

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), ⁵ C.R.S. (2006)
 Appeal from the Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT
 TITLE AND SUBMISSION CLAUSE, AND
 SUMMARY FOR 2005-2006, #95

Petitioners:

DENISE WALTERS and JORGE L. GARCIA,
 objectors,

v.

Respondents:

WILLIAM GARCIA and MARIA ROCHA-SECREST,
 proponents.

and

Title Board:

WILLIAM A. HOBBS, JASON R. DUNN, and
 DANIEL L. CARTIN.

Isaacson Rosenbaum P.C.
 Edward T. Ramey, #6748
 633 17th St., Ste. 2200
 Denver, CO 80202
 303-292-5656
 Paid \$75.00

For the Proponents:

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For Title Board:

John W. Suthers, Attorney General
 Maurice g. Knaizer, Deputy A.G., #05264
 Public Officials
 State Services Section
 303-866-5380 No Fee

2006					
May	8	Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2005-2006 #95 ("Education of English-Language Learners")			
May	9	ORDER - all parties to file SIMULTANEOUS BRIEFS due on or before May 30, 2006.			
		FURTHER ORDERED - all briefs shall be filed and served upon opposing parties by hand delivery or through an overnight delivery service.			
	*	Opening Brief DUE: 5/30/06			
	*	Answer Brief DUE: 5/30/06			
May	30	Brief of Petitioners filed.			
May	30	Brief of Title Board filed.			
May	30	Proponents' Brief filed.			
June	1	Circulated			

ORIGINAL

SUPREME COURT, STATE OF COLORADO
Court Address: 2 East 14th Avenue, Denver,
Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), 1 C.R.S. (2005)
Appeal from the Ballot Title Setting Board

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Objectors,

v.

Respondents:

WILLIAM GARCIA and MARIA ROCHA-
SECREST, Proponents,

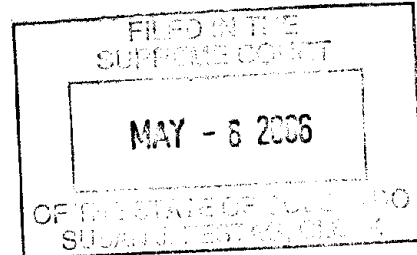
and

Title Board:

WILLIAM A. HOBBS, JASON R. DUNN, and
DANIEL L. CARTIN

Attorneys for Petitioners:

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▲ COURT USE ONLY ▲

Case No.

06SA140

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD
CONCERNING PROPOSED INITIATIVE 2005-2006 #95
("EDUCATION OF ENGLISH-LANGUAGE LEARNERS")**

05/08/06

04 2:27PM

***TOTAL

\$75.00

Denise Walters and Jorge L. Garcia ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), 1 C.R.S. (2005), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #95 ("Education of English-Language Learners").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #95 on April 19, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005) 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 Board granted in part and denied in part Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #95 pursuant to § 1-40-107(2), C.R.S. (2005).

II. Issues Presented

1. Is the title misleading in that it affirmatively states that waivers may be obtained allowing a student to transfer into "classes using bilingual education or other educational methodologies" while failing to disclose that the effect of the

initiative in (a) severely limiting the circumstances in which individual waivers may be obtained and (b) requiring that "classes using bilingual education or other educational methodologies" be offered only by schools in which 20 students or more at the same grade level receive waivers will render such classes generally unavailable and the waiver option essentially meaningless?

2. Does the phrase "accelerated English acquisition process" constitute an improper catch phrase?

III. Supporting Documentation

As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

IV. Relief Requested

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to decline to set a title and to return the proposed Initiative to the proponents.

Respectfully submitted this 8th day of May, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748

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Jorge L. Garcia
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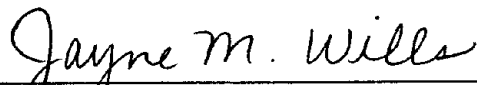
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #95 ("EDUCATION OF ENGLISH-LANGUAGE LEARNERS")** was placed in the United States mail, postage prepaid, to the following:

Mr. William Garcia
912 8th Avenue
Greeley, CO 80631

Ms. Maria Rocha-Secrest
912 8th Avenue
Greeley, CO 80631

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203



Jayne M. Wills



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **GINETTE DENNIS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #95".

.....IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 8th day of May, 2006.

Ginette Dennis

SECRETARY OF STATE

Final #95

RECEIVED

APR 06 2006

ELECTIONS/LICENSING
SECRETARY OF STATE

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

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 ENGLISH LEARNERS IN PUBLIC SCHOOLS.

THE PEOPLE OF COLORADO FIND AND DECLARE:

(1) FINDINGS AND DECLARATIONS.

(a) THE ENGLISH LANGUAGE IS THE COMMON PUBLIC LANGUAGE OF THE UNITED STATES OF AMERICA AND OF THE GREAT STATE OF COLORADO; AND

(b) THE ENGLISH LANGUAGE IS SPOKEN BY THE VAST MAJORITY OF COLORADO RESIDENTS, IS ALSO THE LEADING WORLD LANGUAGE FOR SCIENCE, TECHNOLOGY, AND INTERNATIONAL BUSINESS, THEREBY IS THE LANGUAGE OF ECONOMIC OPPORTUNITY FOR THE RESIDENTS OF COLORADO; AND

(c) THE PEOPLE OF THE STATE OF COLORADO HAVE A DUTY TO PROVIDE A THOROUGH AND UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS THROUGHOUT THE STATE WHEREIN ALL RESIDENTS OF THE STATE BETWEEN THE AGES OF SIX AND TWENTY-ONE YEARS OF AGE MAY BE EDUCATED. EDUCATION IN THE ENGLISH LANGUAGE IS FUNDAMENTAL TO PROVIDING A THOROUGH AND UNIFORM SYSTEM TO THE RESIDENTS OF COLORADO; AND

(d) ENGLISH LEARNING CHILDREN CAN QUICKLY ACQUIRE FULL FLUENCY AND LITERACY IN ENGLISH, IF THEY ARE TAUGHT THAT LANGUAGE IN THE CLASSROOM AS SOON AS THEY ENTER SCHOOL; AND

(e) IT IS IMPERATIVE THAT ALL CHILDREN IN COLORADO PUBLIC SCHOOLS BE TAUGHT ENGLISH AS RAPIDLY AND EFFECTIVELY AS POSSIBLE.

(2) DEFINITIONS:

(a) "ACCELERATED ENGLISH ACQUISITION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR YOUNG CHILDREN 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 TEACHERS 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 LEARN TO READ AND WRITE SOLELY IN ENGLISH.

(b) "BILINGUAL EDUCATION" 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.

(c) "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 SUCH TEACHING PERSONNEL ARE FLUENT AND LITERATE IN ENGLISH. ENGLISH LANGUAGE CLASSROOMS ENCOMPASS BOTH ENGLISH LANGUAGE MAINSTREAM CLASSROOMS AND ACCELERATED ENGLISH ACQUISITION CLASSROOMS.

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

(e) "ENGLISH LEARNER" MEANS A CHILD WHO DOES NOT SPEAK ENGLISH OR WHOSE NATIVE LANGUAGE IS NOT ENGLISH, AND WHO IS NOT CURRENTLY ABLE TO PERFORM ORDINARY CLASSROOM WORK IN ENGLISH.

(3) CENSUS

LOCAL SCHOOL DISTRICTS SHALL ANNUALLY ASCERTAIN, NOT LATER THAN THE FIRST DAY OF APRIL EACH YEAR, UNDER RULES ESTABLISHED BY THE STATE BOARD OF EDUCATION, THE NUMBER OF ENGLISH LEARNERS WITHIN THEIR SCHOOL SYSTEM IN GRADES KINDERGARTEN THROUGH TWELVE, AND SHALL CLASSIFY THEM ACCORDING TO GRADE LEVEL, THE LANGUAGE OF WHICH THEY POSSESS A PRIMARY SPEAKING ABILITY, AND THE ENGLISH LEARNER PROGRAM TYPE IN WHICH THEY ARE ENROLLED, WITH ALL SUCH INFORMATION BEING MADE PUBLICLY AVAILABLE BY SCHOOL AND SCHOOL DISTRICT ON THE SCHOOL DISTRICT WEBSITE, OR OTHERWISE MADE PUBLICLY AVAILABLE. WHERE THE SCHOOL DISTRICT DOES NOT MAINTAIN A WEB SITE THE STATE BOARD OF EDUCATION SHALL PROVIDE SUCH INFORMATION ON AN INTERNET WEB SITE.

