

Certification of Word Count: 4,102

<p>SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue, Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board</p>	<div style="border: 1px solid black; padding: 5px; text-align: center;"><p>FILED IN THE SUPREME COURT</p><div style="border: 1px solid black; padding: 5px; margin: 5px 0;"><p>MAY 30 2006</p></div><p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p></div> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005- 2006, #95</p> <p>Petitioners: DENISE WALTERS and JORGE L. GARCIA, Objectors,</p> <p>v.</p> <p>Respondents: WILLIAM GARCIA and MARIA ROCHA-SECREST, Proponents,</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN</p>	<p>Case No. 06SA140</p>
<p>Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303/256-3978 Fax Number: 303/292-3152 E-mail: eramey@ir-law.com</p>	
<p>BRIEF OF PETITIONERS</p>	

TABLE OF CONTENTS

I.	STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
II.	STATEMENT OF THE CASE	1
	A. Nature of the Case, Course of Proceedings, and Disposition Before the Title Board.....	1
	B. Statement of Facts	2
III.	SUMMARY OF THE ARGUMENT	4
IV.	ARGUMENT	5
	A. The Title is Misleading.....	5
	B. The Title Contains a Catch Phrase	16
V.	CONCLUSION.....	18

Attachment:

Amendment 31 and its title, ballot title, and submission clause as excerpted from the 2002 Ballot Information Booklet prepared by the Legislative Council of the Colorado General Assembly

TABLE OF AUTHORITIES

Cases

In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257 (Colo. 1999).....	5
In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845 (Colo. 1999).....	5
In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22, 44 P.3d 213 (Colo. 2002).....	8, 9, 10, 15
In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).....	6, 7, 16, 17

Statutes

Colorado Revised Statutes § 1-40-106(3)(b) (2005)	5
Colorado Revised Statutes § 1-40-107(1) (2005)	2, 5
Colorado Revised Statutes § 1-40-107(2) (2005)	1

Constitutional Provisions

Colorado Constitution, Article IX.....	2
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Denise Walters and Jorge L. Garcia ("Petitioners"), through their undersigned counsel, respectfully submit the following Opening Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2005-2006 #95 ("Education of English Language Learners").

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The title is misleading in that it affirmatively states that waivers may be obtained allowing students to transfer out of wholly English language classrooms "to classes using bilingual education or other educational methodologies" while failing to disclose that the initiative will render such classes generally unavailable throughout the state and the waiver, therefore, meaningless.

2. The title incorporates an impermissible catch phrase by using the term "accelerated English acquisition process."

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Before the Title Board.

This Original Proceeding is brought pursuant to § 1-40-107(2), C.R.S. (2005), seeking review of the actions of the Ballot Title Setting Board regarding proposed Initiative for 2005-2006 #95. The Petitioners are registered electors who

timely submitted a Motion for Rehearing before the Title Board raising the objections presented herein pursuant to § 1-40-107(1), C.R.S. (2005).

The Title Board conducted its initial public meeting and set a title, ballot title, and submission clause for proposed Initiative for 2005-2006 #95 on April 19, 2006. The Petitioners filed a Motion for Rehearing on April 26, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on May 3, 2006. At the rehearing, the Title Board granted in part and denied in part Petitioners' Motion. Petitioners filed their Petition for Review with this Court on May 8, 2006.

B. Statement of Facts.

Proposed Initiative for 2005-2006 #95 reprises an effort from the 2000 and 2002 election cycles to amend article IX of the Colorado Constitution to require that all children in Colorado's public schools be taught English and all other subjects (except traditional foreign language classes) through placement in classrooms where English is the exclusive or "nearly" exclusive language of instruction. Children who are "English learners" – *i.e.*, are "not currently able to perform ordinary classroom work in English" – "shall be educated through accelerated English acquisition during a temporary transition period not normally intended to exceed one school year." Sec. 4. The temporary "accelerated English

acquisition" classes are defined as incorporating a "process for young children in which nearly all classroom instruction is in English but with curriculum and presentation designed for children who are learning the language" and permitting use of "a minimal amount of the child's native language when necessary." Sec. 2(a). This is distinct from "bilingual education" or "dual language" classes and programs which permit languages other than English to be used for substantial parts of instruction in one or more subjects, either for a period of time while the participating students are learning the English language or as part of a multi-cultural educational program.

As with prior initiatives pursuing this theme, proposed Initiative for 2005-2006 #95 includes a "parental waiver" process whereby parents or legal guardians may request that their children be placed in classes teaching English and other subjects "through bilingual education techniques, such as dual language programs, or other generally recognized educational methodologies permitted by law." Sec. 5. A waiver is available for only two classes of students: (a) students ten years of age or older; and (b) "students with special needs." *Id.* A waiver must be requested in writing by the student's parent or legal guardian, who must personally visit the school to attend an informational session regarding the educational materials and opportunities available for the student. *Id.* School district officials

are then empowered to decide whether to grant or deny the waiver based upon rules to be established by the State Board of Education (which rules are directed to be formulated in consideration of "the best interests of the child"). Id.

If a waiver is granted, the student may transfer into bilingual or other alternative classes if such classes are available in his or her school, or may transfer to a school that offers such classes (with transportation provided by the district if more than two miles from home). Id. Individual schools in which twenty or more students "of a given grade level" receive a waiver are required to offer a bilingual or other alternative program. Id. Otherwise, there is no requirement that such programs be made available.

The initiative provides for enforcement of its requirements through placement of school districts that fail to implement them effectively upon accreditation watch. Sec. 6. The initiative also provides for an annual census of "English learners," Sec. 3, and the administration of standardized tests of English proficiency to all "English learners." Sec. 7. Both the census data and the aggregated testing scores are required to be made publicly available. Sec. 3, 7.

