self-government and ignores the rubric that further judicial construction of its terms must await the enactment of the measure by the electorate and a challenge based on specific local rights-based enactments and then-present facts.

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[28] 2013-2014 #75 Petition, p.5 ¶2.a.

[29] Petition p.4, ¶ B.(1).

Objector's title objection (2)[30] similarly misconstrues Section 2 of the measure, which provides that the rights of natural persons, their local communities and nature ("local rights") will be specified by local enactments, should the people of a local community decide to exercise the right of local self-government secured by the measure. The title adequately explains that the people at the local level have the "power to enact laws to establish, protect, and secure" their local rights. Like the title describing the provision in *2013-2104 #89* that authorized enactment of more restrictive local laws, 328 P.3d at 175 ¶2, #40's title properly alerts the public to future local enactments without improperly speculating on the potential effects of the measure if enacted. 328 P.3d at 179 ¶24.

Similarly, title objection (3)[31] picks at the phrase "prohibitions and other means" which the measure authorizes local enactments to include to secure local rights. Prohibition is the noun derived from the verb "prohibit" which is in common usage by voters. "Other means" is a common term that allows flexibility. The point is to secure local rights. The *voters* will not be misled. The Title Board cannot invent a definition that is not in the measure. Any needed definition of

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[30] Petition p.4, ¶ B.(2).

[31] Petition p.4, ¶ B.(3).

terms must await future construction, *In re Water Rights,* 877 P.2d at 327, in the context of the whole measure, *In re 2009-2010 No. 24,* 218 P.3d at 353.

Objectors' objections (4) and (5)[32] misconstrue the measure as creating a preemptive regime wherein all local laws trump all state and federal law. The Court should understand these objections in the context of the actual text of the measure, as asking the Court to interpret all possible effects of the *limited* immunity from preemption or nullification by state or federal law provided by the measure. All the title must do is summarize the terms of the measure so that the public can understand what it addresses. Constitutional challenges are beyond the scope of this Court's review at this time. *In re School Finance,* 875 P.2d at 211 ¶III (declining to review petitioner's challenges to a title on the basis that the measure conflicted with state and federal constitutions, ruling those challenges "beyond the scope of this court's review"). A title is not unclear or misleading simply because it does not refer to the initiative's possible interplay with existing state and federal laws. *In the Matter of the Title, Ballot Title, and Submission Clause for 2013-2014*

[32] Petition p.4, ¶ B.(4) and (5).

#85, 328 P.3d 136, 145 (Colo. 2014).[33] If the voters do not like the provisions shielding local rights-based laws from preemption or nullification, they can vote down the measure.

The public will not be fooled by the title for #40 set by the Title Board in its discretion. The terms of this measure, as adequately summarized in the title, present the public an opportunity to debate an important proposal for improving the effectiveness of American democracy as available to the people of Colorado. It is a debate that should happen. The title is not misleading and will not compromise Objectors' right and power to engage the debate to influence the voters.

The people should be able to vote on whether or not to amend their state constitution and alter their form of government as proposed by this measure. Judicial construction of the measure must await that vote and further local enactment by the people of a local community willing to take on the burden of

[33] *In re 2013-2014 #85* upheld clear title over objection that it did not address the measure's effect – or lack thereof – on the *federal* takings clause, where the measure explicitly excluded claims under the *state* takings clause as part of the single subject of statewide minimum setbacks for oil and gas development but was silent on the *federal* clause.

exercising and securing their inherent and inalienable right as provided in the measure.

VI. 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 begin circulating the petition for signatures.

Dated February 3, 2016

Respectfully submitted,

Libby Comeaux Law LLC

By: /s/ Elizabeth A. Comeaux #8674

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Certificate of Service

The undersigned hereby certifies that on this 3rd day of February, 2016, I electronically filed a true and correct copy of the foregoing **PROPONENTS' OPENING BRIEF**, including **Exhibit 1**, 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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/s/ Elizabeth A. Comeaux

TO: Colorado Legislative Council and Office of Legislative Legal Services

FROM: Elizabeth A Comeaux, Attorney at Law, for Merrily Mazza and Jeffery Dean Ruybal
Proponents of 2015-2016 #37

DATE FILED: February 3, 2016 7:42 AM

DATE: September 8, 2015

SUBJECT: Proposed initiative measure 2015-2016 #37, concerning

People's Fundamental Right of Local Community Self-Government

IN RESPONSE TO YOUR MEMORANDUM OF SEPTEMBER 3, 2015, WE SUBMIT THE FOLLOWING (OUR COMMENTS ARE IN SMALL CAPS):

Purposes –
THE SOLE PURPOSE IS TO SECURE PEOPLE'S FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT.

The major ~~purposes~~ CONTENTS of the proposed amendment to the Colorado constitution ARE ~~appear to be~~:

1. Stating that the people of Colorado have an inherent and inalienable right ~~to~~ OF local community self-government.

2. Describing the types of powers included in that right ~~and measures~~ that ~~may be used~~ ARE NECESSARY to secure that right WHEN IT IS EXERCISED.