(4) ENGLISH LANGUAGE EDUCATION

SUBJECT TO THE EXCEPTIONS PROVIDED IN SUBSECTION 5 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 ACCELERATED ENGLISH ACQUISITION DURING A TEMPORARY TRANSITION PERIOD NOT NORMALLY INTENDED TO EXCEED ONE SCHOOL YEAR. LOCAL SCHOOL DISTRICTS WHICH DETERMINE A TRANSITION PERIOD OF GREATER THAN ONE YEAR IS NECESSARY, MAY REQUEST ADDITIONAL TIME TO TRANSITION TO ACCELERATED ENGLISH ACQUISITION FROM THE STATE BOARD OF EDUCATION. THE STATE BOARD OF EDUCATION SHALL INDIVIDUALLY REVIEW EACH REQUEST FOR ADDITIONAL TIME AND GRANT SUCH REQUEST BASED UPON REASONABLE CAUSE. LOCAL SCHOOL DISTRICTS 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. LOCAL SCHOOL DISTRICTS 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 ACQUIRE A GOOD WORKING KNOWLEDGE OF ENGLISH AND ARE ABLE TO DO REGULAR SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE MAINSTREAM CLASSROOMS. FOREIGN LANGUAGE CLASSES FOR CHILDREN WHO ARE PROFICIENT IN

ENGLISH SHALL BE COMPLETELY UNAFFECTED BY THIS SECTION, AS SHALL BE SPECIAL EDUCATIONAL PROGRAMS FOR PHYSICALLY - OR MENTALLY-IMPAIRED STUDENTS.

(5) PARENTAL WAIVERS

PARENTS OR LEGAL GUARDIANS MAY REQUEST A WAIVER FROM THE REQUIREMENTS OF SUBSECTION 4 OF THIS SECTION FOR THEIR CHILD/CHILDREN WHO ARE STUDENTS IN THE PUBLIC SCHOOLS. STUDENTS WHO MAY BE ELIGIBLE FOR A WAIVER INCLUDE: STUDENTS WHO ARE TEN YEARS OF AGE OR OLDER, AND STUDENTS WITH SPECIAL NEEDS. SUCH REQUEST FOR A WAIVER SHALL BE IN WRITING BY THE STUDENT'S PARENT OR LEGAL GUARDIAN. NO SUCH REQUEST FOR WAIVER MAY BE GRANTED WITHOUT SAID PARENTS OR LEGAL GUARDIAN PERSONALLY VISITING THE SCHOOL TO APPLY FOR THE WAIVER AND THAT THEY THERE BE 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 EDUCATIONAL OPPORTUNITIES AVAILABLE TO THE CHILD. SCHOOL DISTRICT OFFICIALS DECIDE WHETHER TO GRANT OR DENY THE REQUEST FOR THE WAIVER BASED ON RULES ESTABLISHED BY THE STATE BOARD OF EDUCATION, WHICH GUIDELINES SHALL CONSIDER THE BEST INTERESTS OF THE CHILD IN THEIR FORMULATION. SCHOOLS IN WHICH TWENTY OR MORE STUDENTS OF THE SAME GRADE LEVEL HAVE RECEIVED A WAIVER ARE REQUIRED TO OFFER A DIFFERENT TYPE OF PROGRAM, SUCH AS A BILINGUAL PROGRAM. IN ALL OTHER CASES, STUDENTS WITH A WAIVER MAY TRANSFER TO A SCHOOL THAT OFFERS A DIFFERENT TYPE OF PROGRAM OF INSTRUCTION. IF A PARENTAL WAIVER HAS BEEN GRANTED, THE AFFECTED CHILD MAY BE TRANSFERRED TO CLASSES TEACHING ENGLISH AND OTHER SUBJECTS THROUGH BILINGUAL EDUCATION TECHNIQUES, SUCH AS DUAL LANGUAGE PROGRAMS, OR OTHER GENERALLY RECOGNIZED EDUCATIONAL METHODOLOGIES PERMITTED BY LAW. INDIVIDUAL SCHOOLS IN WHICH 20 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 MUST BE PERMITTED TO TRANSFER TO A PUBLIC SCHOOL IN WHICH SUCH A CLASS IS OFFERED. SCHOOL DISTRICTS SHALL PROVIDE TRANSPORTATION TO SUCH OTHER PUBLIC SCHOOL PROVIDED NO SUCH CLASS IS OFFERED AT A PUBLIC SCHOOL WITHIN TWO MILES OF THE STUDENTS HOME. NO WAIVER IS REQUIRED TO TRANSFER A STUDENT FROM THE ACCELERATED ENGLISH CLASS TO AN ENGLISH LANGUAGE MAINSTREAM CLASSROOM WHO HAS SHOWN SUFFICIENT PROFICIENCY IN ENGLISH TO PERFORM ORDINARY CLASSWORK AT THE APPLICABLE GRADE LEVEL.

(6) ENFORCEMENT

(a) AS SET FORTH IN SUBSECTION 4 OF THIS SECTION, ALL SCHOOL CHILDREN ARE TO BE PROVIDED AT THEIR ENROLLED SCHOOL WITH AN ENGLISH LANGUAGE PUBLIC EDUCATION. THE STATE BOARD OF EDUCATION SHALL BE CHARGED WITH ENFORCEMENT OF THE ACCELERATED ENGLISH ACQUISITION LAWS. ANY SCHOOL DISTRICT WHICH FAILS TO IMPLEMENT ACCELERATED ENGLISH ACQUISITION, OR TO EFFECTIVELY IMPLEMENT ACCELERATED ENGLISH ACQUISITION, SHALL BE PLACED ON ACCREDITATION WATCH, AND IF THE SCHOOL DISTRICT FAILS TO SHOW SIGNIFICANT IMPROVEMENT IN SUCH IMPLEMENTATION, FOLLOWING THE PLACEMENT ON ACCREDITATION WATCH, THEN THE STATE BOARD OF EDUCATION SHALL WITHDRAW ACCREDITATION FROM THAT SCHOOL DISTRICT UNTIL SUCH TIME AS ACCELERATED ENGLISH ACQUISITION IS FULLY AND EFFECTIVELY IMPLEMENTED.

(b) THE LEGISLATURE SHALL ENACT SUCH LAWS AS ARE REQUIRED TO IMPLEMENT THE INTENT OF THIS SECTION.

(c) THE STATE BOARD OF EDUCATION SHALL HAVE POWER TO ESTABLISH AND DEFINE SUCH STANDARDS AS THEY BELIEVE ARE REQUIRED TO IMPLEMENT THE INTENT OF THIS SECTION AND THE LAWS PROMULGATED TO EFFECTUATE THIS SECTION.

(7) STANDARDIZED TESTING FOR MONITORING EDUCATION PROGRESS

(a) TO ENSURE THE PROGRESS ENGLISH LEARNERS, A STANDARDIZED, NATIONALLY ACCEPTED TEST OF ENGLISH PROFICIENCY SHALL BE ADMINISTERED AT LEAST ONCE EACH YEAR TO ALL ENGLISH LEARNERS IN GRADES TWO THROUGH TWELVE ENROLLED IN PUBLIC SCHOOLS. ONLY ENGLISH LEARNERS CLASSIFIED AS SEVERELY LEARNING DISABLED MAY BE EXEMPTED FROM THESE TESTS. THE TESTS TO BE USED SHALL BE SELECTED BY THE STATE BOARD OF EDUCATION, AND THE TESTS SELECTED SHALL CONTINUE TO BE USED FOR AT LEAST FIVE YEARS UNLESS SUBSTANTIAL EVIDENCE SHOWS IT IS INEFFECTIVE IN ASSESSING ENGLISH SKILL LEVEL. THE NATIONAL PERCENTILE SCORES OF STUDENTS SHALL BE CONFIDENTIALLY PROVIDED TO INDIVIDUAL PARENTS OR LEGAL GUARDIAN, AND THE AGGREGATED PERCENTILE SCORES AND DISTRIBUTIONAL DATA FOR INDIVIDUAL SCHOOLS AND SCHOOL DISTRICTS SHALL BE MADE PUBLICLY AVAILABLE ON THE SCHOOL DISTRICT WEB SITE, OR OTHERWISE MADE PUBLICLY AVAILABLE. WHERE THE SCHOOL DISTRICT DOES NOT MAINTAIN A WEB SITE THE STATE BOARD OF EDUCATION SHALL PROVIDE SUCH INFORMATION ON AN INTERNET WEB SITE. THE SCORES FOR STUDENTS CLASSIFIED AS ENGLISH LEARNERS SHALL BE SEPARATELY SUB-AGGREGATED AND MADE PUBLICLY AVAILABLE ON SUCH AFOREMENTIONED WEB SITES AS WELL, WITH FURTHER SUB-AGGREGATION BASED ON THE ENGLISH LEARNER PROGRAM TYPE IN WHICH THEY ARE ENROLLED. SCHOOL ENROLLMENT BY RACE, ETHNICITY, AND ENGLISH LEARNER PROGRAM TYPE SHALL ALSO BE MADE PUBLICLY AVAILABLE. ALTHOUGH ADMINISTRATION OF THESE TESTS ARE REQUIRED SOLELY FOR MONITORING EDUCATIONAL PROGRESS, PUBLIC OFFICIALS AND ADMINISTRATORS MAY UTILIZE THESE TEST SCORES FOR OTHER PURPOSES AS WELL IF THEY SO CHOOSE.