III. SUMMARY OF THE ARGUMENT

1. The title affirmatively states that waivers may be obtained allowing students to transfer out of wholly English language classrooms "to classes using

bilingual education or other educational methodologies" while failing to disclose that the initiative will render such classes generally unavailable and the waiver process virtually meaningless. In this regard, the title is misleading and fails to apprise the voter of the true meaning and intent of the initiative as required by § 1-40-106(3)(b) and § 1-40-107(1), C.R.S. (2005).

2. The title incorporates an impermissible catch phrase by using the term "accelerated English acquisition process." The use of this phrase in the title is an unfair expression that works toward passage while not contributing to voter understanding, in violation of § 1-40-106(3)(b) and § 1-40-107(1), C.R.S. (2005).

IV. ARGUMENT

A. The Title is Misleading.

This Court has frequently stated that the role of a title is that of "enabling informed voter choice." *See, e.g., In re Proposed Initiative for 1999-2000 #37*, 977 P.2d 845, 846 (Colo. 1999), quoting *In re Proposed Initiative for 1999-2000 #29*, 972 P.2d 257, 266 (Colo. 1999). The title set for proposed Initiative for 2005-2006 #95 does not do that.

The particular issue posed by this initiative and its title has been before this Court on three prior occasions involving four predecessor initiatives. On those occasions, the Court emphasized the importance of avoiding an unrealistic

implication in the titles that parents will retain a meaningful alternative option to place their children in bilingual, dual language, or other forms of general education and language acquisition programs (through the waiver process) in lieu of the newly mandated English-immersion curricula.

In July 2000, this Court addressed the first in a series of initiatives that would require children in Colorado's public schools to be educated (in all subjects except foreign languages) either in "English language mainstream classrooms" or temporary and transitional "structured English immersion" classrooms. In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000) (quoting the measure at 4 P.3d at 1103-04). Similar to the present measure, #258(A) provided a process whereby a parent or legal guardian could visit the child's school, be provided a description of educational materials and programs offered at that and other schools in the district, sign a written waiver, and thereby obtain permission for their child to be "transferred to classes where the child is taught English and other subjects through bilingual education or other generally recognized educational methodologies permitted by law." Id. at 1104. The measure also contained the statement, "No school or school district shall be required to offer a bilingual education program." Id. The title dealt with the waiver process as follows: "excepting certain children who primarily speak a

language other than English from such English immersion program when the parent or legal guardian provides a written informed consent waiver." Id. at 1101.

This Court found the title for #258(A) misleading. As the Court explained, "The initiative and titles recite that parents of non-English speaking children may opt out of the English immersion program into a bilingual program. But the initiative provides that no school district or school 'shall be required to offer a bilingual education program.'" Id. at 1099. "Thus," the Court continued, "unless schools voluntarily offer a bilingual program – a decision which will, under the initiative, apparently have to occur school-by-school and will thus depend on individual school resources and the predilections of individual school principals and faculty – parents of non-English speaking children may have no meaningful choice, despite the initiative's seeming provision of such a choice." Id. The Court concluded that the failure of the title to articulate that schools could no longer be required to offer bilingual programs could lead voters to "assume that parents of non-English speaking students will have a meaningful choice between an English immersion program and a bilingual program, and, thus, favor the proposal as assuring both programs." Id. at 1100. The Court held the title to be misleading and confusing in this regard.

The issue was before the Court again two years later in the context of two new initiatives. In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22, 44 P.3d 213 (Colo. 2002).¹ Again, instruction in "English language classrooms" for all subjects except foreign languages was mandated, with a "temporary transition period not normally intended to exceed one year" during which children not sufficiently proficient in English would be placed in "sheltered English immersion" classes in which "nearly all classroom instruction is in English" (with use of a "minimal amount of the child's native language" being permitted). Id. at 222-24, 227-29. Again, there was a waiver process by which parents could seek to have their children placed in programs utilizing "bilingual education techniques or other generally recognized educational methodologies permitted by law" – but now limited to: (a) "children who already know English"; (b) children ten years of age or older; and (c) children with special "individual physical or psychological needs." Id. at 224-25, 229-30. Again, the waiver had to be applied for in writing by a child's parent or legal guardian, accompanied by an informational session at the child's school. Id. at 224, 229. This time the initiatives contained the specific caveat that "schools may refuse to approve any

¹ These initiatives were identical except for the inclusion in #22 of a subsidized adult English language instruction program to members of the community who pledged to provide tutoring to school children learning English. Id. at 230-31.

such waiver application at their sole discretion, without any need to indicate cause," Id. at 224, 229, accompanied by substantial punitive measures directed at school board members and school district employees found to have willfully and repeatedly refused to implement the terms of the initiatives. Id. at 225, 230.

In the 2002 initiatives, the statement that "[n]o school or school district shall be required to offer a bilingual education program" was replaced by a provision that "[i]ndividual schools in which twenty students or more of a given grade level receive a waiver shall be required to offer" a bilingual or other alternative class, with students receiving waivers being permitted to transfer into such classes if not available at their own school. Id. at 224, 229.

The titles set for #21 and #22 dealt with the waiver process as follows: "establishing a parental waiver process to exempt from the English immersion program children who already know English, older children, and children with special needs; requiring schools in which at least twenty students in the same grade receive a waiver to offer classes teaching English and other subjects through bilingual education techniques or other generally recognized educational methodologies; . . . allowing schools to deny a waiver without cause;" Id. at 226-27, 231-32.

