

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: 7325 South Potomac Street Centennial, Colorado 80112	DATE FILED: July 14, 2017 3:22 PM CASE NUMBER: 2017CV31416
Petitioners/Contestors: JASON LEGG; and KRISTIN MALLORY vs. Respondent/Contestee: CITY OF AURORA	Case Numbers: 2017 CV 31416 Div.: 21
ORDER – RE: Petition for Review of Municipal Ballot Issue	

Having reviewed the “Verified Petition for Judicial Review of Ballot Title Pursuant to C.R.S. § 1-11-203.5(2),” including the Answer, and having conducted a hearing on the issue pursuant to C.R.S. § 1-11-203.5(2) on July 12, 2017, and being otherwise fully advised of the premise of the Petition, the Court makes the following rulings:

A. Factual Background.

(1) Nomenclature.

1. Prior to delving into the factual basis of the dispute between the parties, the Court will clarify the terminology used in the appellate case law to describe the various documents at issue in electoral ballot issues of this type. The Court has found that numerous terms are used loosely in the appellate decisions, and a clarification is necessary in order to avoid confusion:

a. Amendments to governing documents, whether those documents are city charters or state constitutions, are proposed in three basic methods: (1) By resolution of the legislative body expressing its general opinion on an issue; (2) through an ordinance drafted by the legislative body detailing the particulars of a legal issue; and (3) through the petition of a citizen or an entity. See **Denver v. Mewborn**, 354 P.2d 155, 160 (Colo. 1960); **Bruce v. City of Colorado Springs**, 200 P.3d 1140, 1141 (Colo. App. 2008) (“**Bruce I**”).

b. A resolution, ordinance, or petition proposed for approval of the voters by ballot is an initiative. See **Bruce v. City of Colorado Springs**, 252 P.3d 30, 32 (Colo. App. 2010) (“**Bruce II**”).

c. The description of the subject matter of the initiative which appears on the actual ballot is the title of the initiative. See **Mewborn**, 354 P.2d at 420.

(2) Undisputed facts.

2. The following facts have been stipulated or are not in dispute between the parties:

a. On or about November 2, 1999, the voters of the City of Aurora, Colorado voted to amend the City Charter (“Charter”) by adding § 11-18.5 prohibiting direct or indirect public subsidies to motor sports facilities [Response, Attachment A at 1]. The relevant language in § 11-18.5 currently in effect provides as follows:

11-18.5 – Prohibition of direct or indirect subsidies to motor sports facilities.

(1) The people of the City of Aurora intend that there be no direct or indirect subsidies, whether through the use of public funds or through the abatement, reduction or elimination of any tax burden, for the benefit of any motorized sports facility, including (but not limited to) arenas, stadiums, speedways, dragstrips or speedtracks.

(2) The City of Aurora is hereby prohibited from using any public funds for the acquisition, construction, operation and maintenance of any motorized sports facility, including (but not limited to) arenas, stadiums, speedways, dragstrips or speedtracks. . . .

b. On June 19, 2017, the City Council of the City of Aurora (Respondent herein – “Aurora”) voted for an ordinance to amend the Charter and for that initiative to be placed on the ballot through title in the November 7, 2017 election (hereinafter, “Ordinance”). Relevant portions of the Ordinance and its supporting legislation provide as follows:

Ordinance No. 2017 - ____
A Bill

For an ordinance submitting to a vote of the registered electors of the City of Aurora, Colorado, at the regular municipal election of November 7, 2017, an Amendment to Section 11-18.5 of the City Charter Regarding Entertainment Districts.

Whereas, the Aurora City Council believes that locating a world-class motor sports facility and entertainment district in the largely undeveloped northeast area of Aurora away from residential zone districts and subdistricts will be of great economic benefit to all of its citizens;

11-18.5 – Direct or indirect subsidies to motor sports facilities; Entertainment Districts.

(A) The people of the City of Aurora intend that there be no direct or indirect subsidies, whether through the use of public funds or through the credit, abatement, rebate or reduction of any tax burden, for the benefit of any motor sports facility that is to be located less than one-half mile from any property in the city within a residential zone district or subdistrict.