(b) IN THE EVENT SUCH INFORMATION REQUIRED BY SUBSECTION (7)(a) TO BE MADE AVAILABLE ON A PUBLIC INTERNET WEB SITE, OR OTHERWISE MADE PUBLICLY AVAILABLE, CANNOT BE DONE WITHOUT REVEALING THE IDENTITY OF THE INDIVIDUAL STUDENTS THE LOCAL SCHOOL BOARD MAY OBTAIN A WAIVER FROM SUCH PUBLIC DISTRIBUTION OF INFORMATION FROM THE STATE BOARD OF EDUCATION. HOWEVER, THE INFORMATION MAY BE AGGREGATED WITH OTHER SCHOOL DISTRICTS FOR USE BY THE STATE BOARD OF EDUCATION.

(8) SEVERABILITY

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

(9) INTERPRETATION

UNDER CIRCUMSTANCES IN WHICH PORTIONS OF THIS ACT 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.

(10) EFFECTIVE DATE

EXCEPT FOR THE CENSUS REQUIREMENTS OF SUBSECTION 3 AND THE TESTING REQUIREMENTS OF SUBSECTION 7 OF THIS SECTION, WHICH SHALL BE IMPLEMENTED IMMEDIATELY UPON PASSAGE, ALL OTHER SUBSECTIONS OF THIS SECTION SHALL BECOME EFFECTIVE 1 JULY 2007.

William Garcia
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Greeley, CO 80631
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Maria Rocha-Secret
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RECEIVED

APR 26 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

1:30pm

BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE 2005-2006 #95 ("EDUCATION OF ENGLISH-LANGUAGE LEARNERS")

Denise Walters and Jorge L. Garcia ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the actions of the Title Board at the hearing on April 19, 2006, regarding Proposed Initiative 2005-2006 #95 ("Education of English-Language Learners"). Petitioners submit that the title does not fairly express the true meaning and intent of the initiative in the following respects:

1. The title is misleading in that it affirmatively states that parents or legal guardians may obtain waivers allowing a student to transfer from an "English Language Classroom" into "classes using bilingual education or other educational methodologies" while failing to disclose that the effect of the initiative in (a) severely limiting the circumstances in which a waiver may be obtained and (b) requiring that "classes using bilingual education or other educational methodologies" be offered only by schools in which 20 students or more at the same grade level receive such waivers will have the practical effect of rendering such classes generally – and certainly geographically – unavailable and the waiver option, therefore, essentially meaningless. In re Proposed Initiatives for 2001-2002 # 21 and #22, 44 P.3d 213, 220 (Colo. 2002); In re Proposed Initiative for 1999-2000 #258(A), 4 P.3d 1094, 1100 (Colo. 2000).

2. The title is misleading in that it fails to disclose that waivers into "classes using bilingual education or other educational methodologies" are only available in severely limited circumstances, *i.e.*, for children ten years of age or older and students "with special needs." In re Proposed Initiatives for 2001-2002 # 21 and #22, 44 P.3d 213, 220-222 (Colo. 2002); In re Proposed Initiative for 1999-2000 #258(A), 4 P.3d 1094, 1100 (Colo. 2000).

3. The title is misleading in that it uses the phrase "English immersion program" while such term is neither used nor defined in the text of the initiative. The term, further, would operate as a catch phrase.

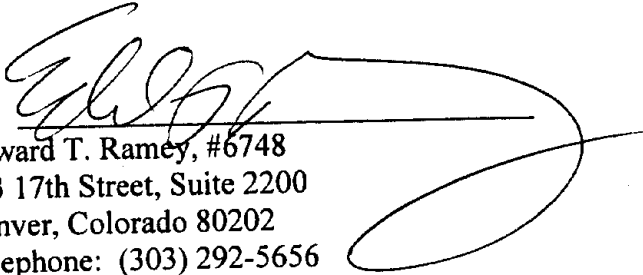
4. The title is misleading in that it states that waivers into "classes using bilingual education or other educational methodologies" must be obtained on an annual basis. There is nothing in the text of the initiative limiting the ability of a school district to provide a waiver of any duration or requiring that it be granted or applied for annually.

5. The title is misleading in that it fails to disclose that English proficiency tests would be required to be administered "at least once each year" to all affected students.

6. The title is misleading in that it fails to disclose that the mandated assessment of "English Learners" must be performed by school districts annually.

Respectfully submitted this 26 day of April, 2006.

ISAACSON ROSENBAUM P.C.

By: 
Edward T. Ramey, #6748
633 17th Street, Suite 2200
Denver, Colorado 80202
Telephone: (303) 292-5656
Facsimile: (303) 292-3152

ATTORNEYS FOR PETITIONERS

Petitioners' Addresses:

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Ft. Collins, CO 80521

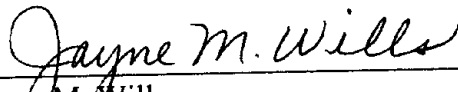
Jorge L. Garcia
1252 Hickory Drive
Erie, CO 80516

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mr. William Garcia
912 8th Avenue
Greeley, CO 80631

Ms. Maria Rocha-Secrest
912 8th Avenue
Greeley, CO 80631



Jayne M. Wills

Ballot Title Setting Board

Proposed Initiative 2005-2006 #95¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; 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; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; 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; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available?

¹ Unofficially captioned "Education of English-Language Learners" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Hearing April 19, 2006:

At request of proponent, technical correction allowed in text of measure. (In section 18 (7)(a), inserted "OF" after "PROGRESS".)

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:15 p.m.

Hearing May 3, 2006:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 4:09 p.m.

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>	

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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

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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 multicultural 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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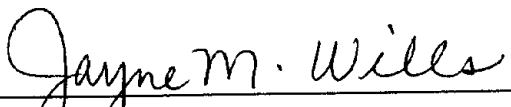
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Jayne M. Wills

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 www.colorado.gov (en el área metropolitana de Denver, llame al 303-861-2200).

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 PARENT'S 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:

(i) 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.

Certification of Word Count: 2,222

SUPREME COURT, STATE OF COLORADO	<div>FILED IN THE SUPREME COURT</div> <div>MAY 30 2006</div> <div>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</div> <div>▲ COURT USE ONLY ▲</div>
2 East 14 th Avenue Denver, CO 80203	
ORIGINAL PROCEEDINGS PURSUANT TO § 1-40-107(2), 1 C.R.S. (2005) Appeal from Title Setting Board	Case No.: 06SA140
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005- 2006, #95 DENISE WALTERS AND JORGE L. GARCIA, OBJECTORS,	
Petitioners,	
v.	
WILLIAM GARCIA AND MARIA ROCHA- SECREST, PROPONENTS AND WILLIAM A. HOBBS, JASON R. DUNN, AND DANIEL L. CARTIN,	Case No.: 06SA140
Respondents.	
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5 th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	
BRIEF OF TITLE BOARD	

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William A. Hobbs, Jason R. Dunn and Daniel L. Cartin, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their brief.

STATEMENT OF THE ISSUES

1. Do the titles fairly and succinctly state the process by which parents may obtain waivers from the English language acquisition requirements?
2. Is the phrase "accelerated English acquisition process" an improper catch phrase?

STATEMENT OF THE CASE

On April 6, 2006, the proponents submitted proposed initiated measure 2005-2006 #95 to amend Colo. Const. art. IX to add a new section 18, entitled "English Language Education for English Learners in Public Schools." On April 19, 2006, the Board found that the measure contained a single subject and set titles. The Objectors filed a motion for rehearing on April 26, 2006. The Board granted the motion in part on May 3, 2006. The Objectors then filed this Petition with the Court on May 10, 2006.

STATEMENT OF THE FACTS

This measure purports to require all public school students in Colorado to be taught in English. Students whose first language is one other than English would

be taught through an accelerated English acquisition program, which generally would not exceed one year. Once English learners acquire an adequate working knowledge of English and are able to perform school work in English, they must be transferred to regular classrooms. Foreign language classes for children who are proficient in English and special education programs for physically- or mentally-impaired students are exempt from the requirements of the proposal. Parents may seek a waiver from the requirements of the proposal. The waiver can be granted if certain prerequisites are met. The proposal requires schools to administer standardized tests to monitor the progress of English learners. The proposal also contains certain enforcement provisions.