This Court again found the titles misleading in the context of the meaningfulness of the purported option to waive into a bilingual or other non-immersion type of program. The Court noted that the prohibition in #258(A) against requiring any school district to offer bilingual programs had been replaced by provisions that "purport to require some form of bilingual or quasi-bilingual programs where twenty or more students in the same grade obtain a parental waiver." Id. at 220. The Court continued, "however, the availability of such bilingual education hinges entirely on the waiver process, and we do agree with the objectors' argument that the titles are misleading as to that process." Id. "The initiatives purport to allow bilingual education through operation of a waiver process, but then create hurdles that make it likely that only the fewest number of waivers will be granted: too few to require, or permit, bilingual education in the future." Id. After enumerating the specific "hurdles," and noting that many of them were in fact reflected in the titles, the Court concluded that "the titles in this case create confusion and are misleading because they do not sufficiently inform the voters of the parental-waiver process *and its virtual elimination of bilingual education as a viable parental and school district option.*" Id. at 221 (emphasis added).

In the wake of the Court's ruling, the proponents of proposed initiatives #21 and #22 immediately returned with a new initiative – proposed Initiative for 2001-2002 #31 – virtually identical to old #21. This time the title dealt with the waiver process and the continued availability of bilingual and other programs as follows:

exempting from such requirements those children whose parents or legal guardians obtain annual waivers allowing the children to transfer to classes using bilingual education or other educational methodologies, but making such waivers very difficult to obtain because the school can grant them only in very restrictive circumstances and can deny them for any reason or no reason *thereby reducing the likelihood that bilingual education will be used*; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least 20 students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered, with the cost of such transfer, excluding transportation, to be provided by the state; . . .

See "Amendment 31" and its title, ballot title and submission clause as excerpted from the 2002 Ballot Information Booklet ("Blue Book") prepared by the Legislative Council of the Colorado General Assembly, attached hereto (emphasis added). This time the Court sustained the title without opinion, and "Amendment 31" went on to be defeated in the November 2002 general election.

As described above in the Statement of the Case, current proposed Initiative for 2005-2006 #95 resurrects much of its 2002 predecessors. Again, public school students are mandated to be placed in classrooms where the language of instruction

– in all subjects except foreign languages – is exclusively or "nearly" exclusively in English. Again, there is a waiver process for opting into bilingual, dual language, or other types of programs – though this time restricted to students ten years of age or older and students with special needs (dropping the additional category from 2002 of children who already know English²). Again, a waiver must be applied for in writing and the parents must personally visit the school to attend an informational session. This time, the specific criteria for granting or denying a waiver – within the limited categories noted above – are deferred to future rulemaking by the State Board of Education. Deficiencies in school district implementation are now addressed through placement of school districts on accreditation watch and eventual withdrawal of accreditation rather than lawsuits.

A critical component of the 2002 initiatives reappears in this initiative: only those "individual schools in which 20 students or more of a given grade level receive a waiver" are required to offer a bilingual, dual language, or other class not exclusively or nearly exclusively in English. While individual students receiving a waiver are permitted to transfer to a school where such a class is offered, no school

² The omission of this category is particularly relevant to those families who wish their children (native English speakers and not) to have the option to attend multicultural schools, programs, or at least classes where a substantial part of the instruction takes place in languages other than English. Under this initiative – unlike the 2002 versions – a waiver could not be obtained for this purpose.

is required to provide such a class to its own or transferee students unless the district has granted waivers to twenty or more students *at a single grade level attending that school.*

In view of the restrictions on individual waivers, this virtually eliminates any prospect for bilingual or dual language classes being offered anywhere below the fifth grade level (barring a remarkable aggregation of twenty or more "special needs" students seeking and receiving individual waivers in a single grade at a single school). It also makes it highly unlikely that any such classes or programs will be available for older children anywhere in the state except, perhaps, in the most densely populated areas where a group of parents of twenty or more students in a single grade at a single school concurrently opt for and receive waivers into a bilingual or dual language program. And if a rare district is able to and seeks to facilitate such an option, it faces the prospect of an accusation of failing "to effectively implement" the "accelerated English acquisition" program with the consequence of an accreditation watch. As with its predecessors, this initiative seeks and will quite effectively accomplish the demise of bilingual and dual language classes and programs in the vast majority, if not all, of the school districts in the state.

Notwithstanding the string of directly applicable precedent discussed above, the title set for proposed Initiative for 2005-2006 #95 deals with the option to attend a bilingual or dual language class or program as follows:

exempting from such requirements those children whose parents or legal guardians obtain waivers allowing the children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least twenty students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered;

While noting, almost in passing, that the initiative establishes "restrictive requirements" for individual waivers, the title gives no hint of how severely restrictive – *e.g.*, *none* below the fifth grade unless involving a child determined under some undefined criteria (by a school district under threat of accreditation watch) to have "special needs." And while emphasizing at some length that individual students receiving a waiver will be permitted to transfer into a bilingual or other program at their own or another school, and that schools in which twenty or more students at a single grade level receive waivers must offer such a program – the title is wholly omissive and misleading as to: (a) the effective preclusion and elimination of any such bilingual or dual language programs below the fifth grade; and (b) the consequence that such classes or programs even at higher grade levels

will be geographically unavailable in all but, perhaps, the most heavily populated spots of the state. Again, the voters are led to believe there will be a real option. In fact, there can and will be no true option for all, but perhaps a very few.

By comparison, the titles rejected by this Court for proposed initiatives #21 and #22 in 2002 at least recited the restrictive classes (less restrictive than here) of students for whom waivers were theoretically available, and recited that they could be denied "without cause." Still the Court correctly held that the titles were misleading in that they failed to disclose the "virtual elimination of bilingual education as a viable parental and school district option." 44 P.3d at 221. The title ultimately sustained for 2002's "Amendment 31" recited that waivers were "very difficult to obtain," that they could be granted "only in very restrictive circumstances" (again less restrictive than here) and could be denied "for any reason or no reason," and, most important, that the effect of the initiative would be "*reducing the likelihood that bilingual education will be used.*" Please see attachment hereto.

