COLORADO SUPREME COURT 2 East 14th Avenue, Fourth Floor Denver, Colorado 80203	DATE FILED March 4, 2025 11:38 AM
Colorado Court of Appeals Case No.: 2023CA73 Opinion by Hon. Timothy J. Schutz (Hon. Robert D. Hawthorne, concurring) Dissenting Opinion by Hon. Jerry N. Jones	
Petitioner: Matthew K. Hobbs, **v.** **Respondents:** City of Salida; Christy Doon, in her official capacity as City of Salida Administrator; and Giant Hornet LLC d/b/a HighSide! Bar and Grill.	
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Reply Brief	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains **4,747** words (reply brief does not exceed 5,700 words).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of the Colorado Appellate Rules 28 and 32.

s/ Julian R. Ellis, Jr.
Julian R. Ellis, Jr.

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INTRODUCTION

In 1971, the general assembly deemed excessive noise to be a dangerous environmental pollutant and changed how it is regulated in the state. The general assembly adopted a comprehensive statutory framework to protect against the harms from excessive noise by setting maximum permissible noise levels, defining narrow exemptions based on legislative priorities, and creating a remedial scheme to empower those impacted by noise pollution—residents—to respond.

The Act's statewide standards are reasonable and create balance by regulating excessive noise based on zones (residential, commercial, light industrial, and industrial) and time (7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m.). The standards assigned to these zones and times range from 50 db(A) (e.g., moderate rainfall or normal conversation) to 80 db(A) (e.g., blow dryer or shouting one yard away).

While the general assembly, through the Act, overhauled how excessive noise is regulated, it did not eliminate local authorities from the regulatory equation. Rather, the Act set statewide baseline standards for excessive noise and allowed localities to enact more restrictive regulations (or regulate downward) to further protect the welfare of their residents. This was the regulatory landscape when the general assembly amended the Act in 1987, to add Colo. Rev. Stat. § 25-12-103(11). The Act created statewide noise standards, and localities

could vary from those statewide standards to be more protective.

Respondents claim that the 1987 amendment fundamentally changed the design of the Act by granting localities (and private nonprofits) vast power to permit or license excessive noise otherwise prohibited under the Act. The only limiter? That the noise be associated with undefined "entertainment" events.

Hobbs disputes that the 1987 general assembly silently changed *the* key feature of the Act's regulatory design. Instead, subsection 103(11) is a narrow exemption that allows the state, localities, and nonprofits to use property to hold entertainment events, along with their necessary permittees and licensees, without violating the Act. This reading maintains the Act's comprehensive statewide design and intent, while crediting the text of the narrow exemption, which was to allow Fiddler's Green, a private nonprofit, to hold concerts.

So far, four judges on the court of appeals have agreed with Hobbs—the dissent here and the division in *Freed*. Respondents don't even acknowledge that a unanimous division of the court of appeals in a published decision flat rejected their view of subsection 103(11). This is pure avoidance, and it is neither helpful nor persuasive. In the end, the text, structure, and history point in one direction: that Hobbs's interpretation of the exemption is the right one.

Just as important though, Hobbs's reading of the exemption will maintain the statewide scheme and ensure the private rights created in the Act still have meaning. This case perfectly illustrates why this is so important. Here, an unelected official issued a blanket permit to a single private for-profit bar that allowed it to hold more than 50 outdoor concerts over a five-month period and emit noise 3,000% higher than the maximum level allowed under statewide standards. Indeed, it's no secret why special interests like Amici Notes Live are lining up in support of judicializing this change to the Act. Building outdoor concert venues in the middle of residential areas and convincing unelected officials to approve raucous concerts is much easier than lobbying the general assembly for sweeping changes to state law.

The court should reverse.