(B) The City of Aurora is hereby authorized to take whatever lawful actions may be necessary to support the creation of an entertainment district within northeast Aurora. Such actions may include, but are not limited to:

(1) Using public funds to facilitate the development of entertainment venues within such district, including motor sports facilities.

(2) Granting any credit, abatement, rebate or reduction of any tax in connection with the development of entertainment venues within such district, including Motor sports facilities; . . .

(C) In no event shall the entertainment district be located less than one-half mile from any property in the City within a residential zone district or subdistrict. In addition, no public funds generated from outside the boundaries of the entertainment district shall be used to subsidize the development of entertainment venues within such district.

[Response, App. A at 2].

c. The title of the initiative/ordinance proposed by Aurora for the 11/7/17 ballot states as follows (hereinafter, "Title"):

Entertainment Districts

Without raising City taxes, shall Section 11-18.5 of the Aurora City Charter be amended to support the creation of an entertainment district in northeast Aurora (north of Interstate 70 and east of Hudson Road), to be located no less than one-half mile from any property in the City within a residential zone district or subdistrict, to facilitate the development of entertainment venues, including motor sports facilities, that are anticipated to increase tourism and create jobs, provided that only public funds generated from within the boundaries of the entertainment district may be used to subsidize the development of such venues?

Yes ___ No ___

[*Id.* at 3].

3. Petitioners assert that the Ordinance, as represented through the Title, violates § 5-1 of the Charter [Motion at 3-5] which provides:

5-1 – Ordinances, resolutions and motions.

Council shall act only by ordinance, resolution or motion. All legislative enactments must be the form of ordinances; all other actions, except as herein provided, may be in the form of resolutions or motions. All ordinances and resolutions shall be confined to one subject except in case of repealing ordinances, and ordinances making appropriations shall be confined to the subject of appropriations.

4. Petitioners further assert that, as an ordinance, the subject of the Ordinance is governed by Aurora City Ordinance § 54-149:

The city council shall have the power to submit any number of Charter amendments to a vote of the registered electors without the receipt of a petition. Charter amendments shall be referred to the registered electors by ordinance.

The ordinance requirement for Charter amendments is repeated in § 54-141(d)(1):

Any Charter amendment initiative petition shall be in the form of an ordinance . . .

5. Petitioners also assert that the Title does not accurately represent the issues contained in the Ordinance [Motion at 5-6].

6. Finally, petitioners assert that the Title contains inappropriate “catch phrases or slogans” [*id.* at 6].

B. “Single Subject” Limitation on Initiatives to Amend the Charter Through Ballot in Aurora.

7. The threshold issue before the Court regarding the Ordinance is whether a “single subject” limitation is placed on ballot initiatives in the Charter. The parties agree that municipal charter amendments through the ballot are not *required* to contain only one subject under the Colorado Constitution. **Mewborn**, 354 P.2d at 161. The issue here is whether § 5-1 of the Charter and Aurora City Ordinance § 54-149 place a local “single subject” restriction on initiatives.

8. Interpretation of the language of Aurora City Ordinance § 54-149 is governed by Colorado statutes regarding the interpretation of statutes:

a. “(1) In enacting a statute, it is presumed that: (b) The entire statute is intended to be effective; (c) A just and reasonable result is intended: . . .” C.R.S. § 2-4-201(1)(b)-(c).

b. “(1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters: (a) The object sought to be attained; (e) The consequences of a particular construction; . . . (g) the legislative declaration or purpose.” C.R.S. § 2-4-203(1)(a), (e) & (g).

c. “If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.” C.R.S. § 2-4-205.

d. “All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that that true intent and meaning of the general assembly may be fully carried out.” .” C.R.S. § 2-4-212.

9. The key language in the Aurora City Ordinance § 54-149 is the first sentence:

The city council shall have the power to submit any number of Charter amendments to a vote of the registered electors without the receipt of a petition.

10. Aurora urges the Court to interpret this language to mean that more than one Charter amendment (i.e., “any number of Charter amendments”) may be included in a single ballot (i.e., “a vote of the registered voters”), thereby permitting multiple subjects in any single initiative regarding a Charter amendment.