This Court's prior guidance on this string of initiatives is directly on point with regard to the title now before it. It is essential that the voters not be misled by the title into believing that some vestige of a choice will remain in the wake of adoption of this initiative as to the languages in which their children will be

permitted to receive instruction. Below the fifth grade, there will be virtually no choice at all. At higher grade levels, the choice, if any, will be geographically constrained at best to the few districts in the state with sufficiently dense school populations to allow for the possible aggregation *at a single grade level in a single school* of enough students seeking and obtaining individual waivers to mandate provision of a bilingual or dual language class at that school. Respectfully, the title suggests there will be real options and a real, albeit restrictive, waiver process. In fact, there will be neither. The title is fundamentally misleading as to the purpose and effect of this initiative.

B. The Title Contains a Catch Phrase.

This Court has cautioned, again in the context of the string of precursor initiatives to the present one, against the use of catch phrases in the title. As explained with regard to the title for proposed Initiative #258(A) in 2000, the prohibition on the use of catch phrases "recognizes that the particular words chosen by the Title Board should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion." 4 P.3d at 1100. The Court noted that, "[b]y drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." Id.

The Court continued by noting catch phrases may form the basis for campaign "slogans" that "encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposal's merits." Id.

The title language in #258(A) found to be a catch phrase was the recitation, lifted directly from the text of the initiative, that the initiative required all children in Colorado public schools to be taught English "as rapidly and effectively as possible." Id. The Court explained, "These words operate as both a catch phrase and a slogan. They mask the policy question regarding whether the most rapid and effective way to teach English to non-English speaking children is through an English immersion program. This question is a subject of great public debate." Id.

In the present case, the title incorporates the phrase, again lifted from the text, that children who are learning English will be "educated through an accelerated English acquisition process." The phrase is defined at length in section 2(a) of the initiative as involving, in essence, a process in which "nearly all" classroom instruction and instructional materials are in English but with a curriculum and presentation designed for children learning the language.

The question of what is the most effective way to teach students, whose primary language may not be English, both how to speak English and other academic subjects, remains "a subject of great public debate." Yet, there is little if

any argument that we want our children to "acquire" the ability to speak and understand English in an "accelerated" fashion. Virtually no one would argue or vote against "accelerated English acquisition." Yet, many voters may well question – as do many professional educators – whether the type of across-the-board instruction in all academic subjects imposed by this initiative, where nearly all instruction and materials are confined to the English language from the outset, is the best way to inculcate both English language skills and other academic material. The title very effectively diverts attention away from that issue and suggests the conclusion that the initiative will provide Colorado's students with "accelerated English acquisition" opportunities. The phrase is a catch phrase, and it will inevitably become the slogan for an "accelerated English acquisition" campaign.

V. CONCLUSION

For the reasons set forth above, the Petitioners request the Court to reverse the actions of the Title Board and to direct the Board to strike the title, ballot title, and submission clause and return proposed Initiative for 2005-2006 #95 to its proponents.

Respectfully submitted this 30th day of May, 2006.

ISAACSON ROSENBAUM P.C.

By:


Edward T. Ramey, # 6748

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2006, a true and correct copy of the foregoing **BRIEF OF PETITIONERS** was forwarded, as listed, to the following addressees:

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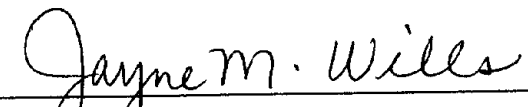
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2002 BALLOT INFORMATION BOOKLET

Analysis of
Statewide Ballot Issues

and
Recommendations on
Referendum Issues

Para recibir una copia del Folleto de Información de Balota de 2002 en español, llame al 1-800-441-4646 o visite el sitio web de la Legislatura del Estado de Colorado (en el idioma español).
atendido las 24 horas.
metropolitana de Denver.

STATEWIDE ELECTION DAY IS
Tuesday, November 5, 2002

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 21, 2002)

**A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and
a NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.**

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September 10, 2002

Dear Colorado Voter:

This booklet provides information on two subjects to be decided by voters at the November 5, 2002, election. The first subject is proposed changes to the state constitution and state statutes. The second subject is the retention of judges. The booklet presents this information in three sections.

Analyses of Proposed Changes to the Colorado Constitution and the Statutes

The first section contains an analysis of each proposed change to the state constitution and state statutes. The state constitution requires the nonpartisan research staff of the General Assembly to prepare these analyses and to distribute them in a ballot information booklet to active registered voters. Each analysis describes the major provisions of a proposal and comments on the proposal's application and effect. It also summarizes major arguments for and against each proposal and the proposal's estimated fiscal impact. Careful consideration has been given to the arguments in an effort to fairly represent both sides of the issue. The Legislative Council, the committee of the General Assembly responsible for reviewing the analyses, takes no position on the merits of the proposals.

Title and Text of Proposed Referred and Initiated Measures

The second section contains the title and the legal language of each proposed change to the state constitution and state statutes.

Information on the Retention of Judges

Information about the performance of Colorado Supreme Court Justices, Court of Appeals Judges, and trial judges in your area of the state is included in the third section of this booklet. The information was prepared by the state and district commissions on judicial performance to provide voters with fair, responsible, and constructive evaluations of judges and justices seeking retention in office. Each profile includes a recommendation stated as "RETAIN," "DO NOT RETAIN," or "NO OPINION."