ARGUMENT

I. The Facts on Review Are Limited to the Well-Pled Allegations in Hobbs's Amended Complaint.

The district court decided this case on the City's and HighSide's motions to dismiss and for judgment as a matter of law. (*See* Order 1.) On such review, courts "accept all allegations in the complaint as true, and [they] view them in the light most favorable to the non-moving party." *N.M. ex rel. Lopez v. Trujillo*, 397 P.3d 370, 373 (Colo. 2017). "The court may only consider matters stated within the complaint

itself," or attached to the complaint, "and may not consider information outside of the confines of that pleading." *Pub. Serv. Co. of Colo. v. Van Wyk*, 27 P.3d 377, 386 (Colo. 2001). On appellate review, "[the] appellate court is in the same position as the trial judge." *Id.*

So here, the only facts before the Court are the well-pled allegations in Hobbs's amended complaint and its attachments. Despite this, the City's and HighSide's answer briefs are replete with citations to evidence outside the amended complaint (*see* City Answer Br. 6–7; HighSide Answer Br. 6–10), including to conclusory declarations that were never subjected to the truth-seeking process, or even reviewed by the district court. This evidence is irrelevant to this appeal, and the Court should limit its review to the operative pleading.

II. The Majority's Interpretation Is Against Subsection 103(11)'s Text and Structure.

Both sides agree the objective here is to interpret subsection 103(11) to determine "legislative intent." But the agreement ends there.

1. For their part, Respondents move straight to the exemption in subsection 103(11), elevating a single clause in a single subsection—"or any of their lessees, licensees, or permittees"—and purport to divine the subsection's meaning without reference to the Act's comprehensive design, the narrow *exemption* at issue, or the provisions adjacent to subsection 103(11), including a provision defining the Act's preemptive

effect. Although Respondents may prefer to avoid these markers of legislative intent, the Court cannot bypass them.

In determining legislative intent, the general assembly has instructed courts to "presume[]" certain constants: every enactment is intended to comply with the state constitution, "[t]he entire statute is intended to be effective," "[a] just and reasonable result is intended," and "[p]ublic interest is favored over any private interest." Colo. Rev. Stat. § 2-4-201(1)(a)–(c), (e). Additionally, "[t]he legislature is also presumed to intend that the various parts of a comprehensive scheme are consistent with and apply to each other … ." *BP Am. Prod. Co. v. Patterson*, 185 P.3d 811, 813 (Colo. 2008). This is why "[w]hen interpreting a comprehensive legislative scheme, [courts] construe each provision to further the overarching legislative intent." *A.S. v. People*, 312 P.3d 168, 171 (Colo. 2013). "[W]hen a statute is clearly part of a comprehensive regulatory scheme, the scheme should be construed to give consistent, harmonious, and sensible effect to all its parts." *Martinez v. People*, 69 P.3d 1029, 1031 (Colo. 2003).

Further, this Court has held that comprehensive legislative acts that are "'remedial and beneficent in purpose … should be liberally construed' to accomplish [their] goals." *Wolford v. Pinnacol Assurance*, 107 P.3d 947, 951 (Colo. 2005) (quoting *Davison v. Indus. Claim*

Appeals Off., 84 P.3d 1023, 1029 (Colo. 2004)). And, by extension, any exemption from such legislative acts must be narrowly construed. *Sargent Sch. Dist. No. RE-33J v. W. Servs. Inc.*, 751 P.2d 56, 60 (Colo. 1988). Respondents cannot avoid these interpretive truisms.

2. As expected, the City and HighSide both argue subsection 103(11) is clear on its face and supports their preferred reading of the statute. (City Answer Br. 11; HighSide Answer Br. 15.) What is surprising though, is neither the City nor HighSide contend with—or even mention—that a unanimous division in *Freed v. Bonfire Entertainment LLC* recently rejected their "plain language" argument. 2024 COA 65, ¶ 42. Or that the division in *Freed* concluded that subsection 103(11) is susceptible to multiple meanings and therefore ambiguous. *Id.* ¶ 41. Instead, Respondents chide Hobbs for doing what *Freed* requires: engaging extra-textual guides to determine legislative intent considering the differing meanings of subsection 103(11).