3. Providing, TO SECURE THAT RIGHT, that local laws adopted pursuant to the right of local community self-government cannot be preempted OR NULLIFIED by any other international, federal, or state law~~s~~, provided that the local laws do not restrict ~~certain~~ fundamental rights or weaken protections OF NATURAL PERSONS, THEIR COMMUNITIES, OR NATURE.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative? SECURING PEOPLE'S FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT.

2. The proposed initiative is located under article II of the state constitution (the state "Bill of Rights"). As this article is concerned principally with individual rights and liberties, is this the most appropriate location for a local governance amendment? YES.

3. The rights enunciated in the proposed initiative are enjoyed by "each county, city, town, and any other municipality." NO, THEY ARE ENJOYED BY THE PEOPLE OF EACH COUNTY, CITY, TOWN, AND ANY OTHER MUNICIPALITY.

a. Does the proposed initiative apply to both statutory and home rule counties and municipalities? NO, IT APPLIES TO PEOPLE LIVING IN BOTH STATUTORY AND HOME RULE COUNTIES AND MUNICIPALITIES.

b. What "other" municipalities are included within the purview of this amendment? ANY OTHER MUNICIPALITIES THAT MAY BE DEFINED AS SUCH BY THE GENERAL ASSEMBLY, FOR EXAMPLE CITY-AND-COUNTY IS CURRENTLY DEFINED AS A MUNICIPALITY.

4. Some local governmental entities are political subdivisions of the state, organized for the convenient administration of state government and possessing only those powers conferred by the legislature. However, the proposed initiative alludes to "an inherent and inalienable right of local community self-government." Does such a right currently exist, or is this right new? SUCH A RIGHT EXISTS AS A NATURAL, ESSENTIAL, AND INALIENABLE RIGHT SECURED BY THE EXISTING COLORADO BILL OF RIGHTS. HOWEVER, NUMEROUS PUBLIC OFFICIALS SEEM TO HAVE OVERLOOKED, FORGOTTEN, MISAPPROPRIATED, OR MISCONSTRUED ITS EXISTENCE. If the latter, is it the proponents' intent to alter the fundamental character of local governments? THIS PROPOSAL IS ABOUT FUNDAMENTAL HUMAN RIGHTS, NOT ABOUT THE ALLOCATION OF POWER BETWEEN LEVELS OF GOVERNMENT.

5. Subsection (2) of the proposed initiative allows people and their governments to alter or eliminate the "rights, powers, privileges, immunities, or duties of corporations and business entities."

a. The scope of this provision is unclear. What types of rights, powers, privileges, immunities, and duties of businesses could be altered or eliminated? Is there any limitation whatsoever? Does this provision apply to existing rights? THE PROVISION PRIORITIZES PEOPLE'S FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT OVER RIGHTS OF PROPERTY ORGANIZED AS BUSINESS ENTITIES.

b. What "rights" do local communities enjoy? What "rights" does nature possess? Do these rights differ from the "fundamental rights" of communities and nature alluded to in paragraph (a) of subsection (3) of the proposed initiative? PEOPLE ACTING COLLECTIVELY AT THE LOCAL LEVEL HAVE THE FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT. THEY MAY DEFINE THE RIGHTS OF THEIR OWN LOCAL COMMUNITY, AN ENTITY THAT COMPRISES A CONTINUUM OF NATURE INCLUDING HUMANS.

c. What results if the rights of natural persons, local communities, and nature conflict? PEOPLE ACTING AT THE LOCAL COMMUNITY LEVEL MUST ADDRESS AND RESOLVE SUCH CONFLICTS, RESPECTING ALREADY-EXISTING RIGHTS AND PROTECTIONS OF NATURAL PERSONS, LOCAL COMMUNITIES, AND NATURE.

d. Are the rights of businesses always trumped by the rights of persons, local communities, and nature? THAT IS UP TO THE EXERCISE OF PEOPLE'S FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT. Would a property right of a business, for example, always be subject to any environmental regulation adopted by a local government? YES, IF THE LOCAL REGULATION WERE ENACTED AS AN EXPRESS EXERCISE OF THIS FUNDAMENTAL RIGHT. Can there be any attempt to weigh or balance the rights against each other? THIS PROPOSAL MAKES CLEAR THAT THIS FUNDAMENTAL HUMAN RIGHT HAS PRIORITY OVER NON-FUNDAMENTAL RIGHTS AND SO-CALLED RIGHTS OF PROPERTY ORGANIZED AS BUSINESS ENTITIES.