Sincerely,

Representative Doug Dean, Chairman

Text of Proposal:

Be it Enacted by the People of the State of Colorado:

Article VII of the Constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 13. Colorado election day voter registration.

(1) Purpose. THE PEOPLE OF THE STATE OF COLORADO DECLARE THAT INCREASING THE NUMBER OF COLORADO CITIZENS WHO VOTE IS BENEFICIAL TO THE COMMUNITY, AND THAT ALLOWING ELIGIBLE CITIZENS TO REGISTER AND VOTE ON ELECTION DAY WILL INCREASE THE NUMBER OF CITIZENS VOTING.

(2) Election Day Registration. EFFECTIVE JANUARY 1, 2004, AN ELIGIBLE COLORADO CITIZEN MAY REGISTER TO VOTE ON ANY DAY THAT A VOTE MAY BE CAST AT ANY ELECTION. AN ELIGIBLE COLORADO CITIZEN MAY REGISTER AT THE POLLING PLACE FOR THE PRECINCT IN WHICH HE OR SHE RESIDES, AT THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH HE OR SHE RESIDES, OR AT ANY OTHER LOCATION WHICH MAY BE DESIGNATED BY SUCH COUNTY CLERK AND RECORDER, AND MAY CAST A BALLOT AT SUCH ELECTION ON THAT DAY. AN ELIGIBLE COLORADO CITIZEN REGISTERING TO VOTE UNDER THIS SECTION MUST APPEAR IN PERSON AT SUCH LOCATION AND MUST PRESENT A CURRENT VALID COLORADO DRIVER'S LICENSE OR STATE IDENTIFICATION CARD OR OTHER APPROPRIATE DOCUMENTATION THAT THE SECRETARY OF STATE SHALL APPROVE.

(3) Enforcement. IN IMPLEMENTING THIS MEASURE, THE GENERAL ASSEMBLY SHALL ADOPT ALL NECESSARY ADDITIONAL PROTECTIONS AGAINST ELECTION FRAUD.

**AMENDMENT 31
ENGLISH LANGUAGE EDUCATION**

Ballot Title: An amendment to the Colorado constitution concerning English-language education in Colorado public schools, and, in connection therewith, requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be placed in an English immersion program that is intended to last one year or less and, if successful, will result in placement of such children in ordinary classrooms; exempting from such requirements those children whose parents or legal guardians obtain annual waivers allowing the children to transfer to classes using bilingual education or other educational methodologies, but making such waivers very difficult to obtain because the school can grant them only in very restrictive

circumstances and can deny them for any reason or no reason thereby reducing the likelihood that bilingual education will be used; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least 20 students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered, with the cost of such transfer, excluding transportation, to be provided by the state; allowing a parent or legal guardian to sue public employees granting a waiver if the parent or guardian later concludes that the waiver was granted in error and injured the child's education; creating severe legal consequences identified in the amendment for such public employees who willfully and repeatedly refuse to implement the amendment; and requiring schools to test children learning English, enrolled in second grade or higher, to monitor their progress, using a standardized nationally-normed test of academic subject matter given in English.

Text of Proposal:

Be it enacted by the People of the State of Colorado:

SECTION 1. Article IX of the Constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 18. English Language Education for Children in Public Schools.

(1) Findings and declarations. THE PEOPLE OF COLORADO FIND AND DECLARE THAT:

(a) THE ENGLISH LANGUAGE IS THE COMMON PUBLIC LANGUAGE OF THE UNITED STATES OF AMERICA AND OF THE STATE OF COLORADO. IT IS SPOKEN BY THE VAST MAJORITY OF COLORADO RESIDENTS, AND IS ALSO THE LEADING WORLD LANGUAGE FOR SCIENCE, TECHNOLOGY, AND INTERNATIONAL BUSINESS, THEREBY BEING THE LANGUAGE OF ECONOMIC OPPORTUNITY; AND (b) IMMIGRANT PARENTS ARE EAGER TO HAVE THEIR CHILDREN ACQUIRE A GOOD KNOWLEDGE OF ENGLISH, THEREBY ALLOWING THEM TO FULLY PARTICIPATE IN THE AMERICAN DREAM OF ECONOMIC AND SOCIAL ADVANCEMENT; AND

(c) THE GOVERNMENT AND THE PUBLIC SCHOOLS OF COLORADO HAVE A MORAL OBLIGATION AND A CONSTITUTIONAL DUTY TO PROVIDE ALL OF COLORADO'S CHILDREN, REGARDLESS OF THEIR ETHNICITY OR NATIONAL ORIGINS, WITH AN AVAILABLE PUBLIC SCHOOL EDUCATION NECESSARY TO BECOME PRODUCTIVE MEMBERS OF OUR SOCIETY. FLUENCY AND LITERACY IN THE ENGLISH LANGUAGE ARE AMONG THE MOST IMPORTANT PARTS OF SUCH AN EDUCATION; AND

(d) THE PUBLIC SCHOOLS OF COLORADO OFTEN DO AN INADEQUATE JOB OF EDUCATING IMMIGRANT CHILDREN, WASTING FINANCIAL RESOURCES ON COSTLY EXPERIMENTAL NATIVE LANGUAGE PROGRAMS WHOSE FAILURE OVER PAST DECADES IS DEMONSTRATED BY THE CURRENT HIGH DROP-OUT RATES AND LOW ENGLISH LITERACY LEVELS OF MANY IMMIGRANT CHILDREN; AND

(e) YOUNG IMMIGRANT CHILDREN CAN EASILY ACQUIRE FULL FLUENCY IN A NEW LANGUAGE, SUCH AS ENGLISH, IF THEY ARE HEAVILY EXPOSED TO THAT LANGUAGE IN THE CLASSROOM AT AN EARLY AGE; AND

(f) THEREFORE IT IS RESOLVED THAT: ALL CHILDREN IN COLORADO PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH AS RAPIDLY AND EFFECTIVELY AS POSSIBLE.

