

SUPREME COURT OF COLORADO 2 East 14 th Avenue Denver, CO 80203	DATE FILED: October 29, 2019
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 2019- 2020 # 122 (“Limits on Local Housing Growth”) Petitioner: Scott E. Smith v. Respondents: Daniel Hayes and Charlotte R. Robinson and Title Board: Melissa Polk, David Powell and Julie Pelegrin	<p style="text-align: center;">COURT USE ONLY</p> <p style="text-align: center;">FILED IN THE SUPREME COURT</p> <p style="text-align: center;">OCT 29 2019</p> <p style="text-align: center;">OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk</p>
<i>Attorney for Scott Smith:</i> Thomas M. Rogers III, #28809 Recht Kornfeld, P.C. 1600 Stout, Suite 1400 Denver, CO 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) trey@rklawpc.com	Case Number: 19SA224

Opening
REPLY BRIEF

IN RESPONSE to the Order of the Colorado Supreme Court dated October 10, 2019, Respondents Daniel Hayes and Charlotte R. Robinson file this Opening Brief regarding the Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2019-2020 #122, Limit on Local Housing Growth (“Initiative #122”).

Scott E. Smith (“Objector”) argues first that Initiative 122 contains multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5). Objector’s argument has no merit. On September 4, 2019, the Title Board approved Initiative #122 as a single subject initiative. Initiative #122 ballot title fixed by the Title Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning limitations on the growth of privately owned residential housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit privately owned residential housing growth by initiative and referendum; permitting county voters by initiative and referendum; permitting county voters by initiative and referendum to limit privately owned residential housing growth uniformly within the county, including all or parts of local governments within the county; for the cities and counties of Broomfield and Denver and for the counties of Adams Arapahoe, Boulder, Douglas, Elbert, El Paso, Jefferson, Larimer, and Weld: (1) limiting privately owned residential housing growth countywide to one percent annually for the years 2021 and 2022 and for subsequent years unless amended or repealed by initiative and referendum starting in 2023; and (2) requiring said counties and cities and counties to allow permits to build new privately owned residential housing units to ensure that the annual growth rate in the total number of such units does not exceed one percent in the years 2021 and 2022; permitting fifteen hundredths of one percent additional privately owned residential housing growth in said counties and cities and counties when such housing is either affordable housing or senior housing; and establishing procedural requirements for initiatives and referenda concerning proposals for local governments to regulate the growth of privately owned residential housing?

This Court presumes the Title Board’s actions are legitimate unless their decision is clearly erroneous. *In re Title, Ballot Title & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶8, 333 P.3d 76. The purposes of the initiative must be dependent upon or connected with each other. *In re Title, Ballot Title and Submission Clause for 2003-2004*, 76 P.3d 460, 461 (Colo. 2003). In determining whether a proposed measure contains more than one subject, the Court may not interpret the language of the measure or predict its application if it is adopted. *In re Ballot Title 1999-2000*, No. 255, 4 P.3d 485 (Colo. 2000). *See also, In re Ballot Title and Submission Clause for 2017-2018 No. 4, 2017*, 395 P.3d 318 (Colo. 2017).

The Supreme Court ruled, in *In Re Title 1999-2000 No. 235(a)*, 3 P.2d 1219 (2000), that a Constitutional amendment initiative proposing to conserve natural lands and open space constituted one subject. That initiative: (1) employed a growth formula for the rate of future development; (2) established a system of measurement to determine a “base development area” of each jurisdiction; (3) allowed a treatment for commenced but not completed projects; (4) excluded low-income housing, public parks and open space, and historic landmarks; and (5)

established a procedure for exemptions. Initiative #122 is much less complex than the initiative involved in No. 235(a).

Initiative #122 simply limits the growth of privately owned residential housing and permits the electors of every local government to limit privately owned residential housing growth by initiative and referendum in the Front Range to one percent annually for two years and subsequent years unless amended or repealed by initiative or referendum, with the exception of additional affordable housing or senior housing. The initiative described the process of such limitations as through the permit process. Clearly, Initiative #122 is a single subject with, as the Title Board recognized, only limited exceptions of low-income housing and senior housing.

Initiative #122 contains only one subject, as recognized by the Title Setting Board. Low income housing and senior housing are only exceptions to the limitations set forth for privately-owned housing growth. All are related to one subject-“Limits on Local Housing Growth”. Therefore, the Objector’s argument that there is more than one subject in Initiative # 122 must fail.

Objector also argues that the title fails to identify what procedural requirements for initiatives and referenda are affected by the initiative. Each local government has its own procedural requirements for initiatives and referenda. As the Title Board recognized, there is no reason to identify each local government’s initiative and referendum process. In fact, had Initiative #122 attempted to identify each local jurisdiction’s procedure for initiatives and referenda, Objector would likely argue that the initiative contained more than one subject.

CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny Objector’s Petition for Review.

Respectfully submitted this 29th day of October 2019.

s/Charlotte Robinson, Respondent

s/Daniel Hayes, Respondent

CERTIFICATE OF SERVICE

I, Charlotte R. Robinson, hereby affirm that a true and correct copy of the
REPLY BRIEF

was sent this 29th day of October ~~28~~ 2019 to the following as indicated below:

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