6. Subsection (3) of the proposed initiative purports to insulate local laws from preemption or nullification by any international, federal, or state law~~s~~, provided that the local laws "do not restrict fundamental rights of natural persons, their local communities, or nature… or weaken protections" for those groups.

a. Federal preemption of state or local law is premised on the Supremacy Clause of the United States constitution (art. VI, clause 2), which provides that the laws of the United States "shall be the supreme law of the land". The proposed initiative appears to upend this preemption doctrine so that a local law would supersede a federal law. How do the proponents intend the initiative to withstand federal preemption analysis? IT WOULD CHANGE FEDERAL PREEMPTION ANALYSIS TO PROVIDE A CARVE-OUT TO A LOCAL LAW ADOPTED PURSUANT TO THE AMENDMENT.

b. The proposed initiative similarly upends well-settled[1] law supporting the proposition that subordinate political subdivisions cannot unilaterally act to nullify the operation and effect of laws that cannot be abridged by local action, regardless of the type of local government acting and the matter with which a particular local law is concerned. THIS PROPOSAL IS ABOUT FUNDAMENTAL RIGHTS OF PEOPLE AND COMMUNITIES THAT CANNOT BE NULLIFIED BY GOVERNMENT; IT IS NOT ABOUT THE ALLOCATION OF GOVERNMENTAL POWER BETWEEN LEVELS OF GOVERNMENT. Are the proponents creating a new preemption regime under which local laws take priority over state laws, even (for example) in matters of traditional statewide concern? Could a local government, for example, enact its own traffic laws that trump traffic laws used elsewhere in the state? Its own conflicting commercial code? Consumer protection laws? Criminal laws? Labor laws? Liquor laws? LAWS ADOPTED PURSUANT TO THE REQUIREMENTS OF THE AMENDMENT MAY EXPAND STATUTORY AND CONSTITUTIONAL PROTECTIONS AND IF THOSE LOCAL LAWS ARE ENACTED PURSUANT TO THE REQUIREMENTS OF THE AMENDMENT THOSE EXPANSIONS MAY EITHER LIMIT OR AUGMENT EXISTING STATE LAWS.

c. Would state law preempt any conflicting local law so long as the former ~~purports to~~ SECURES GREATER fundamental rights of NATURAL persons/communities/ nature or provideS more stringent protections for those groups? AS AMENDED, THE QUESTION IS ANSWERED IN THE AFFIRMATIVE.

d. Under article XX, section 6 of the Colorado constitution, "home rule cities" have plenary authority over issues solely of local concern, and a home rule city is not inferior to the general assembly with respect to local and municipal matters that are within this authority. Under the proposed initiative, will statutory cities in effect enjoy the same

[1] THE COLORADO COURT OF APPEALS HAS ASKED THE COLORADO SUPREME COURT TO REVIEW THE JUDICIAL DOCTRINE YOU REFER TO CONCERNING MATTERS PREVIOUSLY CONSIDERED "WELL SETTLED." ORDER OF COURT AUG. 17, 2015, SIMULTANEOUSLY ISSUED IN COGA V. LONGMONT, CASE NO. 2014CA1759, AND COGA V. FT. COLLINS, CASE NO. 2014CA1991. HOWEVER, THIS REQUESTED REVIEW BY THE COURT OF APPEALS CONCERNS THE ALLOCATION OF GOVERNMENTAL POWER BETWEEN DIFFERENT LEVELS OF GOVERNMENT, WHICH IS NOT THE SPECIFIC CONCERN OF 2015-2016 #37.

quantum of power as home rule cities? THIS PROPOSAL IS NOT ABOUT THE ALLOCATION OF GOVERNMENTAL POWER BETWEEN LEVELS OF GOVERNMENT. THE RIGHTS OF PEOPLE, SECURED BY LOCAL ENACTMENTS PURSUANT TO THE AMENDMENT, ARE THE SAME REGARDLESS OF THEIR TYPE OF LOCAL GOVERNMENT. THE TYPE OF LOCAL GOVERNMENT AFFECTS ONLY THE MEANS BY WHICH PEOPLE MAY EXERCISE THEIR FUNDAMENTAL RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT.

e. Many local governmental boundaries in Colorado overlap. If every type of local government act is supreme, what happens when the laws of overlapping local governmental entities conflict? How will courts determine which law should prevail? PRINCIPLES OF LAW GOVERNING CONFLICTS WILL BE DEVELOPED AND APPLIED BY THE JUDICIARY IN THESE CASES, AS THEY HAVE BEEN DEVELOPED AND APPLIED TO OTHER CASES INVOLVING CONFLICTS BETWEEN STATE LAWS, AND CONFLICTS BETWEEN LOCAL LAWS.

7. Who would have the authority to enforce the provisions of the proposed initiative? The local government itself? Citizens residing within the boundaries of the local government? Both? ENFORCEMENT METHODS WILL BE ESTABLISHED WITHIN THE LOCAL ENACTMENTS ADOPTED PURSUANT TO THE REQUIREMENTS OF THE AMENDMENT.

Technical Comments –

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. The headnote should be in bold-face type, but headnotes are not underlined. CORRECTED AS HIGHLIGHTED IN YELLOW ON THE HL VERSION ATTACHED.

2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado constitution. CORRECTED.

3. Semicolons are used to connect two independent clauses, which could stand alone as their own sentences, and are not used with conjunctions such as "and", "but", or "yet". In subsection (2) of the proposed initiative, the semicolon should be removed. CORRECTED AS HIGHLIGHTED IN YELLOW ON THE HL VERSION ATTACHED.

ALSO CORRECTED, AS HIGHLIGHTED IN YELLOW ON THE HL VERSION ATTACHED, IS A TYPO (INCORRECT "S" ON "LAW").