(2) Definitions. IN THIS SECTION,

(a) "BILINGUAL EDUCATION," ALSO KNOWN AS NATIVE LANGUAGE INSTRUCTION, MEANS A LANGUAGE ACQUISITION PROCESS FOR STUDENTS IN WHICH ALL OR SUBSTANTIAL PORTIONS OF THE INSTRUCTION, TEXTBOOKS, OR TEACHING MATERIALS ARE IN THE CHILD'S NATIVE LANGUAGE OTHER THAN ENGLISH.

(b) "ENGLISH LANGUAGE CLASSROOM" MEANS A CLASSROOM IN WHICH THE LANGUAGE OF INSTRUCTION USED BY THE TEACHING PERSONNEL IS OVERWHELMINGLY THE ENGLISH LANGUAGE, AND IN WHICH ALL SUCH TEACHING PERSONNEL ARE FLUENT AND LITERATE IN THE ENGLISH LANGUAGE. ENGLISH LANGUAGE CLASSROOMS ENCOMPASS BOTH ENGLISH LANGUAGE MAINSTREAM CLASSROOMS AND SHELTERED ENGLISH IMMERSION CLASSROOMS.

(c) "ENGLISH LANGUAGE MAINSTREAM CLASSROOM" MEANS A STANDARD CLASSROOM, ONE IN WHICH THE STUDENTS EITHER ARE NATIVE ENGLISH LANGUAGE SPEAKERS OR ALREADY HAVE ACQUIREDED REASONABLE FLUENCY IN ENGLISH.

(d) "ENGLISH LEARNER" MEANS A CHILD WHO IS NOT FLUENT IN ENGLISH AND WHO IS NOT CURRENTLY ABLE TO PERFORM ORDINARY CLASSROOM WORK IN ENGLISH.

(e) "SHELTERED ENGLISH IMMERSION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR STUDENTS IN WHICH NEARLY ALL CLASSROOM INSTRUCTION IS IN ENGLISH BUT WITH THE CURRICULUM AND PRESENTATION DESIGNED FOR CHILDREN WHO ARE LEARNING THE LANGUAGE. BOOKS AND INSTRUCTIONAL MATERIALS ARE IN ENGLISH AND ALL READING, WRITING, AND SUBJECT MATTER ARE TAUGHT IN ENGLISH. ALTHOUGH TEACHING PERSONNEL MAY USE A MINIMAL AMOUNT OF THE CHILD'S NATIVE LANGUAGE WHEN NECESSARY, NO SUBJECT MATTER SHALL BE TAUGHT IN ANY LANGUAGE OTHER THAN ENGLISH, AND CHILDREN IN THIS PROGRAM LEARN TO READ AND WRITE SOLELY IN ENGLISH. OTHER ASPECTS OF THIS EDUCATIONAL METHODOLOGY SHALL FOLLOW THE STANDARD DEFINITION OF "SHELTERED ENGLISH" OR "STRUCTURED ENGLISH" FOUND IN STANDARD EDUCATIONAL LITERATURE.

(3) English language education. SUBJECT TO THE EXCEPTIONS PROVIDED IN SUBSECTION (4) OF THIS SECTION ALL CHILDREN IN COLORADO PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH BY BEING TAUGHT IN ENGLISH AND ALL CHILDREN SHALL BE PLACED IN ENGLISH LANGUAGE CLASSROOMS. CHILDREN

WHO ARE ENGLISH LEARNERS SHALL BE EDUCATED THROUGH SHELTERED ENGLISH IMMERSION DURING A TEMPORARY TRANSITION PERIOD NOT NORMALLY INTENDED TO EXCEED ONE YEAR. PUBLIC SCHOOLS SHALL BE PERMITTED BUT NOT REQUIRED TO PLACE IN THE SAME CLASSROOM ENGLISH LEARNERS OF DIFFERENT AGES BUT WHOSE DEGREE OF ENGLISH PROFICIENCY IS SIMILAR. PUBLIC SCHOOLS SHALL BE ENCOURAGED TO MIX TOGETHER IN THE SAME CLASSROOM ENGLISH LEARNERS FROM DIFFERENT NATIVE-LANGUAGE GROUPS BUT WITH THE SAME DEGREE OF ENGLISH FLUENCY. ONCE ENGLISH LEARNERS HAVE ACQUIRED REASONABLE FLUENCY IN ENGLISH AND ARE ABLE TO PERFORM ORDINARY SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE MAINSTREAM CLASSROOMS. AS MUCH AS POSSIBLE, PER PUPIL SUPPLEMENTAL FUNDING FOR ENGLISH LEARNERS SHALL AT LEAST BE MAINTAINED. FOREIGN LANGUAGE CLASSES FOR CHILDREN WHO ARE NOT ENGLISH LEARNERS SHALL NOT BE AFFECTED, NOR SHALL SPECIAL EDUCATIONAL PROGRAMS PHYSICALLY-OR MENTALLY-IMPAIRED STUDENTS BE AFFECTED.