In truth, the interpretation of subsection 103(11) has split the court of appeals: two judges agree with Respondents (Judges Schutz and Hawthorne) and four judges agree with Hobbs (Judges Jones, Fox, Grove, and Sullivan). The four-judge majority has the best read.

3. Again, the narrow exemption at issue provides,

> [The Act] 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 corporations, 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.

Colo. Rev. Stat. § 25-12-103(11) (highlights added). While there *is* a correct grammatical reading of subsection 103(11) that gives meaning to the entire subsubsection and advances the general assembly's statewide design (*see* Opening Br. 19–21), admittedly the statute is susceptible to other interpretations. There are three:

Hobbs's interpretation:

The Act is not applicable when the (1) the state, political subdivisions, or nonprofits use property (2) to promote, produce, or hold an entertainment event. If there is qualifying use by the state, political subdivision, or nonprofit, then their lessees, licensees, or permittees are also exempt from statewide noise standards.

Respondents' interpretation:

The Act is not applicable when the (1) the state; political subdivisions; nonprofits; or the state's, political subdivision's, or nonprofit's lessees, licensees, or permittees use property (2) to promote, produce, or hold an entertainment event.

Third interpretation:

The Act is not applicable when the (1) the state; political subdivisions; nonprofits; or a nonprofit's lessees, licensees, or

permittees use property (2) to promote, produce, or hold an entertainment event.

a. Taking the interpretations in reverse order, no party has advanced, and the majority, dissent, and *Freed* rejected, the third interpretation. The qualifying clause, "any of their lessees, licensees, or permittees," applies not only to the immediately preceding entity (i.e., nonprofits), but all the preceding entities in the series (i.e., the state, political subdivisions, and nonprofits). (*See* Op. ¶ 39; *id.* ¶ 69 n.6 (Jones, J., dissenting).) *See also Freed*, 2024 COA 65, ¶ 37 (citing Colo. Rev. Stat. § 2-4-214 (rejecting the last-antecedent rule)). Indeed, it would be odd—and unconstitutional (Opening Br. 26–27)—for the general assembly to delegate only to nonprofits the power to permit or license violations of statewide noise standards.

b. Respondents' interpretation is no less flawed. *First*, if Respondents are right, the first "or" (highlighted above in red) is meaningless. As is, the red "or" separates three primary categories of entities: the state, political subdivisions, and other nonprofits. Respondents disagree and contend there are *four* categories of entities, adding "lessees, licensees, or permittees" to the series of entities. But crediting this interpretation would read the red "or" out of the statute, which the Court cannot do. *See Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007) ("We do not … subtract words" from statutes.). HighSide

contends that the red "or" is needed to avoid ambiguity created by the last-antecedent rule. (HighSide Answer Br. 18.) But the general assembly abolished that rule before the adoption of subsection 103(11), *see* Colo. Rev. Stat. § 2-4-214 (1981), so that cannot be the answer.

Amici Notes Live adds another take on the red "or": that it separates the state and political subdivisions from "other" nonprofits. (Amici Notes Live Br. 10.) That's the point though. The red "or" separates *three* primary categories of entities, all of which are "not for profit entities," and one of which must "use" property before the exemption applies. Amici Notes Live adds that there are "three distinct categories of persons or users, each separated by the term **'or'**," collapsing "the state *or* a political subdivision of the state" into a single category. (*Id.* at 9 (bold in the original; second emphasis added).) This reading misstates the statute. There is no "or" between "this state" and "any political subdivision of this state." The general assembly could have written the statute as Amici Notes Live suggests, but it didn't.

For its part, Amicus CML accuses Hobbs of "assign[ing] undue significance to the second use of a disjunctive 'or' [i.e., the blue 'or' above]." (Amicus CML Br. 7.) But Amicus CML tilts at the wrong "or." Nor is it disqualifying to assign "significant meaning" to every word in the statute. (*Id.* at 8.) That is the purpose of interpreting statutes.

