COLORADO SUPREME COURT 2 East 14th Avenue, Fourth Floor Denver, CO 80203	DATE FILED January 28, 2025 11:50 AM
Appeal from: Colorado Court of Appeals Case No.: 2023CA73 Opinion by The Hon. J. Schutz (Hon. Robert D. Hawthorne, concurring) Dissenting Opinion by Hon. Jerry N. Jones	
Petitioner: MATTHEW HOBBS **v.** **Respondents:** CITY OF SALIDA; CHRISTY DOON in her official capacity as CITY OF SALIDA ADMINISTRATOR; GIANT HORNET, LLC, d/b/a HIGH SIDE! BAR AND GRILL	**▲COURT USE ONLY▲**
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RESPONDENTS CITY OF SALIDA AND CHRISTY DOON'S ANSWER BRIEF	

Certificate of Compliance

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

The brief complied with the applicable word limits set forth in C.A.R. 28. This brief contains 3,407 words, which is not more than the 9,500-word limit.

For each issue on appeal, Respondents City of Salida and Christy Doon state whether we agree with Petitioner's statement concerning which Standard of Review should be used in reviewing the issue. We also state whether we agree that the issue has been preserved for appeal. If we disagree, we state why.

We acknowledge that our brief may be stricken if it fails to comply with these rules.

/s/ Erica Romberg
Erica Romberg, #51480

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Issue Presented

1. Whether the Colorado Court of Appeals correctly found that Colorado Revised Statutes (C.R.S.) Section 25-12-103(11) is plain on its face and allows the City of Salida to issue noise permits to private entities to host "cultural, entertainment, athletic, or patriotic events."

Statement of Case

Respondents City of Salida and Christy Doon adopt the facts as provided by the Petitioner and include the following additional facts into the Statement of the Case in Petitioner's Opening Brief:

The City of Salida has a long history and culture of supporting creative arts and is the state's first Creative Arts District. Op. ¶3; CF, pg. 290. Petitioner's home is approximately 570 feet away from the High Side! Bar and Grill. Op. ¶3. Petitioner fails to mention that his home is located in an area that is zoned Industrial and that in addition to the Arkansas River, the country road, and a walking path, that there is also a railroad line running directly in front of Petitioners house. *Id* at ¶4. Prior to any noise complaints from the Petitioner, the Salida City Council discussed the issuance of amplified sound permits at a work session on July 6, 2021. CF, pg. 290. Petitioner was not present for, and did not participate in that discussion. *Id.* After Petitioner began lodging complaints of the noise, Salida City Council further discussed the issue several times including at a

publicly noticed meeting on February 14, 2022. *Id.* At that meeting, City Council received 147 public comments on the issue of noise permits. *Id.* Of the 147 comments that the City Council heard, there was overwhelming support for opportunities for amplified sound. *Id.* Petitioner had notice of the meeting, but did not attend; instead Petitioner provided Council with written comments. *Id.* In addition to the public comments provided on February 14, 2022, a petition was started by High Side! Bar and Grill (Co-Respondent) that, as of July 2022, had 1,461 signatures in support of live music in Salida. R. CF, p. 342 and 100-48. With overwhelming support, based on the best interests of the City, and in determination of how to best protect the public health, safety, and welfare, the Salida City Council chose to continue the amplified sound permits within the City and has issued permits to thirty-nine businesses within the community including Co-Respondent, since that date. R. CF, p. 291.

Argument Summary

The Court of Appeals did not err in holding that the City of Salida was statutorily authorized to issue noise permits to citizens and entities within its community and, specifically, it was authorized to issue noise permits to High Side! Bar and Grill. Despite the Court of Appeal's clear and accurate ruling, Petitioner continues to misread and misconstrue C.R.S. § 25-12-103(11). Petitioner contends that under C.R.S. § 25-12-103(11) the exemption only applies to a mythical

primary category of users and that those primary users must be involved in any subordinate category's use of property. Petitioner's interpretation is simply wrong and conveniently ignores the remaining text of the statute and, in fact, adds words to the statute, something the Petitioner inaccurately accuses the Court of Appeals of doing in its analysis. Given that the plain language of the statute is clear, the Court need not look any further. Moreover, even if the Court were to look at extrinsic evidence, the legislative history and the possibility of an absurd outcome also supports the Respondent's conclusion. Lastly, given the clear language of the statute, the City was acting well within its statutory authority when issuing sound permits.