(4) Parental waivers. (a) THE REQUIREMENTS OF SUBSECTION (3)

OF THIS SECTION MAY BE WAIVED WITH THE PRIOR WRITTEN INFORMED CONSENT, TO BE PROVIDED ANNUALLY, OF THE CHILD'S PARENTS OR LEGAL GUARDIAN UNDER THE CIRCUMSTANCES SPECIFIED IN THIS SUBSECTION (4). SUCH INFORMED CONSENT SHALL REQUIRE THAT SAID PARENTS OR LEGAL GUARDIAN INITIATE THE WAIVER PROCESS AND PERSONALLY VISIT THE SCHOOL TO APPLY FOR THE WAIVER AND THAT THEY THEREBE PROVIDED A FULL DESCRIPTION IN A LANGUAGE THEY CAN UNDERSTAND OF THE EDUCATIONAL MATERIALS TO BE USED IN THE DIFFERENT EDUCATIONAL PROGRAM CHOICES AND ALL THE PUBLIC SCHOOL EDUCATIONAL OPPORTUNITIES AVAILABLE TO THE CHILD. IF A PARENTAL WAIVER HAS BEEN GRANTED, THE AFFECTED CHILD MAY BE TRANSFERRED TO CLASSES TEACHING ENGLISH AND OTHER SUBJECTS THROUGH BILINGUAL EDUCATION TECHNIQUES OR OTHER GENERALLY RECOGNIZED EDUCATIONAL METHODOLOGIES PERMITTED BY LAW. INDIVIDUAL SCHOOLS IN WHICH TWENTY STUDENTS OR MORE OF A GIVEN GRADE LEVEL RECEIVE A WAIVER SHALL BE REQUIRED TO OFFER SUCH A CLASS; IN ALL OTHER CASES, SUCH STUDENTS SHALL BE PERMITTED TO TRANSFER TO A PUBLIC SCHOOL IN WHICH SUCH A CLASS IS OFFERED, WITH THE COSTS OF SUCH TRANSFER, EXCLUDING TRANSPORTATION, TO BE PROVIDED BY THE STATE. SCHOOLS MAY REFUSE TO APPROVE ANY SUCH WAIVER APPLICATION AT THEIR SOLE DISCRETION, WITHOUT ANY NEED TO INDICATE CAUSE.

(b) THE CIRCUMSTANCES IN WHICH A PARENTAL EXCEPTION WAIVER MAY BE APPLIED FOR UNDER THIS SECTION ARE AS FOLLOWS:

(1) CHILDREN WHO ALREADY KNOW ENGLISH: THE CHILD ALREADY POSSESSES GOOD ENGLISH LANGUAGE SKILLS, AS MEASURED BY ORAL EVALUATION OR STANDARDIZED TESTS OF ENGLISH VOCABULARY COMPREHENSION, READING, AND WRITING, IN WHICH THE CHILD SCORES APPROXIMATELY AT OR ABOVE THE STATE AVERAGE FOR HIS OR HER GRADE LEVEL OR AT OR ABOVE THE FIFTH GRADE AVERAGE, WHICHEVER IS LOWER; OR

(II) OLDER CHILDREN: THE CHILD IS AGE TEN YEARS OR OLDER, AND IT IS THE INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND EDUCATIONAL STAFF THAT AN ALTERNATE COURSE OF EDUCATIONAL STUDY WOULD BE BETTER SUITED TO THE CHILD'S OVERALL EDUCATIONAL PROGRESS AND RAPID ACQUISITION OF BASIC ENGLISH LANGUAGE SKILLS; OR

(III) CHILDREN WITH SPECIAL INDIVIDUAL NEEDS: THE CHILD ALREADY HAS BEEN PLACED FOR A PERIOD OF NOT LESS THAN THIRTY CALENDAR DAYS DURING THAT PARTICULAR SCHOOL YEAR IN AN ENGLISH LANGUAGE CLASSROOM AND IT IS SUBSEQUENTLY THE INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND EDUCATIONAL STAFF THAT THE CHILD HAS SUCH SPECIAL AND INDIVIDUAL PHYSICAL OR PSYCHOLOGICAL NEEDS, ABOVE AND BEYOND THE CHILD'S LACK OF ENGLISH PROFICIENCY, THAT AN ALTERNATE COURSE OF EDUCATIONAL STUDY WOULD BE BETTER SUITED TO THE CHILD'S OVERALL EDUCATIONAL DEVELOPMENT AND RAPID ACQUISITION OF ENGLISH. A WRITTEN DESCRIPTION OF NO FEWER THAN TWO HUNDRED FIFTY WORDS DOCUMENTING THESE SPECIAL INDIVIDUAL NEEDS FOR THE SPECIFIC CHILD MUST BE PROVIDED AND PERMANENTLY ADDED TO THE CHILD'S OFFICIAL SCHOOL RECORDS, AND IN ORDER TO BE APPROVED THE WAIVER APPLICATION MUST CONTAIN THE ORIGINAL AUTHORIZING SIGNATURES OF BOTH THE SCHOOL PRINCIPAL AND THE LOCAL SCHOOL SUPERINTENDENT. WAIVERS GRANTED UNDER THIS SUBPARAGRAPH CANNOT BE APPLIED FOR UNTIL AFTER THIRTY INSTRUCTIONAL DAYS OF A GIVEN SCHOOL YEAR HAVE PASSED, AND THIS WAIVER PROCESS MUST BE RENEWED EACH AND EVERY SCHOOL YEAR. ANY SUCH DECISION TO ISSUE SUCH AN INDIVIDUAL WAIVER IS TO BE MADE SUBJECT TO THE EXAMINATION AND APPROVAL OF THE LOCAL SCHOOL SUPERINTENDENT. UNDER GUIDELINES ESTABLISHED BY AND SUBJECT TO THE REVIEW OF THE LOCAL BOARD OF EDUCATION. THE EXISTENCE OF SUCH SPECIAL INDIVIDUAL NEEDS SHALL NOT COMPEL ISSUANCE OF A WAIVER, AND THE PARENTS SHALL BE FULLY INFORMED OF THEIR OWN RIGHT TO REFUSE TO AGREE TO A WAIVER.