11. The Court rejects this interpretation for the following reasons:

a. Aurora’s interpretation ignores the final clause of the sentence in § 54-149 which identifies the purpose of the ordinance: “without the receipt of a petition.” When combined with the second sentence of § 54-149, the purpose of § 54-149 is to permit the City Council to pass ordinances to amend the Charter without requiring a petition from a citizen or an outside entity, not to permit multiple initiative subjects in an ordinance.

b. Interpreting the “any number of Charter amendments” language in the first sentence of § 54-149 to permit multiple subjects in a single ballot initiative ordinance would directly conflict with the authorizing Charter, § 5-1, which mandates that “[a]ll ordinances and resolutions shall be confined to one subject.” Since Aurora City Ordinance § 54-149 requires all Charter amendments be proposed to the electors in the form of an ordinance, Charter amendment ordinances may only contain one subject. As the authoring authority for all ordinances, in the event of a conflict, Charter § 5-1 prevails over Ordinance § 54-149.

12. Aurora asserts that the language in § 54-149 is akin to § 216 of the Denver Charter which is interpreted in **Mewborn** not to require single subject ordinances:

Section 216 provides:

Council-Act by ordinance and resolution-When and how passed-Publication.

The council shall act only by ordinance in matters of legislation, contracts, appropriations or expenditures of moneys; and by ordinance or resolution in other matters.

All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title. . . .

Mewborn, 354 P.2d at 160. The Court also rejects this analogy to the Supreme Court's interpretation of the Denver Charter:

a. The Supreme Court in **Mewborn** correctly interprets this mandatory "single subject" language in the Denver Charter as applying only to "matters of legislation, contracts," etc., but not to Charter amendments. *Id.* at 161.

b. §§ 54-141 and -149 of the Aurora Charter expressly require that any Charter amendment initiative be in the form of an ordinance. Consequently, the Supreme Court's interpretation of the Denver Charter is inapposite to any interpretation of § 54-149.

13. The Court finds that, reading all of the language in § 54-149, and giving authoritative credence to Charter § 5-1 (which confines all ordinances to one subject), ordinances which amend Aurora Charter amendments under § 54-149 are confined to a single subject.

C. Legal Standard – "Single Subject" Ballot Initiatives.

14. The purpose of requiring a ballot initiative to express a single subject is rooted in the concept of avoiding any confusion of the voters regarding the purpose of the initiative: "This requirement is intended to ensure that each proposal within an initiative "depends on its own merits for passage." **Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-1998 No. 64**, 960 P.2d 1192, 1196-1197 (Colo. 1998); **In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 25**, 974 P.2d 458, 463 (Colo. 1999).

15. A more skeptical outlook of the "single subject" requirement focuses on the abuse of the initiative process:

The “evil” sought to be prevented is the same as that identified in *Catron*. That is, the single subject requirement precludes the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interests.

Matter of 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, 1079 (Colo. 1995).

16. In its continuing interpretation of the “single subject” rule regarding the text of ballot initiatives, the Colorado Supreme Court provides criteria to analyze the text from both perspectives of the analysis; i.e., language which constitutes distinct and separate purposes expressed in an initiative which violate the “single subject” rule, and language which may appear separate, but which constitutes a single purpose or objective.

a. To clarify the identification of “multiple subjects” in an initiative, the Supreme Court provides the following guidance:

In order to constitute more than one subject under our caselaw pertaining to bills, the text of the measure must relate to more than one subject and it must have at least two distinct and separate purposes which are not dependent upon or connected with each other.

898 P.2d at 1078-1079 (emphasis added).¹

An initiative violates the single subject requirement when it has “at least two distinct and separate purposes which are not dependent upon or connected with each other.” This requirement is intended to ensure that each proposal within an initiative “depends on its own merits for passage.” Where two provisions advance separate and distinct purposes, the fact that they both relate to a broad concept or subject is insufficient to satisfy the single subject requirement.

960 P.2d at 1196 (citations omitted)(emphasis added).

A proposed initiative violates this requirement when it “relate[s] to more than one subject and . . . has at least two distinct and separate purposes which are not dependent upon or connected with each other.”