Respondents City of Salida and Christy Doon agree with Petitioner's standard of review in its Opening Brief as a question of statutory interpretation is a question of law and therefore subject to *de novo* review. *Am. Family Mut. Ins. Co. v. Barriga*, 418 P.3d 1181, 1183 (Colo. 2018). Respondents City of Salida and Chirsty Doon further agree that the issue of whether or not C.R.S. § 25-12-103(11) allows the City of Salida to issue noise permits within the City exceeding the limits set forth by statute was properly preserved for appeal.

Argument

1. **The majority properly applied statutory rules of construction when it found C.R.S. § 25-12-103(11) is plain on its face.**

Petitioner asks this Court to read meaning into the statute that is simply not there and urges this Court to conflate the issue properly before it with myriad situations that are simply not at issue under the facts presented in this case. Petitioner first labors mightily to torture ambiguity into C.R.S. § 25-12-103(11) and then misapplies the canons of statutory interpretation to fit his intended result. Respondent respectfully urges this Court to find C.R.S. § 25-12-103(11) unambiguous in line with the trial court and the majority opinion of the Court of Appeals. Based on the plain meaning of the statute, Respondents also ask this Court to find the City's issuance of amplified noise permits fall squarely within the exemption created by the General Assembly in 1987.

It is long established that a court's first objective in construing a statute is to fulfill the intent of the General Assembly. *Colorado Springs v. Securecare Self Storage*, 10 P.3d 1244, 1248 (Colo. 2000)(citing *State v. Nieto*, 993 P.2d 493, 500 (Colo. 2000) and *Walker v. People*, 932 P.2d 303, 309 (Colo. 1997)). "To determine the legislative intent, we first look to the words used, and these words and phrases must be read in context and accorded their plain meaning." *Minch v. Town of Mead*, 957 P.2d 1054, 1056 (Colo.App. 1998). "If courts can give effect to the ordinary meaning of the words used by the legislature, the ordinance should be construed as written, being mindful of the principle that courts presume that the legislative body meant what is clearly said." *Colorado Springs*, 10 P.3d at 1249.

"We must consider the statutory text as a whole, and give 'consistent and harmonious, and sensible effect to all its parts and avoid [] constructions that would render any words or phrases superfluous and lead to illogical or absurd results.'" *Am. Family Mut. Ins. Co. v. Barriga*, 418 P.3d 1181, 1183 (Colo. 2018)(quoting *Pineda-Liberato v. People*, 403 P.3d 160, 164 (Colo. 2017)). However, in doing so, courts do not have "free rein" to rewrite statutes to achieve what courts believe to be a more desirable result. *People v. Bice*, 542 P.3d 709, 715 (Colo.App. 2023). "[T]o preserve the separation of powers, courts must approach rejecting a statute's plain language to avoid creating an absurd result very cautiously." *Oracle Corp. v. Dep't of Revenue of State*, 442 P.3d 947, 956 (Colo.App. 2017). If the statutory language is clear, it is applied as written. *State Farm Mut. Auto. Ins. Co. v. Fisher*, 418 P.3d 501, 504 (Colo. 2018)(citing *Coloradans for a Better Future v. Campaign Integrity Watchdog*, 409 P.3d 350, 353 (Colo. 2018)).

At issue in this case is C.R.S. § 25-12-103(11) and the City of Salida's application of its use to allow High Side! Bar and Grill to host live concerts during the summer months.