SUMMARY OF THE ARGUMENT

The Objectors contend that the titles do not accurately summarize the waiver provisions. The titles describe the waiver provisions as "exempting from such requirements those children whose parents or legal guardians obtain waivers allowing children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers." The titles fairly and accurately describe the waiver provisions of the measure.

The phrase “accelerated English language education process” is not a catch phrase or slogan. It is an objective description of the means by which students whose first language is not English will be taught English.

ARGUMENT

I. THE TITLES FAIRLY AND CLEARLY DESCRIBE THE WAIVER PROCESS DESCRIBED IN THE MEASURE.

In 2000, this Court reviewed a prior iteration of this measure. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-200 #258(A)*, 4 P.3d 1094 (2000)(“#258(A)”). The Court concluded that the measure did not violate the single subject requirement. However, it found that the measure’s titles were not accurate. The titles and summary did not state, paraphrase or summarize that schools were not required to offer bilingual education, thereby effectively depriving those students whose parents wanted them to participate in a bilingual program the opportunity to do so. *Id.* at 1099.

In 2002, proponents offered a different version of the measure. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213 (Colo. 2002)(#21). The Court again found that the measure contained a single subject. The objectors also raised concerns about the adequacy of the Board’s description of the process by which parents could seek a waiver in

order to participate in a bilingual education program. The titles described the process; however, the Court found that the Board's recitation of the features of the waiver process "tend[ed] to overwhelm and obscure the inevitable outcome of the waiver process when all of the provisions are properly taken into account." *Id.* at 221. The Court viewed the measure as authorizing waivers only under very limited circumstances, thereby virtually eliminating bilingual education as a viable parental and school district option. The Court described the waiver provisions in #21 as follows:

Except for students granted waivers under subsection (4), there will be no bilingual education courses. Initiatives #21 and #22, subsec. (3). Subsection (4) details the requirements for such a waiver: (1) schools may only grant waivers in three situations to children who already possess good English-language skills, to children who are least ten years old, or to children with special physical or psychological needs, *over and above the child's lack of English proficiency*, subsec. 4(b)(I)-(III); (2) parents (or legal guardians) must personally visit the school to apply for the waiver, where they will be provided with a full description of the education options for their child, subsec. (4)(a); (3) the waiver process must be renewed every year, subsec. (4)(b)(III); (4) a waiver for special needs may only be applied for after the student has completed thirty instructional days; (5) any decision to grant a waiver is subject to the approval of the local school superintendent; and (6) the existence of special needs does not compel a waiver.

Id. at 220. The Court found that the titles did not adequately convey the narrow circumstances under which waivers could be granted.

The waiver provisions in the measure now before this Court are significantly less stringent. Among other things:

- Access to the bilingual education is not limited to only certain categories of students who are English learners. Instead, the subsection 5 of the measure states, “Students who may be eligible for a waiver *include*: Students who are ten years of age or older, and students with special needs.” (Emphasis added.)
- There is no requirement that the request for waiver must be renewed annually.
- Special needs students are not required to attend regular classes for thirty days prior to applying for a waiver.
- The granting of a waiver is not left to the unfettered discretion of the local school superintendent. Instead, the decision must be made in a manner consistent with rules established by the State Board of Education. These rules must consider the best interests of the child.

The measure does retain certain limitations from the prior measure. The parents must make a written request for a waiver. The waiver cannot be granted unless the parent or legal guardian personally visits the school to apply for the waiver. The parent or legal guardian must be given a full description, in a language they can understand, of the educational materials to be used in the different education programs and of all the educational opportunities available to the child. Schools are not required to offer bilingual programs unless that have twenty or more students of the same grade level who have received waivers. If a school does not offer a bilingual program, students with waivers may transfer to schools that have bilingual programs.

Contrary to the provisions in #21, the effect on the availability of bilingual programs cannot be gauged. The determination of the standards under which students may qualify is left to the State Board of Education. These standards will not be set until the State Board of Education promulgates its rules. Moreover, the range of students who may be eligible is not as limited. Thus, students who may be eligible for waiver "include" students ten years or older and students with special needs. *See, Common Cause v. Meyer*, 758 P.2d 153, 164 (Colo. 1988) (word "includes" is a term of extension or enlargement) Because the ultimate

impact of the measure cannot be determined until implementing rules are promulgated, the Board could not properly state that the waiver provisions virtually eliminate bilingual education as a viable option.

The titles in this case do not suffer the same flaws that the Court found in #21. They do not merely repeat the terms of the measure. Instead, the titles fairly and accurately summarize the measure. They provide:

...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 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...

The language of the titles is similar in structure and content to the language that the Court used in #21 to describe the waiver process. The Court stated:

Parents or legal guardians may seek to exempt their children from the effect of this amendment only by seeking a waiver from the child's school. The school can only grant the waiver in very restrictive circumstances identified in the amendment and the school can deny the waiver for any reason or no reason.

In the present case, the Board used the word “restrictive” rather than the phrase “very restrictive”. It eliminated mention of the unfettered discretion by the schools because the schools would not have unfettered discretion. It noted that bilingual classes may not be available in all schools and children who are granted waivers may transfer to other schools where such programs exist.

For these reasons, the Court must conclude that the titles fairly, accurately and succinctly advise the signers and voters about the waiver provisions.

II. THE MEASURE DOES NOT CONTAIN A CATCH PHRASE

The Objectors next contend that the phrase “accelerated English acquisition process” constitutes a “catch phrase.” For the following reasons, the Court must reject this claim. The Court in #258(A) summarized the analysis it uses to determine whether a title includes a catch phrase. *Id.* 4 P.3d at 1100. “‘Catch phrases’ are words that work in a proposal’s favor without contributing to voter understanding.” *Id.* Catch phrases may form the basis of slogan by those who campaign for or against an initiated measure. “Slogans are catch phrase tailored for political campaigns—brief striking phrases for use in advertising or promotion.” *Id.* Such phrases “encourage prejudice in favor of the issue, and, thereby distract voters

from consideration of the proposal's merits." *Id.* The existence of a catch phrase or slogan will be determined in the context of contemporary political debate. *Id.*

In #258(A), the Court found that the phrase "as rapidly and effectively as possible", wording in the measure itself, constituted a catch phrase. These words were a catch phrase because "[t]hey mask[ed] the policy question whether the most rapid and effective way to teach English to non-English speaking children is through English immersion." *Id.*

The Objectors likely will contend that the phrase "accelerated English acquisition process" is not substantively different from "as rapidly and effectively as possible." The Court must reject this argument. Based upon the fate of a prior version of this measure, there is no evidence the phrase "accelerated English acquisition process" likely will encourage prejudice, distract voters from the merits of the measure, or be used as in campaigns supporting or opposing the measure.

Subsequent to the Court's decision in #258, its proponents collected sufficient signatures to place a revised version of the measure on the ballot. 2002 *Ballot Information Booklet*, Research Publication No. 502-10 (2002) 71. (Attached hereto) The findings and declaration stated, "Therefore it is resolved that: All children in Colorado public schools shall be taught English as rapidly and

effectively as possible.” *Id.* at p. 72. The booklet was mailed to all voters. There is no evidence that the term was used as a catch phrase by proponents or opponents. The fact that the Colorado electorate defeated the measure signifies that the language did not trigger a favorable response.

Moreover, the phrase “accelerated English acquisition process”, particularly when read in context, is merely descriptive and is not a catch phrase. 258(4), 4 P.3d at 1100 (“task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal”). Section 4 of the measure states, “Children who are English learners shall be educated through accelerated English acquisition during a temporary transition period not normally intended to exceed one school year.” The titles state, “requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less.” Both the measure and the titles convey the measure’s goal is to help children whose first language is not English to quickly acquire English skills.

There does not appear to be any significant dispute that the process is accelerated. Again, history is a guide. Proponents of the measure presented to the voters in 2002 argued that “[u]nder the proposal, English learners will be taught in

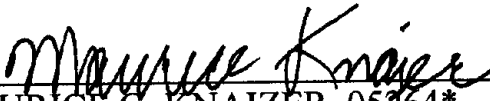
English and placed into a school's regular academic program after one year." 2002 *Ballot Information Booklet*, p. 20. The opponents agreed. "The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year." *Id.* at p. 21. Thus, both proponents and opponents agreed that the process of learning was accelerated.

The measure presented to the Court here contains the same one year limit. The Board's use of the phrase "accelerated English acquisition process" is merely a description of the process. The Court must reject the Objectors' argument.

CONCLUSION

The Board's titles reflect the content of the measure. The Court should approve the titles.