In re Title, Ballot Title & Submission Clause, & Summary For 1999-2000 No. 255, 4 P.3d 485, 495 (Colo. 2000).

¹ Due to the similarity of the title captions all of the Supreme Court cases addressing the “single subject” issue, the Court will refer only to the Pacific citation on subsequent cites to the case.

b. The Supreme Court also recognizes that, merely because an initiative affects other statutes, does not automatically result in a conclusion that the initiative contains multiple subjects:

However, the fact that the provisions of a measure may affect more than one other statutory provision does not itself mean that the measure contains multiple subjects.

4 P.3d at 496. “On the other hand, an initiative which addresses subjects that have no necessary or proper connection to one another will be disallowed as containing more than one subject.” 974 P.2d at 463 (emphasis added).

In light of these purposes, we have held that an initiative containing two or more provisions with no necessary connection or common objective offends the single-subject requirement even if all parts of the initiative address the same general area of law.

962 P.2d at 128 (emphasis added).

c. To simplify the analysis from the “multiple subject” viewpoint, the Supreme Court in 974 P.2d 458 provides the following two-step analysis:

After applying this standard, we held that an initiative violates the single-subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes which are not dependent upon or connected with each other.

974 P.2d at 463.

d. With that said, the Supreme Court also steps around to the other side of the issue to analyze it from the “single subject” viewpoint; i.e., the criteria for finding a single purpose in the text of the initiative: “However, our analysis did not end with our articulation of the foregoing two-part test. We further stated that an initiative which tends to effect or to carry out one general objective or purpose presents only one subject.” *Id.*; 898 P.2d at 1079 (emphasis added).

On the other hand, the single-subject requirement does not preclude the use of provisions that are not wholly integral to the basic idea of a proposed initiative. The single-subject requirement must be liberally construed, however, so as not to impose undue restrictions on the initiative process. Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.

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.

962 P.2d at 929 (citation omitted)(emphasis added). “So long as the matters encompassed in the bill are necessarily or properly connected to each other rather than disconnected or incongruous, the single subject requirement of section 21 is not violated.” **Parrish v. Lamm**, 758 P.2d 1356, 1362 (Colo. 1988)(emphasis added).

17. Finally, this plethora of Supreme Court opinions focuses on the limitations on judicial review of ballot initiatives; i.e., what is (and is not) permitted in the analysis of “single subject” ballot initiative disputes:

a. As a general rule: “Further, in conducting such a review, the actions of the Board are presumptively valid.” 974 P.2d at 465 (emphasis added).

b. Another guideline addresses the distinction between multiple subjects, and the differential implementation of a “single subject” initiative:

The mere fact that the initiative contains detailed provisions for its implementation does not mean that it contains multiple subjects. “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.”

4 P.3d at 496 (citation omitted)(emphasis added).

c. And then, the ‘catch-all’ guideline:

In determining whether a proposed initiative comports with the single subject requirement, “[w]e do not address the merits of a proposed initiative, nor do we interpret its language or predict its application if adopted by the electorate.” Our inquiry is limited, rather, to determining whether the “constitutional prohibition against initiative proposals containing multiple subjects has been violated.”

960 P.2d at 1197 (citations omitted)(emphasis added); 4 P.3d at 495.

In reviewing whether an initiative comports with the single subject requirement, courts should not address the merits or the future application of the proposed initiative. However, courts must sufficiently examine the initiative to discern whether the prohibition against multiple subjects has been violated. “An evaluation of whether the component parts of a proposed initiative are connected

and are germane to one another, so as to comprise one subject, simply cannot be undertaken in a vacuum.” The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process.

Bruce II, 252 P.3d at 35 (citations omitted).

D. Legal Analysis – City Ordinance Section 11-18.5.

18. During the July 12, 2017 hearing, Aurora confirmed that the purpose and “single subject of the amendment to § 11-18.5 is the revocation of the current ban on public funding of motor sports facilities in § 11-18.5(1) in order that such a facility may be developed in the northeast section of the city, as expressed in the second “Whereas” clause of the bill proposing the amendment:

Whereas, the Aurora City Council believes that locating a world-class motor sports facility and entertainment district in the largely undeveloped northeast area of Aurora away from residential zone districts and subdistricts will be of great economic benefit to all of its citizens.