C.R.S. § 25-12-103(11) clearly states:

> This article is not applicable to the ***use of property by*** this state, ***any political subdivision of this state***, or any other

> entity not organized for profit, including, but not limited to, nonprofit organizations, ***or any of their*** lessees, licensees, or ***permittees, for the purpose of*** promoting, producing, or ***holding*** cultural, ***entertainment***, athletic, or patriotic ***events, including, but not limited to, concerts***, music festivals, and fireworks displays. This subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement. Section 25-12-103(11), C.R.S. 2025 ("Sec.103(11)"; ***emphasis added***).

The purpose of this statute is to provide a specific exemption to otherwise applicable noise limits established in an earlier subsection of the statute, C.R.S. § 25-12-103(1). By breaking the statute down into phrases, the legislative intent can be gleaned through the plain meaning of the statute. The first phrase clearly states that the noise limitations are not applicable to "the use of property by the state, any political subdivision of the state, or any other entity not organized for profit, including, but not limited to nonprofit organizations." Sec.103(11). The statute then goes on to list a subgroup that are ***also*** exempt from the noise limitations, "or any of their lessees, licensees, or permittees." *Id.* The last part of the sentence concludes by clearly and specifically identifying the allowable purposes for which the exemption applies as, "promoting, producing, or holding cultural,

entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays." *Id.*

Despite the clear language adopted by the legislature, Petitioner contends that by finding the statute unambiguous, the Court of Appeals ignored phrases and violated the canon of construction that statutes must be read as a whole. This is simply inaccurate, indeed, to interpret the statute as the dissent and Petitioner propose is to, ironically, invite this Court to violate the very rule that Petitioner invokes. In order to find these arguments persuasive, this Court would have to import words or phrases into the statute that simply do not exist.

Petitioner's argument centers on the phrase "use of property by" in Sec. 103(11). Petitioner's argument to the Court of Appeals asserted that the property had to actually owned, leased, or otherwise possessed by the State, a political subdivision of the State, or a nonprofit. Op. at ¶ 27. Now, the Petitioner asks this Court to apply the word "use" in a manner inconsistent with the ordinary meaning of the word, an application that requires the addition of non-existent words to the statute, in order to give Petitioner's interpretation legitimacy. Petitioner's Opening Brief, pg. 18. Merriam-Webster defines the word "use" as "to carry out a purpose or action by means of." *Use,* Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/use, (last visited January 16, 2025),

a definition that plainly encompasses, in this context, far more than simply legal occupation or ownership of real property.

Petitioner asserts that the phrase "use of property by" ***only*** applies to "the state, any political subdivision of the state, or any other entity not organized for profit." That is an illogical construction. It isolates this phrase from its context and asks this Court to read limits on the cited phrase that do not exist in the text of the law. As noted above, "courts presume that the legislative body meant what is clearly said." *Colorado Springs*, 10 P.3d at 1249. If the legislature had intended to require that political subdivisions be directly involved in or act as hosts or sponsors for these cultural events, they could well have written that requirement into the statute. What is plain in the present text of Sec. 103(11) is that this option was available and was a choice the General Assembly did not make in 1987 and has not seen fit to make since. Petitioner's suggested construction should accordingly be rejected.

However, should this Court agree that the phrase "use of property by" only applies to use by the political subdivision itself, and not the use by the political subdivision's permittee, Respondents contend that even if the City is not involved in the event, the issuance of a noise permit to a private entity still qualifies as the City using the property within its jurisdiction. Pursuant to C.R.S. § 31-23-301, cities have the authority to regulate zoning within their limits. These zoning regulations denote a city's desire for how property in different sectors of the city

can and cannot be used. Specifically, Salida has been designated as a Creative District via C.R.S. § 24-48.5-304(1)(a) with the purpose of supporting ongoing economic growth and creating a climate in which creatives and creative enterprises can prosper. *See* City of Salida Creative District, https://www.salidacreates.com/salida-creative-district/, (last visited January 27, 2025) and Arts and Culture, https://www.cityofsalida.com/artsculture/page/salida-creates-creative-district, (last visited January 27, 2025). Furthermore, the Creative District includes not just artists, but "creative entrepreneurs of all types, including ***locally owned restaurants*** and designers." *Id.* (***emphasis added***). Through this designation, the City has denoted its support for the use of all property in the downtown business district, of which the High Side! Bar and Grill in various incarnations is a part, for vibrant art and live music venues. Op. at ¶ 3.