JOHN W. SUTHERS
Attorney General


MAURICE G. KNAIZER, 05264*
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Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

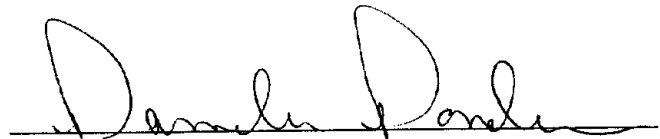
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within BRIEF OF TITLE BOARD
upon all parties herein by depositing copies of same in the United States mail, Express
Mail, postage prepaid, at Denver, Colorado, this 30th day of May
2006 addressed as follows:

Edward Ramey
633 17th Street, Suite 2200
Denver, CO 80202

William Garcia
912 8th Avenue
Greeley, CO 80631

Maria Rocha-Secrest
912 8th Avenue
Greeley, CO 80631

A handwritten signature in cursive script, appearing to read "Daniel D. D. D.", written over a horizontal line.

2002 BALLOT INFORMATION BOOKLET

Analysis of Statewide Ballot Issues and Recommendations on Retention of Issues

Para recibir una copia del Folleto de Información de Balota de 2002 en español, llame al número de teléfono de contestación atendido las 24 horas de la línea 1-800-441-1438 en el área metropolitana de Denver o llame al 212-312-2222 (línea 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.**

AMENDMENT 31
ENGLISH LANGUAGE EDUCATION

The proposed amendment to the Colorado Constitution:

- ◆ requires that all public school students be taught in English unless they are exempted under the proposal;
- ◆ requires students who do not speak English (English learners) to be taught English through sheltered English language immersion programs and to be transferred to a regular classroom, generally after one year, unless a waiver is granted;
- ◆ allows parents or legal guardians to request a waiver from English immersion requirements under limited conditions and gives schools the power to approve or deny the request;
- ◆ authorizes a parent or legal guardian to sue for enforcement of the proposal and provides detailed penalties for teachers, administrators, and school board members; and
- ◆ requires all English learners in grades two through twelve to be tested annually in English using a national test of various academic subjects.

Background

Current federal and state laws require school districts to identify English learners, to test their English proficiency annually, and to establish programs to teach these students the English skills necessary to participate in a school's regular education program. Over 70,000 public school students, or approximately 9 percent of Colorado's public school enrollment, qualify as English learners. Generally, these students receive English language assistance through one of the following types of programs.

- **English as a Second Language:** In English as a Second Language (ESL) programs, English learners are taught entirely in English or mainly in English with some native language assistance. Typically, ESL classes include students with different native languages. English learners may attend the ESL program for a part of the day to work strictly on English skills, or attend for a full day and focus both on English and other academic subjects.

- **Bilingual education programs:** In bilingual programs, English learners are taught academic subjects in their native language while learning English. Bilingual classes usually have students who share the same native language. The length and content of bilingual programs vary, with some programs emphasizing the development of native language skills more than others.
- **Dual language programs or dual immersion programs:** In dual language programs, subjects are taught in two languages in order to develop proficiency in both languages. Students in these programs may be fluent in English or be English learners.

Proposal for English immersion programs. The proposal requires school districts to teach English learners in English immersion programs. In these immersion programs, students will be taught English and other academic subjects in English at a level appropriate to their language skills. Generally, the length of time for students to participate in the program is one year, after which time students will begin attending regular classes. School districts may place English learners of different ages, but with similar English skills, in the same classroom. The proposal's requirements do not apply to foreign language programs or to special education programs.

Parents or legal guardians may request a waiver from the English immersion program for their child. Students who may be eligible for a waiver include: students who already possess adequate English skills, students who are ten years of age or older, and students with special needs. School officials decide whether to grant or deny the request for the waiver. Schools in which twenty or more students of the same grade level have received a waiver are required to offer a different type of program, such as a bilingual program. In all other cases, students with a waiver may transfer to a school that offers a different type of program of instruction.

Parents or legal guardians of any Colorado public school student may sue for enforcement of the proposal. Additionally, a school district employee or board member may be sued and may be held personally liable for "willfully and repeatedly" failing to implement English immersion programs. A final enforcement provision concerns parents of children with special needs. Parents who receive a waiver for their child with special needs have a ten-year window during which they may sue school officials for issuing the waiver, if the parents conclude that the waiver injured the education of their child.

Arguments For

1) Learning English as quickly as possible ensures that English learners are not left behind their peers. Current programs, including bilingual education, have not adequately addressed the needs of English learners, and this proposal provides a different approach. Under the proposal, English learners will be taught in English and placed into a school's regular academic program after one year. Learning English quickly will enable English learners to develop the necessary skills and knowledge to improve their future education and career choices.

2) Colorado needs a uniform statewide policy for teaching English learners. English learners who move between school districts may encounter different programs, which can delay their academic progress. Further, students should not be used as a part of educational experiments, as school districts try out different approaches to English instruction. The proposal focuses on students' acquisition of solid English skills, rather than the maintenance of native language skills, and provides a uniform philosophy for school districts. School districts retain enough flexibility to tailor programs to their students' needs.

3) Once English learners become reasonably fluent in English, they will be transferred into regular classrooms, increasing their opportunities to practice and use English. In addition, cultural awareness and interaction between children of different backgrounds will enhance the education of all children.

Arguments Against

1) The proposal restricts parental choice and local control of education. Many parents want their children to develop skills in more than one language so that they will be better prepared to live and work within a global economy. By requiring that all instruction be in English, the proposal limits the ability of school districts to offer innovative language programs, even if the programs are effective and respond to the needs and wishes of the school community. In addition, school districts may be cautious in granting waiver requests from parents seeking different programs because of the possibility of legal action against the school and its employees. Any teacher, administrator, or school board member who is found in violation of this amendment is subject to a lawsuit, and restricted from teaching or holding public office for five years. Parents retain the right to sue school district employees and school board members for up to ten years.

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2) The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year. However, the speed by which a child becomes fluent in English depends on the child's age, cultural circumstances, previous education, and socioeconomic background. Some children may take longer than one year to achieve a level of proficiency comparable to their English-speaking peers. If programs are too rigid, students' individual needs may not be met.

3) The proposal adds another layer of testing requirements for English learners. School districts will have to test English learners in English every year using a national test in addition to the Colorado Student Assessment Program (CSAP) tests. The additional testing for English learners means further administrative expense and time away from classroom teaching.

Estimate of Fiscal Impact

While the proposal will not increase or decrease state expenditures, local school districts' expenditures will be impacted. Under the proposal, some school districts will have to revamp their curricula, staff assignments, and testing procedures. However, the net impact to all school districts cannot be predicted because the impacts will vary depending on how each individual school district implements the proposal.

REFERENDUM A EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS

The proposed amendment to the Colorado Constitution:

- ◆ eliminates term limits for elected district attorneys.

Background

Term limits. Colorado has term limits for elected state and local officials. The Colorado Constitution limits the length of office for the governor, lieutenant governor, secretary of state, state treasurer, and attorney general to two consecutive four-year terms. Members of the Colorado legislature may serve up to four consecutive two-year terms in the House of Representatives and two consecutive four-year terms

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

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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

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TITLES AND TEXT

(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 FOR 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 THERE BE 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.

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SUPREME COURT, STATE OF COLORADO
Court Address: 2 East 14th Avenue
Denver Colorado 80203

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE, AND
SUMMARY FOR 2005-2006, #95

Petitioners:

DENISE WALTERS and JORGE L. GARCIA,
Objectors,

vs

Respondents:

WILLIAM GARCIA
and MARIA ROCHA-SECREST,
Proponents,

and

Title Board:

WILLIAM A. HOBBS, JASON R. DUNN, and
DANIEL L. CARTIN

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FILED IN THE
SUPREME COURT

MAY 30 2006

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case Number: 06SA140

PROPOSERS' BRIEF

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I. Issues Presented

1. Is the title, as approved by the Title Board, misleading despite the Title Board modifying the wording of the title at the rehearing to accurately indicate the waivers available were restricted?
2. Does the phrase “accelerated English acquisition process” constitute an improper catch phrase in this initiative where the phrase is used neither in the Proponents’ organizational name nor the organization’s slogan?

II. Statement of the Case

The proposed initiative, 2005-2006 #95, (Education of English Language Learners), was submitted to the legislative counsel on or about 20 March 2006. A review with legislative counsel and the proponents was held on 30 March 2006. The proponents made several non-substantive changes based on the legislative counsel review and the initiative was forwarded to the Title Board for hearing. (See Exhibit 1- text of the proposed amendment). The Title Board held the initial title setting hearing on the proposed title on 19 April 2006. No opponents spoke against the initial title as amended with technical changes suggested by the proponents at this hearing. However, a motion for rehearing was filed on 26 April 2006 pursuant to C.R.S. § 1-40-107(1). The rehearing was held on 3 May 2006

with the Title Board granting the motion in part to the extent the Title Board amended the title and denied the motion in all other respects. (See Exhibit 2 - title as set by the Title Board). The objectors then filed petition with the Colorado Supreme Court as an original proceeding under C.R.S. § 1-40-107(2).

