

<p>DISTRICT COURT, SAN JUAN COUNTY, COLORADO</p> <p>Court Address: PO Box 900, 1557 Greene St., Silverton, CO 81433</p> <p>Phone Number: (970) 387-5790</p> <p>Plaintiff(s): JOHN H. WRIGHT</p> <p>Defendant(s): TOWN OF SILVERTON</p>	<p>DATE FILED: August 4, 2023 3:29 PM</p> <p>COURT USE ONLY</p>
	<p>Case Number: 2023CV1 Division: 1</p>
<p align="center">ORDER UPON THE PETITION FOR JUDICIAL REVIEW</p>	

This case comes before the Court upon a petition for judicial review of the contents of a petition for a citizen ballot initiative. The initiative sought to amend the municipal code of the Town of Silverton to allow the use of off-highway vehicles on certain portions of streets within the Town’s municipal limits. Initiative and referendum powers of municipalities are governed by CRS 31-11-101, *et. seq.* The petitioner argues that the petition circulated contains two defects. The first alleged defect was the inclusion of extraneous material in the petition; the second defect alleged was that the petitions submitted had a ballot question printed upon it while CRS 31-11-111(2) requires the Town Board of Silverton to determine the ballot question that will be submitted to the electorate.

EXTRANEOUS MATERIAL

CRS 31-11-106(1) states, in part, that “The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material.” The

petitioner complains that while the petition in support of an initiative is required to list the names and addresses of two persons representing the proponents of the initiative (CRS 31-11-106(2)), an additional 77 words were printed on the petition above the names of the representatives. The petitioner argues these 77 words are “extraneous material” that should not have been included on the petition and that such inclusion voids the petition. The disputed portion of the petition states:

...the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

The Court disagrees with the petitioner’s argument. The challenged language explains to the electors, who are considering whether to sign the petition, that the proponents of the initiative expect either a change to a municipal ordinance will be adopted by the town board or that a municipal election will decide the issue. The information is certainly helpful to potential signatories to the petition so they can decide whether they wish to sign the petition. The Court finds, as a matter of law, this information is not “extraneous material.”

BALLOT TITLE

The petitioner argues that either the clerk or the initiative proponents set the ballot title in violation of CRS 31-11-111(2) which requires “The legislative body of the municipality or its designee shall fix a ballot title for the referred measure.” The following was printed on the circulated petition:

Ballot Question:

“Shall a route be established to allow the use of Off-Highway Vehicles on Streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and prohibiting the use of Off-Highway Vehicles in residential areas?”

While the ballot question is to be set by the town board, the printing of the above does not divest the town board of its powers or obligations under CRS 31-11-111. After ordering the election, the town was free to accept the ballot question as printed on the petition or fix its own title. The Court does not see a violation of any part of Article 11 of Title 31 by the printing of the proposed ballot question on the petition.

CONCLUSIONS

Because the rights to initiative and referendum are considered fundamental rights under the Colorado Constitution, substantial compliance with the statutory scheme regarding initiative and referendums is the standard to determine whether to reverse the decision of a municipality to hold an election on an initiative submitted to it by its citizens. *Loonan v. Woodley*, 882 P.2d 1380, (Colo. 1994).

In light of the nature and seriousness of these rights, we have held that constitutional and statutory provisions governing the initiative process should be “liberally construed” so that “the constitutional right reserved to the people ‘may be facilitated and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.’”

Id., 1384, *citation omitted*. To determine substantial compliance, the test is:

(1) the extent of the proponents' non-compliance, that is, whether the proponents systematically disregarded the statutory requirements or whether their divergence was an isolated instance; (2) the purpose of the statutory provision and whether that purpose is substantially achieved despite the non-compliance; and (3) whether it can reasonably be inferred that the proponents made a good faith effort to comply or whether the non-compliance is more properly viewed as an attempt to mislead the electorate.

Matter of Title, Ballot Title & Submission Clause, & Summary for Proposed Initiated Const.

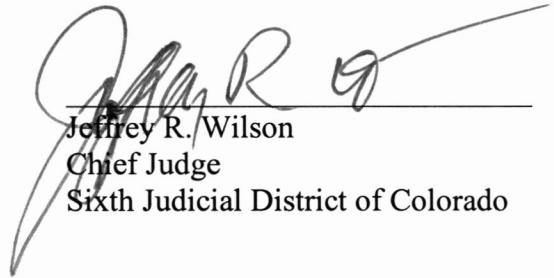
Amend. 1996-3 Adopted on Apr. 3, 1996, & Motion for Rehearing Denied on Apr. 17, 1996, 917

P.2d 1274, 1276 (Colo. 1996). Even if the items complained of in the petition could be

considered as extraneous material or an usurpation of the town board's powers, the Court finds

that the petition substantially complies with CRS 31-11-101, *et. seq.* The petition challenging the initiative and referendum is denied.

Done and signed this 3rd day of August, 2023.



Jeffrey R. Wilson
Chief Judge
Sixth Judicial District of Colorado