Based on the undisputed facts specific to this case and the plain language of the statute, the Court of Appeals properly decided that the statute is plain on its face and that the City's issuance of the permits to the High Side! Bar and Grill to facilitate summer concerts in the Creative District was proper.

2. Any argument by Petitioner that goes beyond the plain language of the statute is derived from fabricated ambiguity and misdirection.

a. The language of the statute is clear and the Court should not look to the legislative history; however, even if the Court does, the majority's findings should be upheld.

As previously noted, if the language of a statute is clear, courts are to look no further and apply the language according to its ordinary meaning. *State Farm Mut. Auto. Ins. Co.* 418 P.3d at 504. However, if there is ambiguity within the statute, courts may look to extrinsic evidence of legislative intent. *Henderson v. City of Fort Morgan*. 277 P.3d 853, 855 (Colo.App. 2011)(citing *Bd. of County Comm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004)). A statute will be considered ambiguous if it is reasonably susceptible to multiple interpretations. *Linnebur v. People*, 476 P.3d 734, 737 (Colo. 2020).

Petitioner's entire argument collapses if Sec. 103(11) is simply read plainly. But that reading yields a result that Petitioner does not prefer, so, in service of that outcome, Petitioner spends pages urging this Court to divine or discover ambiguity in a statute where there is none. *See* Notes Live Amicus Brief, pg. 4, 7, 9-12.

Petitioner properly notes that C.R.S. § 25-12-103(11) was added as the result of HB 87-1340. Petitioner's Opening Brief, pg. 29. The 1987 exemption demonstrates a legislative intent to give local governments control and authority to permit and regulate noise locally for cultural events such as the concerts that are being challenged in this case. Indeed, the Court of Appeals found the purpose of the adoption of Sec. 103(11) was to "provide local governments with the flexibility and control to apply local standards to regulate cultural, entertainment athletic, or

patriotic events, rather than subject these events to a statewide, unbending mandate." Op. at ¶ 48.

Petitioner notes that the title for HB 87-1340 was "An Act Concerning the Exemption of Property Used by Not for Profit Entities for Public Event From Statutory Maximum Permissible Noise Levels." Petitioner's Opening Brief, pg. 31. Unfortunately for Petitioner, the title of the 1987 legislation neither fully explains the prerogatives given to non-profits nor the many other aspects of the bill. Fundamentally, the title of the bill certainly cannot serve to read out of the statute its actual language. The historic language reads, "[e]xempts property used by this state, political subdivisions of this state, and nonprofit entities, ***and*** their lessees, licensees, and permittees, for cultural, entertainment, athletic, or patriotic events from the maximum permissible noise levels allowed by law." CF pg. 201 (***emphasis added***). While this specific language varies slightly from the language that was ultimately codified as C.R.S. 25-12-103(11), the intent of the General Assembly to create exemptions such as the permit at issue in this suit without the involvement of the City as part of the event remains clear.

b. Adopting Petitioner's reading of the statute would be the truly absurd result.

Petitioner suggests that were the City to prevail it would open the door to an absurd result. Petitioner's Opening Brief, pg. 28. But the various interpretations of Sec. 103(11) that Petitioner suggests will lead inexorably to absurd results from the

plain meaning are red herrings involving facts and questions not before this Court in the case at bar. It is worth recognizing that, in the thirty-seven years that Sec. 103(11) has been the law of the State, none of the absurdities forecast by Petitioner, if the statute is applied as written, have actually occurred.