III. Argument

- 1. Is the title, as approved by the Title Board, misleading despite the Title Board modifying the wording of the title at the rehearing to accurately indicate the waivers available were restricted?**

The objectors, D. Walters and J. Garcia, set forth in their petition the issue question, "Is the title misleading in that it affirmatively states that waivers may be obtained allowing a student to transfer into 'classes using bilingual education or other educational methodologies' while failing to disclose that the effect of the initiative in (a) severely limiting the circumstances in which individual waivers may be obtained and (b) requiring that 'classes using bilingual education or other educational methodologies' be offered only by schools in which 20 students or more at the same grade level receive waivers will render such classes generally unavailable and the waiver option essentially meaningless?" This statement of the issue is a misreading of the initiative, or at best, their interpretation of the

initiative language.

The language of the initiative as set forth in subsection 5¹ states, beginning in line 13:

“Schools in which twenty or more students of the same grade level have received a waiver are required to offer a different type of program, such as a bilingual program. In all other cases, students with a waiver may transfer to a school that offers a different type of program of instruction. If a parental waiver has been granted, the affected child may be transferred to classes teaching English and other subjects through bilingual education techniques, such as dual language programs, or other generally recognized educational methodologies permitted by law. Individual schools in which 20 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 must be permitted to transfer to a public school in which such a class is offered. School districts shall provide transportation to such other school provided no such class is offered at a public school within two miles of the students home.” (emphasis added)

The language of the initiative does not prohibit a school from offering a bilingual class when less than twenty students of the same grade level have received a waiver, it does, however, require such a class if there are twenty or more students of the same grade level who have received a waiver. The twenty student level was established by the proponents as a baseline for the school district in an effort to minimize the financial burden on the school district. Having several

¹ Full text of initiative is set forth in Exhibit 1

classes throughout the school district for small numbers of non English proficient students would place a huge financial strain on limited school budgets. Absent a class for non-English proficient students with waivers within the school, the school district must allow students to transfer to another school where such instruction is available. (See lines 15 - 16 and lines 22 - 24 of subsection 5). In an effort to encourage the school district to maintain at least one class within the district for students who had obtained waivers, the initiative required the school district to provide transportation for students, where the school is more than two miles from the students home. (See lines 24 - 26 of subsection 5).

It appears Walters and J. Garcia have interpreted the "In all other cases" statement in subsection 5 to mean no bilingual or dual language class can be held unless there are at least twenty (20) students with waivers at a grade level.

The proponents, W. Garcia and Rocha-Secrest, argue such an interpretation is faulty on two levels. First, the express language of the initiative states such classes are only required when twenty students at a grade level without any prohibition on bilingual classes or other such classes being offered with less than twenty (20) students. Second, the initiative, (in subsection 6) charges the State Board of Education with the enforcement of this provision if enacted. Further, the

State Board of Education is also charged with establishing rules for the waivers the School Districts must follow in granting waivers. Such oversight by the State Board of Education minimizes the likelihood of the parade of horrors set forth by Walters and J. Garcia.

Granted, in *In re Ballot Title 2001-2002 #21 and 22*, 44 P.3d at 213 (Colo 2002), the Court found a provision allowing waivers was actually “a sham.” The provisions in this initiative are substantially different from the provisions set forth in the 2002 initiative. This initiative sets no hard and fast conditions as did the 2002 initiative, rather it allows flexible grounds for waivers and charges the State Board of Education to establish rules for granting such waivers.

The Title Board did recognize the waivers, as allowed by the initiative, are restricted, at least by the tone of initiative, and modified the wording of the title at the rehearing to address this issue raised by Walters and J. Garcia. (See Exhibit 2 - Title, Ballot Title and Submission as set by the Title Board; line 8 of title; adding the word “restrictive”). The initiative allows waivers under certain conditions, however these conditions are not meaningless nor are they without flexibility. The initiative sets forth the waiver conditions in subsection 5, beginning in line 1:

“Parents or legal guardians may request a waiver from the requirements of

subsection 4 of this section for their child/children who are students in the public schools. Students who may be eligible for a waiver include: students who are ten years of age or older, and students with special needs. Such request for a waiver shall be in writing by the student's parent or legal guardian. No such request for a waiver may be granted without said parents or legal guardian personally visiting the school to apply for the waiver and that they be 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 educational opportunities available to the child." (See Exhibit 2 - Subsection 5)

Nowhere in subsection 5 does it limit the issuance of waivers to only those children over 10 years of age or special needs students. These were included only as examples of those who may be eligible to receive a waiver.

The other conditions required for a waiver are directed to the education of the parents or legal guardian of the child/children. Requiring a parent to come to the school to apply for the waiver may be a burden for many who are working and spend long hours on the job. However, a parent should be concerned enough about the education of his/her child to take a few moments to review the information the school is required to make available to the parent/legal guardian so a truly informed decision can be made. These requirements are not intended to make the process more difficult, but rather to ensure the parent/legal guardian is making a fully informed decision about the English acquisition education of their

child/children.

Further, since the rules for issuance of such waivers have not yet been promulgated by the State Board of Education the difficulty of such rules is, at this point speculative at best. In addition, the initiative requires the Board to set such rules "with the best interests of the child in their formulation." Such direction limits the restrictive nature to a limited area.

2. **Does the phrase "accelerated English acquisition process" constitute an improper catch phrase in this initiative where the phrase is used neither in the Proponents' organizational name nor the organization's slogan?**

The Court has well established that "the use of catch phrases or slogans in the title, ballot title and submission clause, and summary should be avoided . . ." *In re Amend Tabor No. 32*, 908 P.2d 125 (Colo.1995). The intent of the rule is to refrain from prejudicing the public for or against, an initiative solely on the basis of the phrase's appeal or emotional impact. See *In re Ballot Title 1999-2000 #215*, 3 P.3d 11 (Colo 2000). The Court determines "the existence of a catch phrase or slogan in the context of contemporary political debate." See *In re Ballot title 1999-2000 #227 & 228*, 3 P.3d at 7; *In re Workers Comp Initiative*, 850 P.2d 144, 147 (Colo 1993).

Further, the proponents have not utilized this term in the formation of the issue committee, (Registered as "English for Colorado"). Nor has the group utilized "accelerated English acquisition" as the slogan for the committee or group. The slogan being used in the petition signing efforts is: "English = Opportunity". While the campaigning effort for votes has not yet begun, as it has not yet achieved the requisite valid signatures, it is unlikely the group/proponents would change the slogan for such campaign. While this does not, in of itself, preclude the finding that "accelerated English acquisition" is an improper catchphrase; it does at the least imply the proponents did not consider it a valid emotional tag for use in such effort.

W. Garcia and Rocha-Secrest argue the words "accelerated English acquisition" do not constitute an improper catchphrase. These words in combination do not conjure up in the mind any emotional response nor are they easily turned into a political slogan for use in any political campaign. The term accelerated English acquisition is nothing more than an expression which lends some measure of understanding of the intent of the initiative. At best it raises the question, "What is accelerated English acquisition?" This would then increase the desire of the electors to know more about the initiative rather than engender a

impulsive reaction to the term. Therefore, the term is essentially neutral with no emotional impact or creating a favorable response without contributing to the elector's understanding of the issue presented. See *In re Ballot Title 1999 - 2000* # 256, 12 P.3d 246 (Colo 2000).

IV. CONCLUSION

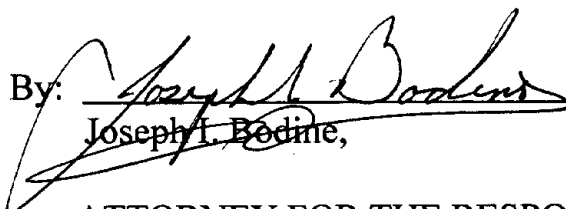
The initiative provides a limited but flexible method for the issuance of waivers and charges the State Board of Education with the responsibility to establish rules for issuance of such waivers. The requirement for parents/legal guardians to be properly informed about the English educational opportunities does not improperly burden the waiver process. The title set by the Title Board is not misleading as to the use of waivers and the restrictive nature of those waivers.

The term "accelerated English acquisition process" does not cause an emotional response nor is it easily used as a slogan in the political campaigning process. The term is essentially neutral and is therefore not an impermissible "catchphrase".

Therefore, the proponents, W. Garcia and Rocha-Secrest, request the petition of the objectors, Walters and J. Garcia be denied and the title set by the Title Board be allowed to stand as approved by the Title Board.

