

RECEIVED

APR 27 2016

S. WARD  
2:20 P.M.

1

ELECTIONS  
SECRETARY OF STATE

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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

2016 #131

MOTION FOR REHEARING

Registered electors, *Robert Smoke and Terese Howard* request a rehearing of the  
Title Board for Initiative

2015-2016 #131. As set forth below, *the proponents* respectfully object to  
the Title Board's

denial of the initiative for failure to constitute a single subject. Registered electors request  
reconsideration on the grounds that the measure complies with the single subject  
requirements of Article V, Section 1(5.5) of the Colorado Constitution and Colo. Rev.  
Stat § 1-40- 106.5. Specifically, the criminalization and discrimination provisions of the  
Rights of Person Experiencing Homelessness Act carry out the single objective of equal  
protection for the homeless population, bear a necessary and proper connection to one  
another, and the provisions are neither surreptitious nor fraudulent.

INTRODUCTION AND BACKGROUND

Approximately 16,203 people experience homelessness on a single night in  
Colorado. 1 In the Denver metropolitan region alone, at least 6,130 people are homeless.

Twenty-four percent of all homeless people in the Denver metropolitan region are  
considered newly homeless.

Though many of Colorado's cities are engaging in efforts to create more  
affordable housing for the homeless, there remains a dearth sufficient services and  
housing for homeless populations. 3 Further, many of these same cities are also enacting

ordinances that criminalize the status of being homeless and are unequally enforced against the homeless. 4 Examples of such legislation include camping bans, anti-food

1 University of Colorado Denver, School of Public Affairs. The Colorado Statewide Homeless Count. (2007).

2 Metro Denver Homeless Initiative, 2015 State of Homelessness Report: Seven-County Denver Metropolitan Region, [http://mdhi.org/wp-content/uploads/2015/06/FINAL-DRAFT-06.05.15.hf\\_.pdf](http://mdhi.org/wp-content/uploads/2015/06/FINAL-DRAFT-06.05.15.hf_.pdf).

3 Fort Collins provides 118 shelter beds for over 400 homeless residents. Tony Robinson and Allison Sickels. No Right to Rest: Criminalizing Homelessness in Colorado. Denv. Homeless out Loud 36, Apr 2015,

<https://denverhomelessoutloud.files.wordpress.com/2015/04/report-final.pdf>. Boulder provides 280 beds for 440 homeless residents. 2014 State of Homelessness Annual Assessment of Homelessness in the City of Boulder, Metro Denv. Homeless Initiative 1 (2014) <http://mdhi.org/wp-content/uploads/2013/02/2014-City-of-Boulder-PIT-ONE-Page-Overview-and-Charts.pdf>.

4 17% of all citations that Grand Junction issued are pursuant to an anti-homeless ordinance. 50% of trespassing citations issued by Grand Junction are issued to homeless sharing ordinances, sidewalk obstruction, and bans on sleeping in public. Such enforcement disparately impacts the homeless population and leads to the violation of homeless individual's rights under the Fourth and Eighth amendment of the US Constitution. Specifically, homeless people experience destruction and seizure of their property with little or no notice of city raids, 5 and are subject to arrest or citation for harmless acts, such as sleeping in public.

Both United States and Colorado Constitutions guarantee that no person shall be denied equal protection of law; equal protection guarantees that government will treat similarly situated individuals in similar manner. *Mayo v. National Farmers Union Property and Cas. Co.*, 833 P.2d 54, 57 (Colo. 1992).

The Rights of Person Experiencing Homelessness Act Creates an equal protection framework to ensure a statewide concerted effort to prevent cities from enacting discriminatory laws that are unequally enforced against the homeless and deprive them of their fundamental liberties.

#### ARGUMENT

The Rights of Person Experiencing Homelessness Act complies with the single-subject requirements under Colorado Law. Specifically, its criminalization and discrimination provisions carry out the single purpose of ensuring that Colorado's homeless population receives equal treatment under the law, bear a necessary and proper connection to one another, and do not have the effect of surprising the electorate.

To pass muster, an initiative must carry out a single subject. Colo. Rev. Stat. § 1-40-106.5(1)(a)&(c). If an initiative's provisions bear a necessary and proper connection to one another and are therefore not incongruous, an initiative comports with the single subject requirement. Colo. Rev. Stat. § 1-40-106.5(1)(e)(I). Finally, the Colorado legislature intended that the single subject requirement be liberally construed to both to protect voters from surreptitious measures but preserve and protect the right of initiative and referendum. Colo. Rev. Stat. § 1-40-106.5(2).

