COLORADO SUPREME COURT 2 East 14th Avenue, Fourth Floor Denver, Colorado 80203	DATE FILED January 28, 2025 5:51 PM
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 Hobbs v. Respondents: City of Salida; Christy Doon, in her official capacity as City of Salida Administrator; and Giant Hornet LLC d/b/a High Side! Bar and Grill	▲ FOR COURT USE ▲
Attorney for Respondent: Giant Hornet LLC d/b/a High Side! Bar and Grill: Thomas H. Wagner, #38135 Anderson Law Group 7385 W. Hwy 50 Salida, Colorado 81201 719-539-7003 tom@anderson-lg.com	Case No. 2024SC216

RESPONDENT GIANT HORNET LLC'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 complies with the applicable word limits set forth in C.A.R. 28. This brief contains 4,806 words, which is not more than the 9,500-word limit.

For each issue on appeal, we state whether we agree with the 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/Thomas H. Wagner
Thomas H. Wagner

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Issue Presented

Long before the events giving rise to this case, the General Assembly enacted a state noise statute, C.R.S. § 25-12-101, *et seq*. Section 25-12-103(11) is one of multiple exceptions to that noise statute. Section 25-12-103(11) states that "[t]his 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."

Did a majority of the Court of Appeals correctly apply the plain language of C.R.S. § 25-12-103(11) in holding that it authorizes the City of Salida to issue permits to the High Side! allowing the High Side! to promote and hold outdoor concerts?

Statement of the Case

I. The parties.

Respondent Giant Hornet LLC d/b/a High Side! Bar and Grill (the "High Side!") is a locally owned bar and grill located in downtown Salida, Colorado. CF, p 341 ¶ 5. The restaurant's defining feature is an outdoor patio on the banks of the Arkansas River where the High Side! hosts concerts during the summer. CF, p 341

¶ 9. Without hosting live music to generate business, the High Side! would likely go out of business. CF, p 341 ¶ 11.

The High Side! also holds concerts to help support the arts community in Salida. CF, p 341 ¶ 12. Live outdoor music in Salida enjoys broad public support, and Salida has a long history of supporting the creative arts. Op. ¶ 3; CF, p 290 & p 342 ¶ 20. Indeed, Salida is the state's first Creative Arts District. *Id.* Most of the musicians that play concerts at the High Side! live in Salida or Chaffee County. CF, p 341 ¶ 12.

Petitioner Matthew Hobbs ("Petitioner") is an attorney. He lives approximately 180 yards away from the High Side! in an area known as Hollywood. CF, p 376 ¶ 19. The Arkansas River, Chaffee County Road 177, a walking path, and the Union Pacific railroad tracks sit between Petitioner's house and the High Side! CF, p 376 ¶ 19.

When Petitioner first talked with the High Side! about noise from the concerts, the High Side! spent about $5,000 on new sound equipment and paid a sound engineer to consult on the purchase of a new PA system to reduce the impact of noise on the area surrounding the High Side! CF, p 342 ¶¶ 15-16. Petitioner acknowledged the efforts helped and that on some occasions, he could not tell if the noise he heard was coming from the High Side! or some other source, such as wind. CF, pp 54, 56.

Petitioner took no sound pressure measurements to verify his concerns about excess noise.

II. The City of Salida's sound permitting system.

Well before the events giving rise to this case, the Colorado legislature enacted a noise abatement statute with sound pressure limits. C.R.S. § 25-12-101, *et seq*. (the "state noise statute"). Respondent City of Salida (the "City") has also adopted a municipal ordinance with sound pressure limits. *See* Salida Mun. Code § 10-90-30, Table 10-A.

The City's code authorizes the City Administrator, Respondent Christy Doon, to issue amplified sound permits "for special events or activities, including, without limitation, musical performances or other entertainment events, fireworks displays, parades and seasonal commercial activities." Salida Mun. Code § 10-9-80(a). Per the City permits, "[n]o noise is authorized in excess of the maximum limit of 85 dB(A), as measured from any point along the property line or within the property of the receiving premises." CF, p 31 (example permit). The City selected a limit of 85 dB(A) based on a chart from the American Academy of Audiology. CF, pp 172 & 188. The 85 dB(A) limit in the City permits is higher than the limits in the state noise statute. *See* C.R.S. § 25-12-103(1).