[Response, App. A at 1]. Aurora asserts that all other “provisions” of the amendment either support or facilitate from this primary purpose and “single subject.”

19. Notwithstanding the language in the second “Whereas” clause in the City Council bill (which is not part of the Ordinance amending § 11-18.5), the Court finds that the language of the amendment provides Aurora with much greater latitude than just publicly funding a motor sports facility.

20. In **Mewborn**, the Supreme Court differentiates the “subject” of an initiative from various “propositions” which may be contained in the initiative. **Mewborn**, 354 P.2d at 161.² The Court finds that the following seven (7) “propositions” are set forth in the Sections of the 6/19/17 amendment to Aurora Ordinance § 11-18.5 and are relevant to the dispute between Aurora and the Petitioners:

Section A: (1) Revocation of the complete, city-wide ban on public funding for motor sports facilities, as currently set forth in § 11-1.85(1).

² We do not read the language of the third portion of section 268 as meaning that a proposed amendment must be dissected into as many parts as there are ‘propositions’ that can be found within it. Such a reading of the section would run counter to our decisions which have avoided imposing any such requirement.

Mewborn, 354 P.2d at 161.

(2) Any motor sports facility which receives public funding shall be located one-half mile or more from any property in a residential zone district or subdistrict.

Section B: Aurora may act to support the creation of an “Entertainment District” within the northeastern section of the city.

Section B(1): To support the creation of an “Entertainment District” in the northeastern section of the city, Aurora may use public funds to develop “Entertainment Venues,” including (but not limited to) motor sports facilities.

Section B(2): To support the creation of an “Entertainment District” in the northeastern section of the city, Aurora may grant economic credits, abatements, rebates, or reductions in any public tax connected with the development of specific “Entertainment Venues,” including (but not limited to) motor sports facilities.

Section C: (1) Any “Entertainment District” created by Aurora within the northeastern section of the city (and by implication, any “Entertainment Venue” within the “Entertainment District”) shall be located one-half mile or more from any property in a residential zone district or subdistrict.

(2) No public funds generated from outside the “Entertainment District” will be used for the development of any “Entertainment Venue” inside the Entertainment District.”

[Response, App. A at 2].

21. The Court must determine whether the “propositions” in the amendment to § 11-18.5: (1) “advance separate and distinct purposes,” even though the propositions all “relate to a broad concept or subject” and are therefore “insufficient to satisfy the single subject requirement,” 960 P.2d at 1196; or (2) “are necessarily or properly connected to each other rather than disconnected or incongruous,” **Parrish**, 758 P.2d at 1362, and “have a necessary and proper relationship to the substance of the initiative,” and “are not a separate subject.” 962 P.2d at 929.

22. Within this framework, the Court provides the following analysis of each of the seven “propositions” in the proposed amendment to § 11-18.5:

a. Sections B, B(1) & (2): Aurora will create an “Entertainment District” in northeastern Aurora in order to publicly fund and/or provide financial and tax incentives to the development of “Entertainment Venues,” including, but not limited to motor sports facilities within the District. This is the primary purpose of the Ordinance.

b. Section A(1): In order to facilitate Sections B, B(1) and B(2), the current city-wide ban on public funding of motor sports facilities will be revoked, but such development can only occur within the “Entertainment District” in the northeastern section of the city under Sections B, B(1) and B(2).

c. Sections A(2) & C(1): To minimize and control the effect of Sections B, B(1) and B(2), no “Entertainment District” (and by implication, no “Entertainment Venue,” including, but not limited to any motor sports facility) can be located within one-half mile of any property in a residentially zoned district or subdistrict.

d. Section C(2): To insure that the financial impact from Sections B, B(1) and B(2) is confined to the area benefited, public funds used to assist in the development of any “Entertainment Venue” will come only from the “Entertainment District.”