Respectfully submitted this 30th day of May 2006.

LAW OFFICE OF JOSEPH I. BODINE. LLC

By: 
Joseph I. Bodine, #26775
ATTORNEY FOR THE RESPONDENTS

List of Exhibits

Exhibit 1 - Full Text of Initiative

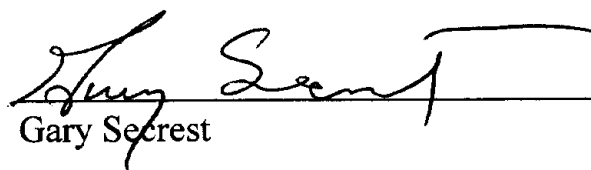
Exhibit 2 - Title, Ballot Title and Submission as set by the Title Board

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of May 2006, a true and correct copy of the foregoing **PROPONENTS' BRIEF** was hand delivered to the following:

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Isaacson Rosenbaum P.C.
633 17th Street - Ste 2200
Denver CO 80202

Maurice G. Knaizer, Esq
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street - 5th Floor
Denver CO 80203


Gary Secrest

Final TS
RECEIVED

APR 06 2006

ELECTIONS/LICENSING
SECRETARY OF STATE

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

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

SECTION 18: ENGLISH LANGUAGE EDUCATION FOR ENGLISH LEARNERS IN PUBLIC SCHOOLS.

THE PEOPLE OF COLORADO FIND AND DECLARE:

(1) FINDINGS AND DECLARATIONS.

(a) THE ENGLISH LANGUAGE IS THE COMMON PUBLIC LANGUAGE OF THE UNITED STATES OF AMERICA AND OF THE GREAT STATE OF COLORADO; AND

(b) THE ENGLISH LANGUAGE IS SPOKEN BY THE VAST MAJORITY OF COLORADO RESIDENTS, IS ALSO THE LEADING WORLD LANGUAGE FOR SCIENCE, TECHNOLOGY, AND INTERNATIONAL BUSINESS, THEREBY IS THE LANGUAGE OF ECONOMIC OPPORTUNITY FOR THE RESIDENTS OF COLORADO; AND

(c) THE PEOPLE OF THE STATE OF COLORADO HAVE A DUTY TO PROVIDE A THOROUGH AND UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS THROUGHOUT THE STATE WHEREIN ALL RESIDENTS OF THE STATE BETWEEN THE AGES OF SIX AND TWENTY-ONE YEARS OF AGE MAY BE EDUCATED. EDUCATION IN THE ENGLISH LANGUAGE IS FUNDAMENTAL TO PROVIDING A THOROUGH AND UNIFORM SYSTEM TO THE RESIDENTS OF COLORADO; AND

(d) ENGLISH LEARNING CHILDREN CAN QUICKLY ACQUIRE FULL FLUENCY AND LITERACY IN ENGLISH, IF THEY ARE TAUGHT THAT LANGUAGE IN THE CLASSROOM AS SOON AS THEY ENTER SCHOOL; AND

(e) IT IS IMPERATIVE THAT ALL CHILDREN IN COLORADO PUBLIC SCHOOLS BE TAUGHT ENGLISH AS RAPIDLY AND EFFECTIVELY AS POSSIBLE.

(2) DEFINITIONS:

(a) "ACCELERATED ENGLISH ACQUISITION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR YOUNG CHILDREN 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 TEACHERS 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 LEARN TO READ AND WRITE SOLELY IN ENGLISH.

(b) "BILINGUAL EDUCATION" 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.

EXHIBIT
1

(c) "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 SUCH TEACHING PERSONNEL ARE FLUENT AND LITERATE IN ENGLISH. ENGLISH LANGUAGE CLASSROOMS ENCOMPASS BOTH ENGLISH LANGUAGE MAINSTREAM CLASSROOMS AND ACCELERATED ENGLISH ACQUISITION CLASSROOMS.

(d) "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.

(e) "ENGLISH LEARNER" MEANS A CHILD WHO DOES NOT SPEAK ENGLISH OR WHOSE NATIVE LANGUAGE IS NOT ENGLISH, AND WHO IS NOT CURRENTLY ABLE TO PERFORM ORDINARY CLASSROOM WORK IN ENGLISH.

(3) CENSUS

LOCAL SCHOOL DISTRICTS SHALL ANNUALLY ASCERTAIN, NOT LATER THAN THE FIRST DAY OF APRIL EACH YEAR, UNDER RULES ESTABLISHED BY THE STATE BOARD OF EDUCATION, THE NUMBER OF ENGLISH LEARNERS WITHIN THEIR SCHOOL SYSTEM IN GRADES KINDERGARTEN THROUGH TWELVE, AND SHALL CLASSIFY THEM ACCORDING TO GRADE LEVEL, THE LANGUAGE OF WHICH THEY POSSESS A PRIMARY SPEAKING ABILITY, AND THE ENGLISH LEARNER PROGRAM TYPE IN WHICH THEY ARE ENROLLED, WITH ALL SUCH INFORMATION BEING MADE PUBLICLY AVAILABLE BY SCHOOL AND SCHOOL DISTRICT ON THE SCHOOL DISTRICT WEBSITE, OR OTHERWISE MADE PUBLICLY AVAILABLE. WHERE THE SCHOOL DISTRICT DOES NOT MAINTAIN A WEB SITE THE STATE BOARD OF EDUCATION SHALL PROVIDE SUCH INFORMATION ON AN INTERNET WEB SITE.

(4) ENGLISH LANGUAGE EDUCATION

SUBJECT TO THE EXCEPTIONS PROVIDED IN SUBSECTION 5 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 ACCELERATED ENGLISH ACQUISITION DURING A TEMPORARY TRANSITION PERIOD NOT NORMALLY INTENDED TO EXCEED ONE SCHOOL YEAR. LOCAL SCHOOL DISTRICTS WHICH DETERMINE A TRANSITION PERIOD OF GREATER THAN ONE YEAR IS NECESSARY, MAY REQUEST ADDITIONAL TIME TO TRANSITION TO ACCELERATED ENGLISH ACQUISITION FROM THE STATE BOARD OF EDUCATION. THE STATE BOARD OF EDUCATION SHALL INDIVIDUALLY REVIEW EACH REQUEST FOR ADDITIONAL TIME AND GRANT SUCH REQUEST BASED UPON REASONABLE CAUSE. LOCAL SCHOOL DISTRICTS 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. LOCAL SCHOOL DISTRICTS 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 ACQUIRE A GOOD WORKING KNOWLEDGE OF ENGLISH AND ARE ABLE TO DO REGULAR SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE MAINSTREAM CLASSROOMS. FOREIGN LANGUAGE CLASSES FOR CHILDREN WHO ARE PROFICIENT IN

ENGLISH SHALL BE COMPLETELY UNAFFECTED BY THIS SECTION, AS SHALL BE SPECIAL EDUCATIONAL PROGRAMS FOR PHYSICALLY - OR MENTALLY-IMPAIRED STUDENTS.

(5) PARENTAL WAIVERS

PARENTS OR LEGAL GUARDIANS MAY REQUEST A WAIVER FROM THE REQUIREMENTS OF SUBSECTION 4 OF THIS SECTION FOR THEIR CHILD/CHILDREN WHO ARE STUDENTS IN THE PUBLIC SCHOOLS. STUDENTS WHO MAY BE ELIGIBLE FOR A WAIVER INCLUDE: STUDENTS WHO ARE TEN YEARS OF AGE OR OLDER, AND STUDENTS WITH SPECIAL NEEDS. SUCH REQUEST FOR A WAIVER SHALL BE IN WRITING BY THE STUDENT'S PARENT OR LEGAL GUARDIAN. NO SUCH REQUEST FOR WAIVER MAY BE GRANTED WITHOUT SAID PARENTS OR LEGAL GUARDIAN PERSONALLY VISITING THE SCHOOL TO APPLY FOR THE WAIVER AND THAT THEY THERE BE 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 EDUCATIONAL OPPORTUNITIES AVAILABLE TO THE CHILD. SCHOOL DISTRICT OFFICIALS DECIDE WHETHER TO GRANT OR DENY THE REQUEST FOR THE WAIVER BASED ON RULES ESTABLISHED BY THE STATE BOARD OF EDUCATION, WHICH GUIDELINES SHALL CONSIDER THE BEST INTERESTS OF THE CHILD IN THEIR FORMULATION. SCHOOLS IN WHICH TWENTY OR MORE STUDENTS OF THE SAME GRADE LEVEL HAVE RECEIVED A WAIVER ARE REQUIRED TO OFFER A DIFFERENT TYPE OF PROGRAM, SUCH AS A BILINGUAL PROGRAM. IN ALL OTHER CASES, STUDENTS WITH A WAIVER MAY TRANSFER TO A SCHOOL THAT OFFERS A DIFFERENT TYPE OF PROGRAM OF INSTRUCTION. IF A PARENTAL WAIVER HAS BEEN GRANTED, THE AFFECTED CHILD MAY BE TRANSFERRED TO CLASSES TEACHING ENGLISH AND OTHER SUBJECTS THROUGH BILINGUAL EDUCATION TECHNIQUES, SUCH AS DUAL LANGUAGE PROGRAMS, OR OTHER GENERALLY RECOGNIZED EDUCATIONAL METHODOLOGIES PERMITTED BY LAW. INDIVIDUAL SCHOOLS IN WHICH 20 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 MUST BE PERMITTED TO TRANSFER TO A PUBLIC SCHOOL IN WHICH SUCH A CLASS IS OFFERED. SCHOOL DISTRICTS SHALL PROVIDE TRANSPORTATION TO SUCH OTHER PUBLIC SCHOOL PROVIDED NO SUCH CLASS IS OFFERED AT A PUBLIC SCHOOL WITHIN TWO MILES OF THE STUDENTS HOME. NO WAIVER IS REQUIRED TO TRANSFER A STUDENT FROM THE ACCELERATED ENGLISH CLASS TO AN ENGLISH LANGUAGE MAINSTREAM CLASSROOM WHO HAS SHOWN SUFFICIENT PROFICIENCY IN ENGLISH TO PERFORM ORDINARY CLASSWORK AT THE APPLICABLE GRADE LEVEL.