The permit system also allows the City to impose additional conditions and limitations on its permittees. CF, p 31 (example permit). The permits only allow permittees to hold events between May 2 and October 31. CF, p 31 (example permit).

After the COVID pandemic restrictions began to ease, the Salida City Council discussed its system for amplified sound permits on July 6, 2021. CF, pg. 290. Petitioner did not participate in that discussion. *Id.* However, after Petitioner began complaining about noise, the City Council further discussed the issue multiple times, including at a public meeting on February 14, 2022. *Id.* At that meeting, the City Council received 147 comments on the issue, the overwhelming majority of which expressed support for increased opportunities for outdoor concerts like those held at the High Side! *Id.* A petition in support of live outdoor music in Salida had 1,461 signatures as of July 25, 2022. CF, p 342 ¶ 20. Based on the wishes of the City's residents, Salida's City Council chose to continue with its sound permit system and the City issued permits to thirty-nine permittees in the community for the 2022 season, including the High Side! R. CF, p. 291.

After a number of concerts had already been held at the High Side!, Petitioner filed suit in Chaffee County District Court in late June 2022. CF, p 221-241.

III. Petitioner's lawsuit

Petitioner did not allege public or private nuisance claims against the High Side! and he did not include any sound pressure measurements showing the High

Side! had, in fact, exceeded municipal or state sound pressure limits. Instead, Petitioner asserted that because the sound pressure limits allowed by the City's permits exceeded the sound pressure limits in the state noise statute, the City permitting process was preempted by the state noise statute. CF, p 240 ¶¶ A-C.

Petitioner sought a declaratory judgment invalidating the sound permit process in the City's municipal code and declaring the permits already issued to be null and void. CF, p 240 ¶¶ A-C. The High Side! objected to Petitioner's motion for a temporary restraining order and filed a Motion to Dismiss and for Judgment as a Matter of Law (the "Motion to Dismiss"). *See* CF, pp 324-339 (Response to TRO Motion) & CF, pp 306-321 (Motion to Dismiss).[1] The Motion to Dismiss showed that Petitioner's declaratory judgment claim failed as a matter of law because Petitioner had misinterpreted the state noise statute. In particular, Petitioner failed to acknowledge an exemption to the state noise statute set forth in C.R.S. § 25-12-103(11) ("Subsection (11)"). That subsection exempts permittees from the state noise statute when those permits are issued by governmental entities for the purpose of holding concerts and other cultural events. CF, pp 312-319.

[1] The City and its then-administrator Drew Nelson also responded to the temporary restraining order motion and moved to dismiss and for judgment as a matter of law. CF, pp 292-305, 273-288.

IV. The lower court rulings

The District Court issued two seemingly identical orders on January 9, 2023 granting in part and denying in part, the Motion to Dismiss. CF, p 424-441. The District Court concluded the City permit system did not conflict with the state noise statute because of the exemption in Subsection (11). The District Court held that because Subsection (11) exempted the City and its permittee from the state noise statute, there was no conflict between the noise limits in the City permits and the limits in the state noise statute. The District Court thus held the state noise statute did not preempt the City's sound permit system. CF, pp 428-29 (quoting C.R.S. § 25-12-103(11). Having rejected Petitioner's claim of preemption, the District Court concluded that dismissal of Petitioner's claims or judgment in favor of the defendants as a matter of law was appropriate. CF, p 431.

Petitioner appealed the dismissal of his claims, and a majority of the Court of Appeals affirmed the District Court's decision. Like the District Court, the majority Court of Appeals found Subsection (11) dispositive. The majority held that Subsection (11) was unambiguous and that it applied to the permits issued to the High Side! by the City. Petitioner then sought certiorari in this Court, which was granted.

Argument Summary

The majority of the Court of Appeals ruled correctly in holding that the City is authorized by Subsection (11) to issue permits under its existing municipal ordinance. Petitioner asks this Court adopt the dissent's reasoning and interpretation of Subsection (11), but Petitioner's request lacks merit.