Second, if Respondents are right, it nullifies the comma highlighted above in green and distorts the meaning of the "their" highlighted in gray. As Hobbs argued in his opening brief, the phrase "their lessees, licensees, or permittees" is set off by commas, meaning it is a parenthetical element that is explanatory of the primary-entity list, as opposed to a continuation of the list. (Opening Br. 20.) Further, the use of the possessive pronoun "their" maintains a connection between the parenthetical element and the primary entities' use of property. (*Id.*) In structuring the statute, the general assembly created derivative users—lessees, licensees, and permittees—that are also exempt when a primary entity uses property to hold qualifying events. Including the derivative actors recognizes the reality that they will almost always be needed to assist with events. Thus, the statute establishes the primary-exempt entities and extends the exemption to qualifying actors that derive their property use rights from those primary entities. Respondents and their Amici offer no response to this argument.

c. Hobbs's—and *Freed*'s—interpretation of subsection 103(11) suffers from none of these textual infirmities. It gives meaning to every word in the statute and follows the chosen structure and punctuation.

The City responds that Hobbs's interpretation is inconsistent with the "ordinary meaning" of the word "use" and "read[s] limits" into the

phrase "use of property by" (City's Answer Br. 12–13), but the City does not develop these arguments or say *how* Hobbs's interpretation is against the plain meaning of the text. They can be ignored for this reason alone. Next, the City adds that, if Respondents lose on the text, the Court should construe the phrase "use of property by" to include the "issuance of a noise permit to a private entity" even when a primary entity "is not involved in the event." (*Id.* at 13.) The City compares this to zoning decisions. (*Id.* at 13–14.) But again, the City fails to develop the argument. It does not argue that the City's zoning decisions equate to property "used by" the City (which would be strange, and may itself lead to undesirable outcomes like expanded tort liability); it offers no limiting principle, so logically every permit, license, or lease involving property would constitute the *City's* use of property; and it provides no text-based support for its alternative interpretation.

HighSide's primary retort is that Hobbs's interpretation is inconsistent with the series-qualifier canon. (HighSide Answer Br. 17.) That is, "use of property by" is a prepositive modifier applying to a four-part series including the primary- and subordinate-entity lists. This is wrong. *First*, HighSide assumes the subordinate-entity list is a continuation of the primary-entity series. Hobbs has already disproved that assumption. *Second*, HighSide misses *the* exception to the series-

qualifier canon: the use of "determiners" limiting any carryover. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 148 (2012) ("The typical way in which syntax would suggest no carryover modification is that a determiner (*a, the, some, etc.*) will be repeated before the second element."). Here, "of their" is a critical determiner limiting carryover. *Third*, subsection 103(11) differs from the exemplar statutes HighSide cites because there is no "or" before each noun or verb in the assumed series. (*Compare* HighSide Answer Br. 17 (citing cases and statute), *with* Colo. Rev. Stat. § 25-12-103(11) (no "or" between "this state" and "any political subdivision of this state").) If anything, the series-qualifier canon supports Hobbs.

4. The Act's broader structure and design is further evidence that Hobbs's interpretation is right. Before 1971, localities had broad authority over the regulation of noise in their jurisdictions. That fundamentally changed with the adoption of the Act. Through the Act, the state removed local power over "excessive" noise by establishing statewide policies, including setting noise maximums or standards, Colo. Rev. Stat. §§ 25-12-101, -103; deeming noise above the statewide standards an environmental pollutant dangerous to humans and, therefore, an actionable public nuisance, § 25-12-101; and creating a private right for residents to abate violations of these nuisances in court

through prohibitory injunctions, §§ 25-12-104, -105. To be sure, the general assembly did not abrogate all local power over noise regulation. Localities remained free to regulate downward and adopt more protective measures, except in defined circumstances involving electric transmission facilities and on- and off-highway vehicles. *See* §§ 25-12-103(12)(b), -107(1), -108, -110(6).