(6) ENFORCEMENT

(a) AS SET FORTH IN SUBSECTION 4 OF THIS SECTION, ALL SCHOOL CHILDREN ARE TO BE PROVIDED AT THEIR ENROLLED SCHOOL WITH AN ENGLISH LANGUAGE PUBLIC EDUCATION. THE STATE BOARD OF EDUCATION SHALL BE CHARGED WITH ENFORCEMENT OF THE ACCELERATED ENGLISH ACQUISITION LAWS. ANY SCHOOL DISTRICT WHICH FAILS TO IMPLEMENT ACCELERATED ENGLISH ACQUISITION, OR TO EFFECTIVELY IMPLEMENT ACCELERATED ENGLISH ACQUISITION, SHALL BE PLACED ON ACCREDITATION WATCH, AND IF THE SCHOOL DISTRICT FAILS TO SHOW SIGNIFICANT IMPROVEMENT IN SUCH IMPLEMENTATION, FOLLOWING THE PLACEMENT ON ACCREDITATION WATCH, THEN THE STATE BOARD OF EDUCATION SHALL WITHDRAW ACCREDITATION FROM THAT SCHOOL DISTRICT UNTIL SUCH TIME AS ACCELERATED ENGLISH ACQUISITION IS FULLY AND EFFECTIVELY IMPLEMENTED.

(b) THE LEGISLATURE SHALL ENACT SUCH LAWS AS ARE REQUIRED TO IMPLEMENT THE INTENT OF THIS SECTION.

(c) THE STATE BOARD OF EDUCATION SHALL HAVE POWER TO ESTABLISH AND DEFINE SUCH STANDARDS AS THEY BELIEVE ARE REQUIRED TO IMPLEMENT THE INTENT OF THIS SECTION AND THE LAWS PROMULGATED TO EFFECTUATE THIS SECTION.

(7) STANDARDIZED TESTING FOR MONITORING EDUCATION PROGRESS

(a) TO ENSURE THE PROGRESS ENGLISH LEARNERS, A STANDARDIZED, NATIONALLY ACCEPTED TEST OF ENGLISH PROFICIENCY SHALL BE ADMINISTERED AT LEAST ONCE EACH YEAR TO ALL ENGLISH LEARNERS IN GRADES TWO THROUGH TWELVE ENROLLED IN PUBLIC SCHOOLS. ONLY ENGLISH LEARNERS CLASSIFIED AS SEVERELY LEARNING DISABLED MAY BE EXEMPTED FROM THESE TESTS. THE TESTS TO BE USED SHALL BE SELECTED BY THE STATE BOARD OF EDUCATION, AND THE TESTS SELECTED SHALL CONTINUE TO BE USED FOR AT LEAST FIVE YEARS UNLESS SUBSTANTIAL EVIDENCE SHOWS IT IS INEFFECTIVE IN ASSESSING ENGLISH SKILL LEVEL. THE NATIONAL PERCENTILE SCORES OF STUDENTS SHALL BE CONFIDENTIALLY PROVIDED TO INDIVIDUAL PARENTS OR LEGAL GUARDIAN, AND THE AGGREGATED PERCENTILE SCORES AND DISTRIBUTIONAL DATA FOR INDIVIDUAL SCHOOLS AND SCHOOL DISTRICTS SHALL BE MADE PUBLICLY AVAILABLE ON THE SCHOOL DISTRICT WEB SITE, OR OTHERWISE MADE PUBLICLY AVAILABLE. WHERE THE SCHOOL DISTRICT DOES NOT MAINTAIN A WEB SITE THE STATE BOARD OF EDUCATION SHALL PROVIDE SUCH INFORMATION ON AN INTERNET WEB SITE. THE SCORES FOR STUDENTS CLASSIFIED AS ENGLISH LEARNERS SHALL BE SEPARATELY SUB-AGGREGATED AND MADE PUBLICLY AVAILABLE ON SUCH AFOREMENTIONED WEB SITES AS WELL, WITH FURTHER SUB-AGGREGATION BASED ON THE ENGLISH LEARNER PROGRAM TYPE IN WHICH THEY ARE ENROLLED. SCHOOL ENROLLMENT BY RACE, ETHNICITY, AND ENGLISH LEARNER PROGRAM TYPE SHALL ALSO BE MADE PUBLICLY AVAILABLE. ALTHOUGH ADMINISTRATION OF THESE TESTS ARE REQUIRED SOLELY FOR MONITORING EDUCATIONAL PROGRESS, PUBLIC OFFICIALS AND ADMINISTRATORS MAY UTILIZE THESE TEST SCORES FOR OTHER PURPOSES AS WELL IF THEY SO CHOOSE.

(b) IN THE EVENT SUCH INFORMATION REQUIRED BY SUBSECTION (7)(a) TO BE MADE AVAILABLE ON A PUBLIC INTERNET WEB SITE, OR OTHERWISE MADE PUBLICLY AVAILABLE, CANNOT BE DONE WITHOUT REVEALING THE IDENTITY OF THE INDIVIDUAL STUDENTS THE LOCAL SCHOOL BOARD MAY OBTAIN A WAIVER FROM SUCH PUBLIC DISTRIBUTION OF INFORMATION FROM THE STATE BOARD OF EDUCATION. HOWEVER, THE INFORMATION MAY BE AGGREGATED WITH OTHER SCHOOL DISTRICTS FOR USE BY THE STATE BOARD OF EDUCATION.

(8) SEVERABILITY

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

(9) INTERPRETATION

CC CC

UNDER CIRCUMSTANCES IN WHICH PORTIONS OF THIS ACT 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.

(10) EFFECTIVE DATE

EXCEPT FOR THE CENSUS REQUIREMENTS OF SUBSECTION 3 AND THE TESTING REQUIREMENTS OF SUBSECTION 7 OF THIS SECTION, WHICH SHALL BE IMPLEMENTED IMMEDIATELY UPON PASSAGE, ALL OTHER SUBSECTIONS OF THIS SECTION SHALL BECOME EFFECTIVE 1 JULY 2007.

Ballot Title Setting Board

Proposed Initiative 2005-2006 #95¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; 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; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; 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; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available?

¹ Unofficially captioned "Education of English-Language Learners" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Hearing April 19, 2006:

At request of proponent, technical correction allowed in text of measure. (In section 18 (7)(a), inserted "OF" after "PROGRESS".)

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:15 p.m.

Hearing May 3, 2006:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 4:09 p.m.

<p>SUPREME COURT, STATE OF COLORADO TWO 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>	<p>Case No.06SA140</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006, #95</p> <p>Petitioners:</p> <p>DENISE WALTERS and JORGE L. GARCIA, objectors,</p> <p>v.</p> <p>Respondents:</p> <p>WILLIAM GARCIA and MARCIA ROCHA-SECREST, proponents,</p> <p>and</p> <p>Title Board:</p> <p>WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.</p>	
<p>ORDER OF COURT</p>	

Upon consideration of the Petition for Review, together
with briefs filed herein, and now being sufficiently advised in
the premises,

IT IS ORDERED that the actions of the Title Board are
AFFIRMED.

BY THE COURT, EN BANC, JUNE 8, 2006.
JUSTICE EID does not participate.



Copies mailed via the State's Mail Services Division on 6-9-06 NMT

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