Initially, the Court should reject Petitioner's rhetorical slights of hand and red herring phrasing of the issues. Contrary to Petitioner's assertion, Subsection (11) does not "excuse violations" of the state noise statute. Likewise, Petitioner's reference to "for-profit" entities is inapposite, since there is no dispute that lessees, licensees, or permittees can be for-profit entities under the statute.

More importantly, Petitioner misapplies the rules of statutory construction. Petitioner relies first on extrinsic statutory interpretive aids before he purports to analyze the text of Subsection (11). This error infects Petitioner's entire analysis and causes him to misconstrue the statute. Since the plain language of Subsection (11) is clear, the Court need not look outside of that statute to affirm the majority opinion here.

Petitioner next errs in his textual interpretation. He contends that Subsection (11) only applies to an invented primary category of users and that those primary users must be physically involved in use of property by a subordinate category of users. That is simply wrong, and Petitioner's reading of Subsection (11) creates

distinctions in Subsection (11) that the Legislature never intended. Petitioner thus adds unwritten words into the statute, something Petitioner accuses the Court of Appeals of doing in its analysis.

Lastly, Petitioner's interpretation of Subsection (11) is incorrect even if the Court does consider extrinsic interpretive aids. The legislative history, statutory context, and the possibility of an absurd outcome all support affirming the majority opinion.

The High Side! thus requests that this Court affirm the majority opinion of the Court of Appeals and hold that Subsection (11) is unambiguous. Based on the plain meaning of the words in the statute, the High Side! also asks this Court to find the City's issuance of amplified noise permits fall squarely within the exemption created by the General Assembly in Subsection (11).

Regarding the standard of review, the High Side! agrees with Petitioner. A question of statutory interpretation is a question of law and therefore subject to *de novo* review. The High Side! further agrees that the issue to be decided was properly preserved for appeal.

Argument

I. Petitioner misapplies the rules of statutory interpretation.

Petitioner's interpretation of Subsection (11) begins with the assumption that it must be narrowly construed because Subsection (11) is part of a remedial statute. This is a fundamentally incorrect statement of the law of statutory construction.

A court's objective when 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) & *Walker v. People*, 932 P.2d 303, 309 (Colo. 1997)). To discern legislative intent, courts ***always*** begin with the text of the statute, and not with presumptions derived from parol evidence or extrinsic sources. *See People in Int. of A.T.C.*, 528 P.3d 168, 171 (Colo. 2023) *(*quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457 (2022)) ("As always, we begin with the text.") (cited and quoted in Petitioner's Brief, p 22). If the language is susceptible to only one reasonable interpretation, courts "stop there and enforce the statute as written." *Antero Res. Corp. v. Airport Land Partners, Ltd.*, 526 P.3d 204, 208 (Colo. 2023). The canon of interpretation allowing courts to narrowly or broadly interpret a statute based on the broader statutory scheme is only relevant if the legislative intent of a statute cannot be found in the plain language. *Nicholas v. People*, 973 P.2d 1213, 1216 (Colo. 1999) (en banc) ("Where the language is clear and unambiguous, we need not resort to rules of statutory construction.").

In this case, Petitioner has put the interpretive cart before the horse. He relies on concepts of narrow construction and remedial purpose without first interpreting the plain language of Subsection (11). This foundational error leads Petitioner to invent ambiguity when none exists. Indeed, as shown below, the Court need not consider the interpretive aids cited by Petitioner because Subsection (11) is unambiguous, and interpretive aids are unnecessary here.

II. The majority correctly applied the rules of grammar and syntax in holding that Subsection (11) is unambiguous.

This case concerns Subsection (11) and the City's reliance on that statute in issuing permits to allow the High Side! and others to host live concerts. Subsection (11) 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.

C.R.S. § 25-12-103(11) (emphasis added).

The plain language of Subsection (11) shows that the Legislature intended to exempt a broad swath of entities from the requirements of the state noise statute when those entities are engaged in the promotion, production, or holding of cultural, entertainment, athletic, or patriotic events. The legislative intent behind Subsection

(11) can be gleaned from the plain meaning of the words used by the Legislature by breaking the statute into separate clauses. The first clause states that the noise statute is 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." The statute then goes on to list another group of entities or persons, *i.e.*, "any of their lessees, licensees, or permittees."