Respondents and their Amici do not dispute any of this. Yet, they maintain that a discrete and narrow *exemption* adopted 16 years after the fact overhauled the entire design of the Act. How so? By undoing the abrogation of local control and granting local authorities and private nonprofits, of all things, the power to permit and license excessive noise—deemed a pollutant—to anyone, anywhere so long as the excessive noise is for "entertainment." At the same time, eviscerating the rights of residents to protect themselves from that pollutant. Such a result is hard to accept, particularly without explanation.[1] Of course, it's unsurprising that special interests like

[1] Amici Notes Live and CML point out that localities already "extensively regulate[] noise." (*See* Amici Notes Live Br. 16; *see also* Amicus CML Br. 3.) That does not change the fact that local regulation must comply with the statewide policies in the Act. And many do. The City of Boulder's municipal code, for example, provides that "[n]o person shall ... promote or facilitate the carrying on of any activity" that violates statewide noise limits. *See* Boulder Muni. Code § 5-9-3(a)(3). Consistent with Hobbs's interpretation of subsection 103(11), the code

HighSide and Amici Notes Live, which just built an 8,000-seat outdoor amphitheater in the middle of a residential area,[2] are in support.

It is said that legislative bodies do not fundamentally change the design of a regulatory scheme in vague or ancillary terms—that is, they do not "hide elephants in mouseholes." *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Here, the change advanced by Respondents comes not as an elephant, but as a blue whale.

III. The Majority's Interpretation Violates Multiple Interpretative Canons.

1. Neither Respondents nor their Amici seriously address the

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exempts "sound ... made on property belonging to or leased or managed by a federal, state, or county governmental body ... and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body." § 5-9-3(d)(6). The code even clarifies its noise ordinance "shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state." § 5-9-3(e). The City of Pueblo's code of ordinances also follows statewide noise limits, *see* Pueblo Code of Ordinances § 11-1-607(d)(1), but exempts "the Colorado State Fairgrounds or the use thereof when duly authorized by the Colorado State Fair Authority," § 11-1-607(d)(8). These ordinances are missing from Amicus CML's exhibit. (Amicus CML Br., Ex. A.)

[2] *See* John Wenzel, *Ford Amphitheater: After 600 Noise Complaints in Two Weeks, A New $90 million Amphitheater Is Facing the Music*, Denver Post (Aug. 23, 2024), https://bit.ly/3CX9Qzc; Dan Boyce, *For Owner of Ford Amphitheater in Colorado Springs, Live Music's Future Is in Mid-Size Cities—Even If Locals Complain About the Noise*, CPR.org (Feb. 27, 2025), https://bit.ly/4btr3x1.

constitutional doubt forced on subsection 103(11) if their interpretation is credited. (*See* Opening Br. 26–27.) Under their read of the statute, private nonprofits have the power to permit and license exemptions from statewide noise standards for entertainment events. If true, this is a clear unconstitutional delegation of legislative power.

Rather than respond in substance, HighSide (the only party offering a response) dismisses the argument as "strain[ing] credulity" because there "is no legal authority allowing nonprofits to issue permits o[r] licenses to other entities." (HighSide Answer Br. 22.) This denies reality. There *was* no authority authorizing private nonprofits to permit or license excessive noise until the majority's decision. But that is precisely what the majority's interpretation allows, and Respondents offer no limiting principle for how subsection 103(11) grants the state and political subdivisions (the first and second entity in the series) the power to permit or license excessive noise but doesn't do the same for nonprofits (the third entity in the series). If subsection 103(11) grants power to the primary-entity list to permit and license noncompliance, as Respondents suggest, grammatically, it applies to all three entities.