Petitioner echoes the dissent in the Court of Appeals, arguing that havoc of many kinds would ensue if this Court were to affirm that the statute applies as written. These arguments are, in and of themselves, absurd and continue to ignore words in the statute that serve to prevent the scenarios suggested. Petitioner's Opening Brief, pg. 28-29. For example, Petitioner suggests that the "plain meaning" of Sec. 103(11) means that any person who holds a license, lease, or permit issued by the City or the State would be given free rein to host an event and exceed the noise limitations outlined in C.R.S. § 25-12-103(1).

In order to accept the chaos predicted by the dissent and Petitioner, it would require that this Court or anyone applying Sec. 103(11) ignore the key phrase, "for the purpose of promoting, producing, or holding…" the event in question. Driver's licenses, commercial leases, and building permits are quite obviously not given for the purpose of holding cultural events. It also blatantly ignores the final sentence of Sec. 103(11) which states, "[t]his subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate

noise abatement." This last sentence exists in the statute to prevent the absurd results envisioned and propounded by the dissent and Petitioner.

This argument also ignores the steps that the City of Salida has taken to control these events. *See* CF 31 (example permit). In order for permits to be issued, the City Administrator must approve the event and permittees must agree and meet the standards outlined by the City. *Id.* These limitations include the maximum allowable decibels emitted from the premises, when events must conclude, and times throughout the year when amplified sound is not permitted. *Id.* Further, the City specified that if anyone wishes to host an event outside the parameters listed on the permit, such use would be subject to a public hearing and approval by the Salida City Council. *Id*.

Were this Court to find in favor of the Petitioner, a truly absurd result would occur. The vibrant culture of not only Salida, but other municipalities across the state, would be forever changed.

c. The Majority's opinion does not conflict with other sections within the Noise Abatement Act.

Petitioner contends that the Appellate Court's decision creates an unlawful conflict with other sections of the Noise Abatement Act, specifically C.R.S. § 25-12-108. This argument is solely made for the purpose of misdirection and is simply wrong. A Court should only turn to a section in the context of the Act as a whole, when there is ambiguity. *Henderson* 277 P.3d at 855. Respondents again assert that

no ambiguity exists, and any argument set forth by Petitioner's argument beyond that of C.R.S. § 25-12-103(11) is inappropriate. However, if the Court concludes ambiguity is present, "[a] comprehensive regulatory scheme such as the Act must also be construed as a whole to give effect and meaning to all its parts." *Wolford v. Pinnacol*, 107 P.3d 947, 951 (Colo. 2005).

C.R.S. § 25-12-108 states:

> Except as provided in sections 25-12-103 (12) and 25-12-110, this article shall not be construed to preempt or limit the authority of any municipality or county to adopt standards that are no less restrictive than the provisions of this article. Section 25-12-108, C.R.S. 2025.

Petitioner contends that the majority's interpretation is at odds with the above preemption. Unfortunately, Petitioner again ignores the first part of C.R.S. § 25-12-103(11) which plainly states "[t]his article is not applicable to…" which clearly establishes and exemption from the rest of the Act. Likewise, Petitioner conflates the standards with the exemption to those same standards. Salida does not in fact have noise standards that are less restrictive than those established in C.R.S § 25-12-103(1) but, rather, the City's standards mirror those of the state. *See* Salida Municipal Code, Section 10-9-30.

The Court should not fall for Petitioner's misdirected bait and uphold the decision of the Court of Appeals.

Conclusion

Based on the plain language of C.R.S. § 25-12-103(11), the Court of Appeals properly found that the City of Salida can issue permits to allow entities, like High Side! Bar and Grill, to exceed the statewide decibel levels for the purposes of hosting concerts. Even if the Court were to consider extrinsic evidence, this Court should come to the same conclusion.

Certificate of Service

The undersigned hereby certifies that on the 28th day of January, 2025, a true and correct copy of the foregoing Answer Brief was filed and served via Colorado Courts E-Filing, electronic mail, and/or U.S. Mail to the following counsel of record:

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