(5) Legal standing and parental enforcement. As detailed in SUBSECTIONS (3) AND (4) OF THIS SECTION, ALL COLORADO SCHOOL CHILDREN HAVE THE RIGHT TO BE PROVIDED AT THEIR PUBLIC SCHOOL OF CHOICE WITH AN ENGLISH LANGUAGE PUBLIC EDUCATION. THE PARENT OR LEGAL GUARDIAN OF ANY COLORADO SCHOOL CHILD SHALL HAVE LEGAL STANDING TO SUE FOR ENFORCEMENT OF THE PROVISIONS OF THIS SECTION, AND IF SUCCESSFUL SHALL BE AWARDED NORMAL AND CUSTOMARY ATTORNEY FEES AND ACTUAL AND COMPENSATORY DAMAGES, BUT NOT PUNITIVE OR CONSEQUENTIAL DAMAGES. ANY SCHOOL DISTRICT EMPLOYEE OR SCHOOL BOARD MEMBER WHO WILLFULLY AND REPEATEDLY REFUSES TO IMPLEMENT THE TERMS OF THIS SECTION MAY BE HELD PERSONALLY LIABLE FOR ATTORNEY FEES AND ACTUAL AND COMPENSATORY DAMAGES BY THE CHILD'S PARENTS OR LEGAL GUARDIAN, AND CANNOT BE SUBSEQUENTLY INDEMNIFIED FOR SUCH ASSESSED DAMAGES BY ANY PUBLIC OR PRIVATE THIRD PARTY. ANY INDIVIDUAL FOUND SO LIABLE IN A COURT OF LAW SHALL BE IMMEDIATELY REMOVED FROM OFFICE FOR MALFEASANCE, AND SHALL BE BARRED FROM HOLDING ANY POSITION OF AUTHORITY ANYWHERE WITHIN THE COLORADO GOVERNMENT OR THE PUBLIC SCHOOL SYSTEM FOR A

SUBSEQUENT PERIOD OF FIVE YEARS. PARENTS WHO APPLY FOR AND ARE GRANTED EXCEPTION WAIVERS UNDER SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION STILL RETAIN FOR TEN YEARS THEREAFTER THE FULL LEGAL RIGHT TO SUE THE INDIVIDUALS WHO GRANTED SUCH WAIVERS IF THEY SUBSEQUENTLY CONCLUDE DURING THAT PERIOD THAT THE WAIVERS WERE GRANTED IN ERROR AND ULTIMATELY INJURED THE EDUCATION OF THEIR CHILD.

(6) Standardized testing for monitoring education progress. IN ORDER TO ENSURE THAT THE EDUCATIONAL PROGRESS OF COLORADO STUDENTS IN LEARNING ENGLISH TOGETHER WITH OTHER ACADEMIC SUBJECTS IS PROPERLY MONITORED, A STANDARDIZED, NATIONALLY-NORMED WRITTEN TEST OF ACADEMIC SUBJECT MATTER GIVEN IN ENGLISH SHALL BE ADMINISTERED AT LEAST ONCE EACH YEAR TO ALL COLORADO PUBLIC SCHOOL CHILDREN IN GRADES 2 AND HIGHER WHO ARE ENGLISH LEARNERS. ONLY STUDENTS CLASSIFIED AS SEVERELY LEARNING DISABLED MAY BE EXEMPTED FROM THIS TEST. THE PARTICULAR TEST TO BE USED SHALL BE SELECTED BY THE COLORADO COMMISSIONER OF EDUCATION, AND IT IS INTENDED THAT THE TEST SHALL GENERALLY REMAIN THE SAME FROM YEAR TO YEAR. THE NATIONAL PERCENTILE SCORES OF STUDENTS SHALL BE CONFIDENTIALLY PROVIDED TO INDIVIDUAL PARENTS, AND THE AGGREGATED PERCENTILE SCORES AND DISTRIBUTIONAL DATA FOR INDIVIDUAL SCHOOLS AND SCHOOL DISTRICTS SHALL BE MADE PUBLICLY AVAILABLE ON AN INTERNET WEB SITE; THE SCORES FOR STUDENTS CLASSIFIED AS ENGLISH LEARNERS SHALL BE SEPARATELY SUB-AGGREGATED AND MADE PUBLICLY AVAILABLE THERE AS WELL, WITH FURTHER SUB-AGGREGATION BASED ON THE ENGLISH LEARNER PROGRAM TYPE IN WHICH STUDENTS ARE ENROLLED. SCORES OF STUDENTS WHO ARE NEITHER EXEMPTED NOR TAKE THE TEST SHALL BE REPORTED AS ZERO. ALTHOUGH ADMINISTRATION OF THIS TEST IS REQUIRED SOLELY FOR MONITORING EDUCATIONAL PROGRESS, COLORADO PUBLIC OFFICIALS AND ADMINISTRATORS MAY UTILIZE THESE TEST SCORES FOR OTHER PURPOSES AS WELL IF THEY SO CHOOSE.

(7) Severability. IF A PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

(8) Interpretation. UNDER CIRCUMSTANCES IN WHICH PORTIONS OF THIS STATUTE ARE SUBJECT TO CONFLICTING INTERPRETATIONS, THE FINDINGS AND DECLARATIONS OF SUBSECTION (1) OF THIS SECTION SHALL BE ASSUMED TO CONTAIN THE GOVERNING INTENT OF THIS SECTION.

SECTION 2. Effective date - applicability. This initiative shall take effect upon proclamation of the vote by the Governor, and shall apply to all school terms beginning more than sixty days after such date.