Nor is it true that Hobbs's (and *Freed*'s) interpretation leads to an unconstitutional result. (*See* HighSide Answer Br. 23.) There is no question that the general assembly has the power to establish statewide

noise standards and define narrow exemptions, including an exemption for when the state, political subdivisions, or nonprofits use property to hold events that are community enhancing. *See generally* Colo. Const. art. V, § 1 ("The legislative power of the state shall be vested in the general assembly ... ."). If HighSide believes this "type of result is unreasonable," its remedy is with the legislature, not the courts.

2. Next, Respondents do little to contend with the tension between their interpretation of subsection 103(11) and the other provisions in section 103. (*See* Opening Br. 24–25.) Of the three similarly worded exemptions in section 103, only subsection 103(11) defines the activity *and* the class of property users to which the exemption applies. The other two exemptions simply define which activities (snowmaking and speed racing) are exempt from statewide standards without mentioning who is using the property. The general assembly could have structured subsection 103(11) the same way: exempt "promoting, producing, or holding cultural, entertainment, athletic, or patriotic events," subject to localities' downward regulatory power. It didn't. Instead, the general assembly included a material textual limitation that exempts a limited class of not-for-profit property users (and their necessary lessees, licensees, or permittees) that hold qualifying events.

Despite the differences between the exemptions, HighSide denies

that subsection 103(11) is the narrower option, instead maintaining that it is "broadly drafted and open-ended." (HighSide Answer Br. 25.) But the clause HighSide references, "including, but not limited to" (*id.*), has nothing to say about the relevant textual limitation: the class of users to which the exemption applies. It addresses the scope of events that qualify under the exemption; and no one disputes that the scope of qualifying events under the exemption is broad. Indeed, it is hard to imagine an event that would *not* qualify as "entertainment" under the statute—from tractor pulls to house parties. This forces yet another tension with the Act's preemption section. The preemption section makes clear that local authorities may only regulate downward or adopt more protective measures. Colo. Rev. Stat. § 25-12-108. If Respondents are right about subsection 103(11) and its broad meaning, the Act's preemption section has little to no function left.

3. Last, Respondents and their Amici dedicate much of their response to untangling the absurdities that the dissent and the division in *Freed* catalogued if the majority's new interpretation prevails. (*See* Opening Br. 28–29.) Their saving grace is a nonexistent limiting principle fashioned from the "for the purpose of" qualifier in subsection 103(11). To Respondents, because the exemption only applies to uses of property "for the purposes of promoting, producing, or holding" a

qualifying event, this cuts off the absurdity that any state "licensee" (by driver's license, liquor license, or law or medical license), every permit holder, and every tenant in a government building is exempt from the Act. Not so. The "for the purpose of" clause does not limit the type of lease, license, or permit; rather, it defines the qualifying property uses.

Consider a modification of Amici Notes Live's example of a person with a driver's license at a Willie Nelson concert. (Amici Notes Live Br. 18.) Assume the person holding the driver's license is hosting Mr. Nelson and his band at a private backyard BBQ in the Town of Simla.[3] If the majority's interpretation of the exemption in subsection 103(11) is correct, here is the analysis:

- (1) Is there use of property by a licensee of the state? **Yes.**
- (2) Is the use of the property for the purposes of holding an entertainment event? **Yes.**
- (3) Has the locality exercised its downward regulatory power in a way that would limit this excessive noise? **No.**
- **Conclusion:** the use of property by the person with a driver's license holding a private backyard BBQ is exempt from the Act's statewide noise standards.

To be clear, this is an absurd result. But it is an outcrop of interpreting subsection 103(11) the way the majority and Respondents have done. As

[3] The Town of Simla has no noise ordinance.

Freed pointed out, the absurdities are "effectively endless" and can and should be avoided. 2024COA65, ¶ 53.