The District Court and majority conducted just this type of analysis when they correctly concluded that Subsection (11) was unambiguous. These rulings should be affirmed because they make the most grammatic sense given the plain language of Subsection (11).

Petitioner asserts that "use of property by" only applies to the so-called "primary" groups in Subsection (11), *i.e.*, "the state, any political subdivision of the state, or any other entity not organized for profit," and not to the "subordinate" groups, *i.e.*, "any of their lessees, licensees, or permittees." In support of his interpretation, Petitioner contends that use of the word "or" twice in Subsection (11) indicates a legislative intent to limit the scope of Subsection (11) to situations when "the state, any political subdivision of the state, or any other entity not organized for profit" are using property. Petitioner is incorrect and his interpretation creates unwritten divisions in the statute.

Contrary to Petitioner's assertion, use of a second "or" in Subsection (11) does not dissociate the categories in the second clause of the statute from the initial prepositional language in the statute. On the contrary, the word "or" means "different," "alternative," "distinctive" and "separate" categories. *Bloomer v. Boulder County Bd. Of Comm'rs*, 799 P.2d 942, 946 (Colo. 1990) (use of or "demarcates different categories"). And when there are "nouns or verbs in a series," a modifier at the beginning or end of the series "normally applies to the entire series." *Facebook, Inc. v. Duguid*, 592 U.S. 395, 402-03 (2021) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012) (quotation modified)). Indeed, this series-qualifier canon has long been applied to statutes containing multiple "or's" as in Subsection (11). *See, e.g., Porto Rico Ry. & Light Co. v. Mor*, 253 U.S. 345, 348 (1920) ("No reason appears why the clause 'not domiciled in Porto Rico' should not be read as applying to the entire phrase 'citizens or subjects of a foreign state or states, or citizens of a state, territory, or district of the United States.'"); *see also City & Cnty. of Denver v. Bd. of Cnty. Comm'rs*, 376 P.2d 981 (Colo. 1963) (holding that clause "whenever this is possible" modifies entire sentence in statute stating, "Is such that the noncontiguous boundaries thereof coincide with existing block lines, or center lines of established streets, roads, highways, or alleys, or with governmental subdivision lines for purposes of identification whenever this is possible," not just clause after the last "or").

Applying this canon to Subsection (11) means that "use of property by" applies to "the state, any political subdivision of the state, or any other entity not organized for profit" and to "any of their lessees, licensees, or permittees."

Petitioner is also incorrect in contending that interpretation of Subsection (11) to apply "use of property by" to "any of their lessees, licensees, or permittees" would render the first "or" in the statute superfluous. If the first "or" was deleted, the remaining phrase would be "use of property by this state, any political subdivision of this state, any other entity not organized for profit, including, but not limited to, nonprofit organizations, or any of their lessees, licensees, or permittees . . . ." This hypothetical language would create ambiguity as to whether the clause "or any of their lessees, licensees, or permittees" would modify only "any other entity not organized for profit, including, but not limited to, nonprofit organizations," since that category is the last in the series that precedes the clause "or any of their lessees, licensees, or permittees." *See Estate of David v. Snelson,* 776 P.2d 813, 818 (Colo.1989) ("The last antecedent rule provides that in the absence of a contrary intention, referential and qualifying words and phrases refer solely to the clause immediately preceding [them]."). The first "or" in Subsection (11) avoids this ambiguity.

Petitioner next contends that use of the possessive "their" in Subsection (11) supports his interpretation, but he again is incorrect.[2] Indeed, substitution of the noun for the pronoun does not change the interpretation of Subsection (11), unless words are added to the statute as suggested in Petitioner's Opening Brief. To wit, "use of property by this state, any political subdivision of this state, any other entity not organized for profit, including, but not limited to, nonprofit organizations, or any of *the state's, any political subdivision of this state's, any other entity not organized for profit's* lessees, licensees, or permittees." The series-qualifier canon would still apply and "use of property by" would still modify lessees, licensees, or permittees.