23. Petitioners assert that the territorial distinction between Section A(1) which revokes the current *city-wide* ban on public funding for motor sports facilities, and the creation of an “Entertainment District” and the development of “Entertainment Venues” (including public funding of motor sports facilities confined to only the *northeast section* of the city in Sections B, B(1) and B(2) automatically creates two subjects in violation of § 5-1 of the Charter. The Court disagrees:

a. In order to accomplish the stated purpose of permitting the development of a publicly-funded motor sports facility in the northeast section of the city, the Ordinance must revoke the city-wide ban on such funding *at least* in that city section. This can be accomplished in one of two methods: (1) leave the ban in place for the city, but exclude the northeast section from the ban; or (2) revoke the city-wide ban, and indicate that motor sports facilities may only be developed in the northeast section.

b. Either method accomplishes the same purpose: The first method continues to focus on the city-wide ban, but with an exclusion for the northeast section. The second method focuses on the development of a motor sports facility, but only in one section, by implication not permitting such development in any other section.

c. The Court does not find the second method (i.e., the method used by Aurora in the Ordinance) to be confusing to the electors, or to raise a second subject.

24. Based on the Court’s analysis of these “propositions,” and in contrast to the second “Whereas” clause of Aurora’s bill (and only for the purpose of this Order), the Court restates the primary purpose of the ordinance amending § 11-18.5:

Whereas, the Aurora City Council believes that creating an “Entertainment District” in the largely undeveloped northeast area of Aurora away from residential zone districts and subdistricts, and providing public funding to “Entertainment Venues” within that District, including (but not limited to) a world-class motor sports facility, and requiring the revocation of the current ban on public funding of motor sports facilities to accomplish that purpose in the northeast section of the City, will be of great economic benefit to all of its citizens.

25. The Court further finds that (1) this primary purpose is a “single subject” in accordance with § 5-1 of the Charter, and (2) all of the seven “propositions” in the amendment to § 11-18.5 “are necessarily or properly connected to each other rather than disconnected or incongruous,” **Parrish**, 758 P.2d at 1362, “have a necessary and proper relationship to the substance of the initiative,” and “are not a separate subject.” 962 P.2d at 929.

E. Legal Analysis – Conformity of the Ballot Title with the Ordinance.

26. As noted above, the title of a ballot initiative must inform the electors of the primary purpose of the initiative:

We believe that the object of the title of an amendment is to notify those concerned with the act as to what is being proposed in the body of the ordinance.

Coopersmith v. City & County of Denver, 399 P.2d 943, 946 (Colo. 1965).

And so, therefore, the tests are: Does the title adequately describe the measure; is the amendment so complex as to render it impossible to adequately and comprehensively express its subject matter in the title; is it possible for a voter to be deceived because of its inadequate or misleading description?

Mewborn, 354 P.2d at 162.

27. As noted above in ¶ 2.c., the ballot Title of the amendment to § 11-18.5 provides:

Without raising City taxes, shall Section 11-18.5 of the Aurora City Charter be amended to support the creation of an entertainment district in northeast Aurora (north of Interstate 70 and east of Hudson Road), to be located no less than one-half mile from any property in the City within a residential zone district or subdistrict, to facilitate the development of entertainment venues, including motor sports facilities, that are anticipated to increase tourism and create jobs, provided that only public funds generated from within the boundaries of the entertainment district may be used to subsidize the development of such venues?

[Response, App. A at 3]. With this language, the Title addresses four (4) “propositions”:

- a. Creating an “Entertainment District” in the northeast section of the city in order to facilitate through public support the development of “Entertainment Venues” within the District including, but not limited to, motor sport facilities.
- b. Restricting the “Entertainment District” (and by implication, any “Entertainment Venue”) to one-half mile or more from any property in a residentially zoned district or subdistrict.
- c. Public funding of motor sport facilities within the “Entertainment District,” thereby implicitly revoking the ban on such public funding within the District.
- d. Restricting public funding to funds or benefits generated within the District.

28. These expressed purposes are the same four categories of related issues which appear within the seven “propositions” in the amendment to § 11-18.5 noted in ¶ 22 above. Therefore, the Title provides the electors the same information that is set forth in the Ordinance.