IV. The Majority's Interpretation Is Against Subsection 103(11)'s Legislative History.

Both the dissent and *Freed* found the legislative history conclusive. (Op. ¶ 75 (Jones, J., dissenting)); *Freed*, 2024COA65, ¶¶ 47–51. For the most part, Respondents urge that "the Court should not look to the legislative history." (City Answer Br. 14; *see also* HighSide Answer Br. 20 ("The legislative history of Subsection (11) is inapposite.").) This is predictable considering the legislative history is one-dimensional—in Hobbs's favor.

1. Amici Notes Live, however, does take on the argument, arguing the legislative history supports a preference for "'**any other open-air concerts around the state**,' whether operated on 'public or private property.'" (Amici Notes Live Br. 15 (purporting to quote legislative testimony).) The dissent dismantled this argument (*see* Op. ¶ 76, first & second bullets (Jones, J., dissenting)), and Amici Notes Lives does nothing to revive it.

Contrary to Amici Notes Live's "quotations," Representative Schauer (HB 1340's sponsor) never used the words "public or private property" in discussing the bill with the House as a whole. (*Compare id.* at 15 & n.6, *with* Second Reading on H.B. 1340 before Whole House,

56th Gen. Assemb., 1st Reg. Sess., at 0:48–1:04 (Apr. 13, 1987) (statement of Rep. Schauer) ("House Bill 1340 provides for an exemption to the noise pollution standards to allow for, in essence, open-air concerts that would be performed at any property, *whether that be state, city or county, or a nonprofit facility*." (emphasis added)).) The only time that Representative Schauer mentioned "private" property was in direct reference to Fiddler's Green, a private *nonprofit* facility, during a committee hearing. *See* Hearing on H.B. 1340 before H. Fin. Comm., 56th Gen. Assemb., 1st Reg. Sess., at 1:20–2:20 (Apr. 1, 1987) (statement of Rep. Schauer). (*See also* Op. ¶ 76, first bullet (Jones, J., dissenting)); *Freed*, 2024COA65, ¶ 49 ("Representative Schauer explained that while the bill applied to the 'private, nonprofit facility,' it also applied more broadly," but "[e]ach example involved a public or nonprofit entity hosting a qualifying event.").

At bottom, nothing in the legislative history "contemplated the exemption would apply to [an event] hosted by a private, for-profit promoter on property not used by one of the three primary entities identified in the exemption." *Freed*, 2024COA65, ¶ 49.

2. The title of HB 1340 further drives the point: "An Act Concerning the Exemption of *Property Used By Not for Profit Entities for Public Events* from Statutory Maximum Permissible Noise Levels,"

1987 Colo. Sess. Laws, ch. 212 (caps removed; emphasis added). The title "suggest[s] that the drafters always intended to exempt only events on property used by governmental and nonprofit actors." *Freed*, 2024COA65, ¶ 47. (*See also* Op. ¶ 75 (Jones, J., dissenting).)

HighSide counters that the "title does not mention the 'state,' [or] 'political subdivisions of the state,'" and "[y]et, those entities are set forth in the plain language of Subsection (11)." (HighSide Answer Br. 21.) This is mere word play. Both the state and political subdivisions are unquestionably "not for profit entities." So, the title properly captures the primary-entity list: "this state, political subdivisions of this state, and any *other entity not organized for profit*." Colo. Rev. Stat. § 25-12-103(11) (emphasis added). The City finally adds that the title of HB 1340 "neither fully explains the prerogatives given to non-profits nor the many other aspects of the bill." (City Answer Br. 16.) While that may be true of longer, more complex bills, HB 1340 was neither long nor complex. It added a single, two-sentence subsection on narrow topic. The title accurately captures the entirety of HB 1340.

CONCLUSION

Hobbs asks the Court to REVERSE the majority's decision. The majority's interpretation of the statute is against the text, structure, and history of the Act and subsection 103(11). Once the majority's

interpretive error is corrected, it is clear the City may not permit for-profit entities to violate statewide noise limits on private property.

Dated: March 4, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 4, 2024, a true and correct copy of this Reply Brief was filed with the Court and served via the Colorado Courts E-Filing System upon all counsel of record.

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