Petitioner effectively asks this Court to rewrite Subsection (11) by requiring that there be at least two "users" of property for exempted events before exemption applies. That is, a governmental or nonprofit entity, the first property user, ***and*** a lessee, licensee, or permittee, the second user. The plain language of Subsection (11) does not, however, have two-user requirement. If the Legislature intended to require the "the state, any political subdivision of the state, or any other entity not organized for profit" to be physically involved in, or act as hosts or sponsors for these cultural

[2] Notably, the *Freed* case cited by Petitioner actually invented a word in the statute, holding that the pronoun "their" in the phrase "or their lessees, licensees, or permittees" refers back to the noun "users." *Freed v. Bonfire Entertainment LLC*, 2024COA65. But "users" does not appear in Subsection (11).

events, they would have written that requirement into the statute, but they did not. Therefore, Petitioner's argument must be rejected.

III. Any argument by Petitioner outside the plain language of Subsection (11) is a red herring.

If the language of a statute is clear, courts are to look no further and apply the language according to its ordinary meaning. However, if there is ambiguity, 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 is ambiguous only if it is reasonably susceptible to multiple interpretations. *Linnebur v. People*, 476 P.3d 734, 737 (Colo. 2020).

As noted above, Petitioner's argument relies almost entirely on a finding of ambiguity and application of interpretive aids. Petitioner tortures Subsection (11) into ambiguity and he now asks this Court to contort the statutory text to fit his erroneous conclusion. The Court should decline Petitioner's request.

a. The legislative history of Subsection (11) is inapposite.

Legislative history can help interpret ambiguous statutes, C.R.S. § 2-4-203(1)(c), but the history does not support Petitioner's interpretation here.

Petitioner properly notes that Subsection (11) was added to the state noise statute with passage of HB 87-1340. Op. p 29. Petitioner asserts the title for HB 87-1340, "An Act Concerning the Exemption of Property Used by Not for Profit Entities

for Public Event From Statutory Maximum Permissible Noise Levels," supports his interpretation of the statute, but Petitioner's argument is circular. The title of the 1987 legislation is accurate as far as it goes. But the title neither explains the prerogatives given to nonprofits nor the many other aspects of the bill. The title certainly cannot defeat the actual language of the statute.

The title does not mention the "state," "political subdivisions of the state," or "lessees, licensees, or permittees." Yet, those entities are set forth in the plain language of Subsection (11). The legislative title does not, therefore, resolve any ambiguity and it does not support Appellant's reading of Subsection (11).

Moreover, the legislative history suggests that HB 87-1340 was intended to create a law that "[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, p 201. This language varies slightly from the language that was ultimately codified in Subsection (11), but the intent of the General Assembly to create an exemption to noise limits for a broad variety of events, including those held under permits like the permits issued to the High Side! by the City is clear. The legislative history thus does not contradict the plain language interpretation of Subsection (11) adopted by the majority in this case.

b. Adopting the majority's reading of Subsection (11) will not create an absurd result.

"A statutory interpretation leading to an illogical or absurd result will not be followed." *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004). Petitioner suggests that the majority's interpretation of Subsection (11) would lead to absurd results, but the arguments he presents as absurd are more red herrings. Petitioner argues that if this Court were to find the statute applies as written, havoc would ensue because any person who holds a license, lease, or permit issued by the government or a nonprofit would be given free rein to host loud events. Petitioner, however, ignores a key phrase of the statute, *i.e.*, "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." Thus, the examples given by Petitioner, driver's licenses, commercial leases, and building permits, are not helpful because they do not relate to the promoting, producing, or holding of cultural, entertainment, athletic, or patriotic events.

Likewise, the idea that any nonprofit could issue a permit or license to a private entity to allow the permittee to exceed noise limits strains credulity. There is no legal authority allowing nonprofits to issue permits of licenses to other entities and notably, in the thirty-seven years since this exemption was created, there is no record of Petitioner's "absurd results" actually occurring. The hypotheticals Petitioner has invented to support his position are so absurd that they could never

become reality. The rule of interpretation that seeks to avoid absurd results is only helpful when the scenario that is presented is not, itself, absurd.