29. Petitioners assert that, since the electors are not being expressly informed of the revocation of the current city-wide ban on public funding of motor sports facilities, the Title is misleading as to the primary purpose of the Ordinance. The Court disagrees:

- a. As noted above in ¶ 23, Aurora could have accomplished the primary purpose of the Ordinance (i.e., revocation of the city-wide ban on public funding of motor sports facilities, but permitting such funding in the northeast section of the city) using either of two methods.
- b. The net effect of either method is the same: Permitting public funding of a motor sports facility in the northeast section of the city only.
- c. Consequently, the language of the Title stating that (1) the “Entertainment District” will be in the northeast section of the city only, (2) a motor sports facility may only be in the “Entertainment District,” and (3) public funding for a motor sports facility will only come from the “Entertainment District” is neither misleading nor confusing.

30. Based on this legal and factual analysis, the Court finds that the ballot Title of the Ordinance “adequately describe[s] the measure” and is not “inadequate or misleading.” **Mewborn**, 354 P.2d at 162.

F. Legal Analysis – “Catch Phrases” and Slogans.

31. As noted above in ¶ 27, the Title states that the planned motor sports facilities “are anticipated to increase tourism and create jobs” [Response, App. A at 3].

32. Petitioners assert that this language contains “catch phrases” and slogans which are not permitted in the ballot title to an initiative.

33. The scrutiny of language in ballot titles is two-fold and addresses issues of both relevance and prejudice:

a. First, all language in the ballot title must be related to the actual intent of the initiative. That is, reference to a slogan or a “catch phrase” which may appeal to voters, but which has no actual relation to the broad intent of the initiative is not permitted. **Matter of Title, Ballot Title & Submission Clause, & Summary Pertaining to Proposed Initiative Designated Governmental Bus.**, 875 P.2d 871, 875 - 876 (Colo. 1994).

b. Second, the title may not pander to the voters with slogans or “catch phrases” designed to arouse emotion leading to confusion of the actual intent of the initiative and unfair prejudice to the opposing party:

The standard cannot be that a phrase becomes a catch phrase if the petitioner proves that it polls with the public better than other phrases. Surely the same could be said about the phrases “management of growth,” “preserve the social institution of marriage,” and “protect the environment and human health”-phrases we have held are not improper catch phrases. The purpose of the catch-phrase prohibition is to prevent prejudice and voter confusion, not to forbid the use of language that proponents of the initiative might also use in their campaigns.

Instead, the petitioners must prove that, rather than describing the initiative, the phrase provokes emotion such that it impermissibly distracts voters from consideration of the initiative's merits. . . .

In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45, 234 P.3d 642, 650 (Colo. 2010)(citations & footnote omitted).³

34. Based on this standard, the Court finds that the statement in the Title to the Ordinance that a motor sports facility will “increase tourism and create jobs” does not raise emotion, unfairly confuse the voters, or prejudice the Petitioners. These phrases do no more than advocate Aurora’s position in a reasonable manner.

35. Based on this analysis, the Court rejects Petitioners’ argument that the Title contains any language which would pander to the electors’ emotions unfairly.

³ In 234 P.3d 6442, the Supreme Court changed the legal standard for reviewing “catch phrases” and slogans in ballot titles from “words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment,” *In the Matter of the Proposed Initiative on Casino Gaming*, 649 P.2d 303, 308 (Colo.1982), to the “emotion” standard set forth above.

G. Conclusion.

36. Based on the legal and factual rulings set forth above, the Court DISMISSES the Petition on grounds that: (1) the Aurora Charter and ordinances require amendments to the Charter to contain a single subject; (2) the 6/19/17 Ordinance represent a single subject; (3) the Title accurately represents the single subject and primary intent of the Ordinance; and (4) the Title does not contain impermissible “catch phrases” or slogans.

37. Petitioner’s Petition is DISMISSED with prejudice.

38. The Court certifies all issues herein as concluded in the trial court for the purpose of appeal pursuant to C.A.R. 4.2(c).

By Order of the Court this 14th day of July, 2017.



John L. Wheeler
District Court Judge

Cc: All parties