As shown below, the Rights of Person Experiencing Homelessness Act carries out the single objective of equal protection by preventing Colorado's municipalities from

individuals. University of Denver Sturm College of Law. Too High a Price: What Criminalizing Homelessness Costs Colorado. Grand Junction City Spotlight (2016). Fort Collins issues citations to homeless individuals at the rate of two citations per homeless resident per year. Too High a Price: What Criminalizing Homelessness Costs Colorado. Fort Collins City Spotlight (2016). Colorado Springs has doubled the rate at which they enforce anti-homeless ordinances between 2010-2014.” University of Denver Sturm College of Law. Too High a Price: What Criminalizing Homelessness Costs Colorado. Colorado Springs City Spotlight (2016)

5 Chris Walker . Homeless: Denver Police Officers Threw Away Possessions Without Warning, Westword. Thursday, December, 22, 2015.

discriminating against and violating the civil liberties of the homeless, and contains a framework that bears a necessary and proper connection for achieving that purpose. None of the Act’s provisions frustrate the policy intent of the single subject requirement because they do not surprise or commit fraud upon Colorado’s voters.

I. The Rights Of Person Experiencing Homelessness Act Carries Out The Single Objective Of Ensuring Equal Protection And Its Provisions Provide Mechanisms For Achieving That Objective.

The Rights of Person Experiencing Homelessness Act carries out a single objective of ensuring equal protection for the homeless by preventing Colorado’s municipalities from discriminating against the homeless through enacting legislation that criminalizes the status of being homeless and violates the fundamental rights of the homeless protected by the US Constitution.

While a proposed initiative cannot seek to accomplish multiple, discrete, unconnected purposes, an initiative must have a unifying and common objective. See *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995). “If an initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law.” *Id.* at 1079.

Furthermore, an initiative comports with the single subject requirement and is not overbroad if it proposes a comprehensive framework that contains a single subject if all of its provisions relate directly to its single subject. In *re Title Ballot Title and Submission Clause for 2013-2014*, 328 P.3d 172, 177 (Colo. 2014) (quoting *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010)).

For example, in holding that a public’s right to the environment was not an overbroad single subject of an initiative, the Colorado Supreme Court considered the relationship between that subject and the provisions that carried out the objective. *Id.* The proposed law declared that the environment was common property of all Coloradoans and the second and third proposed subsections provided mechanisms for carrying out the objective by establishing the state and local governments would serve as trustees of the public’s right to Colorado’s environment. *Id.* The initiative also provided that if local governments enacted laws or regulations that were more protective of the environment than those enacted by the state, the more protective laws would govern. The court thus found that each subsection was necessary and properly connected to a single subject. *Id.*

The Rights of Person Experiencing Homelessness Act’s unifying and common

objective is to ensure equal protection for Colorado's homeless population. (See Recital 1(b) which states that the response to the homelessness crisis should ensure equal rights of all Coloradoans). The measure ensures equal protection of the homeless by prohibiting municipalities from enacting laws that discriminate either intentionally or by impact and deprive the homeless of their civil liberties (see 2(a)&(b)), including but not limited to the right to be free from unreasonable searches and seizures (see Sections 3(a)&(d)), the right to property (see Section 3(a)&(c)), and the right to be free from cruel and unusual punishment (see Section 4). Accordingly, the provisions are mechanisms to carry out a larger framework of equal protection and thus bear a necessary and proper connection to each other and a single subject.

In conclusion, the Rights of Person Experiencing Homelessness Act's single unifying theme is ensuring equal protection for the homeless population of Colorado. Equal protection prohibits discrimination by virtue of laws that criminalize the status of being homeless, and also protects the fundamental rights of the homeless. Accordingly, the Rights of Person Experiencing Homelessness Act's provisions relating to discrimination and criminalization carry out the single purpose of equal protection.

II. The Rights Of Person Experiencing Homelessness Acts' Provisions Are Not Surreptitious And Therefore Further The Policy Intent Of The Single-Subject Requirement.

The Rights of Person Experiencing Homelessness Act's provisions comply with the policy purpose of the single-subject requirement because they do not contain any provisions that would surprise or commit fraud on Colorado's voters. The Constitution's single subject requirement serves to ensure that each legislative proposal depends upon

its own merits for passage and protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision "coiled up in the folds" of a complex bill. In re Title, Ballot Title and Submission Clause for Proposed Initiative 2011-02 No. 43, 234 P.3d 642 (Colo. 2010). An example of a surreptitious measure would be legislation that significantly modified a mechanic's lien or exemption laws hidden under a title relating exclusively to railroads. In re Breene, 14 Colo. 401 (Colo. 1890).

The Rights of Person Experiencing Homelessness Act contains no provisions unrelated to the equal protection and civil liberties of the homeless, nor are there any surprises coiled up in the folds of a complex piece of legislation. Unlike the connection between a mechanic's lien and railroads, the provisions of the Rights of Person Experiencing Homelessness are very clear in that they relate to the fundamental civil liberties of the homeless.

Based on the foregoing, I, Robert P. Smoker respectfully request the Title Board to conduct a

re-hearing on the title set for Initiative 2015-2016 #131.

Respectfully submitted this 27<sup>th</sup> day of April, 2016 by:

Robert P. Smoker

Address

1065 University Avenue #117  
Boulder, CO 80302