On the contrary, Petitioner's proposed interpretation, rather than the majority's interpretation would lead to unconstitutional and absurd results. For example, under Petitioner's interpretation of Subsection (11), every lessee of the state, political subdivisions of the state, or any nonprofits would be required to have their landlord host, sponsor, attend, or chaperone cultural, entertainment, athletic, or patriotic events to fall within the scope of the Petitioner's version of Subsection (11) because that would be the only way that a landlord might be deemed to use the property in question. That type of result is unreasonable, and it cannot be what the legislature intended when adopting Subsection (11).

c. The majority's opinion comports with the broader scheme of the state noise statute.

The underlying premise of Petitioner's argument is that because Subsection (11) is an exception to a "remedial statute," it must be construed narrowly. But as noted above, courts only turn to the context of a statutory scheme when there is ambiguity. *See supra.* And here, no ambiguity exists and so there is no need to look beyond the text of Subsection (11). Regardless, analysis of the broader context of the state noise statute supports the majority's interpretation of Subsection (11).

Petitioner contends that because other provisions in the state noise statute, including C.R.S. § 25-12-108, explicitly limit local authorities' ability to regulate

noise, those provisions reflect a legislative intent to limit the scope of Subsection (11). But in relying on the context of the state noise statute, Petitioner again ignores the first part of Subsection (11) which states "[t]his ***article*** is not applicable to . . . ." which clearly establishes an exemption from the entire state noise statute. C.R.S. § 25-12-103(11) (emphasis added). Thus, the entire purpose of Subsection (11) is to allow exemptions from the state noise statute. Nothing in the majority's interpretation of Subsection (11) fails to give effect to other portions of the state noise statute because those other sections are rendered inapplicable by the plain language of Subsection (11). *Cf. Wolford v. Pinnacol*, 107 P.3d 947, 951 (Colo. 2005).

Moreover, a review of the other explicit exceptions in the state noise statute supports the majority's interpretation of Subsection (11). Section 25-12-103 contains at least three other explicit exceptions to the state noise statute for "the operation of aircraft," "speed or endurance events involving motor or other vehicles," and the "use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow." C.R.S. §§ 25-12-103(4), 103(7) & 103(10). Notably, these exceptions are all narrowly drafted so that they apply only to specific activities, *i.e.*, the operation of aircraft, motor vehicle racing, and snowmaking and grooming.

In contrast to those specific exceptions, the exception in Subsection (11) is broadly drafted and open-ended. Subsection (11) applies to multiple types of entities, *i.e.*, governmental and nonprofit entities and their lessees, licensees, or permittees. And Subsection (11) applies to multiple types of events that fall within the broad language selected by the Legislature, "cultural, entertainment, athletic, or patriotic events, ***including, but not limited to***, concerts, music festivals, and fireworks displays." C.R.S. § 25-12-103(11) (emphasis added).

If, as Petitioner asserts, the General Assembly intended Subsection (11) to be a "narrow" exception to the state noise statute, the General Assembly would have selected more narrow language in the text of Subsection (11), which is what the Assembly did with the other exceptions in C.R.S. § 25-12-103. Yet, rather than narrowing the scope of Subsection (11), the Legislature actually added language to broaden the scope of the statute, *e.g.,* "including, but not limited to." Since Subsection (11) is broadly drafted to provide local authorities broader authority than is reflected elsewhere in the state noise statute, the Court should reject Petitioner's request to "narrowly" construe Subsection (11)'s plain language.

Conclusion

The plain language of Subsection (11) suggests that the General Assembly sought to enable local governments like the City to enhance their communities by allowing those local governments to promote, produce and hold various types of

cultural, entertainment, athletic, and patriotic events without. The City rightfully and reasonably used that authority in this case to promote live music that supports artists and venues alike.

Petitioner's interpretation of Subsection (11) conflicts with not only the rules of statutory interpretation, but also the clear legislative intent. Accordingly, the High Side! requests that this Court affirm the majority opinion.

Dated: January 28, 2025

Respectfully submitted,

s/Thomas H. Wagner
Thomas H. Wagner

Attorney for Respondent

Certificate of Service

The undersigned hereby certifies that on January 28, 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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