

Supreme Court, State of Colorado 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Setting Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned “Oil and Gas Operations”) Petitioners/Cross-Respondents: Mizraim Cordero and Scott Prestidge; v. Respondents/Cross-Petitioners: Caitlin Leahy and Gregory Diamond; and Ballot Title Setting Board: Suzanne Staiert, Daniel Domenico, and Jason Gelender.	▲ Court Use Only ▲
Attorneys for Petitioners: Sarah M. Clark, #39367 Michael F. Feeley, #12266 Brownstein Hyatt Farber Schreck LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202 303.223.1100 tel 303.223.1111 fax sclark@bhfs.com, mfeeley@bhfs.com	Case Nos.: 14SA116 (Initiative #85) 14SA119 (Initiative #86) 14SA122 (Initiative #87) 14SA125 (Initiative #88)
Consolidated Opening Brief of Petitioners/Cross-Respondents Concerning Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned “Oil and Gas Operations”)	

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

- The brief complies with C.A.R. 28(g). It does not exceed 30 pages.
- The brief complies with C.A.R. 28(k). For the party raising the issue: It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. ,p.), not to an entire document, where the issue was raised and ruled on.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32

/s/ Sarah M. Clark
Sarah M. Clark

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I. Statement of the Issues Presented for Review

A. Whether the “not a taking” provision contained in Proposed Initiatives #85, #86, and #87 is an impermissible second subject.

B. Whether the Title Board erred in failing to inform voters that Proposed Initiatives #85, #86, and #87 do not bar federal takings claims.

C. Whether the Title Board erred in failing to explain to voters that the Proposed Initiatives incongruously limit their applicability only to oil and gas resources belonging to the State of Colorado.

D. Whether the Title Board erred in using the catch phrase “statewide setback” rather than a more descriptive and common word such as “prohibition.”

E. Whether the Title Board erred in setting titles for Proposed Initiatives #86, #87, and #88 that conflict with Proposed Initiative #85.

F. Whether, as raised in the cross-petitions for review, the Title Board properly removed references to the catch phrase “hydraulic fracturing.”

II. Statement of the Case

A. Nature of the Case

Registered electors Mizraim Cordero and Scott Prestidge (“Petitioners”) have brought this original proceeding pursuant to section 1-40-107(2), C.R.S. (2013), seeking review of the actions of the Ballot Title Setting Board (“Title

Board” or “Board”) regarding Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (collectively “Proposed Initiatives” or singularly “Proposed Initiative”).

B. Nature of the Measures and Language of the Titles

The Proposed Initiatives seek to override the state’s current rules prohibiting oil and gas wells from being located within a certain distance from occupied buildings. Proposed Initiatives #85, #86, and #87 further seek to divest property owners of the rights and protections afforded by sections 14 and 15 of the Colorado constitution by declaring that the Proposed Initiatives’ new rules concerning the location of oil and gas wells are not, under any circumstances, a taking and never require payment of just compensation.

The titles for the Proposed Initiatives, as set by the Title Board at its April 16 rehearing, are worded as follows:

Proposed Initiative #85: An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil and gas well to be located at least 1,500 feet from the nearest occupied structure; authorizing a homeowner to waive the setback for the homeowner’s home; and establishing that the statewide setback is not a taking of private property requiring compensation under the Colorado constitution.

Proposed Initiative #86: An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil and gas well to be located at least 2,000 feet from the nearest occupied structure; authorizing a homeowner to

waive the setback for the homeowner's home; and establishing that the statewide setback is not a taking of private property requiring compensation under the Colorado constitution.

Proposed Initiative #87: An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil and gas well to be located at least one half mile from the nearest occupied structure; authorizing a homeowner to waive the setback for the homeowner's home; and establishing that the statewide setback is not a taking of private property requiring compensation under the Colorado constitution.

Proposed Initiative #88: An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil and gas well to be located at least 2,000 feet from the nearest occupied structure; and authorizing a property owner to waive the setback for any structure located on the owner's property.

See Exhibit A, pp. 1–4.

C. Nature of the Proceedings Below

Catlin Leahy and Gregory Diamond (“Proponents”) submitted the Proposed Initiatives to the Office of Legislative Council on March 3, 2014. As required by statute, the Office of Legislative Council and the Office of Legislative Legal Services held a public review and comment meeting with Proponents on March 17. After the review and comment hearing, Proponents filed the Proposed Initiatives with the Secretary of State, and the Proposed Initiatives were placed on the agenda for a public hearing before the Title Board. *See* Exhibit B, pp. 1–4.

On April 3, the Title Board held its hearing, at which it found a single subject and set title for each of the Proposed Initiatives. A week later, Petitioners filed timely motions for rehearing, alleging: (1) that Proposed Initiatives #85, #86, and #87 impermissibly contain multiple subjects; (2) that the titles set for Proposed Initiatives #85, #86, #87, and #88 were unfair, were misleading, and failed to include key aspects of the Proposed Initiatives; and (3) that the titles set for Proposed Initiatives #86, #87, and #88 improperly conflicted with the title previously set for Proposed Initiative #85. The Title Board held the rehearing on April 16 and denied Petitioners' motions except to the extent that the Board made changes to the titles.

Even with the Title Board's changes, the titles set for Proposed Initiatives #85, #86, #87, and #88 remain confusing and misleading. In addition, Proposed Initiatives #85, #86, and #87 contain two distinct and unrelated subjects, and the titles set Proposed Initiatives #86, #87, and #88 conflict with the title previously set for Proposed Initiative #85. For these reasons Petitioners filed petitions for review with this Court on April 23. That same day, Proponents filed cross-petitions for review concerning only Proposed Initiatives #86 and #87. Subsequently, the Title Board moved to consolidate the cases. The Court granted the motion to

consolidate for briefing purposes only, retaining its discretion to resolve the cases in separate orders and opinions.

III. Summary of Argument

Proposed Initiatives #85, #86, and #87 violate the single subject requirement by both: (1) seeking to override current statewide rules that prohibit locating oil and gas wells within a certain distance of occupied buildings; and (2) seeking to alter the applicability of the rights and protections afforded by sections 14 and 15 of the Colorado constitution concerning just compensation for the taking of private property.

In addition, the titles set for Proposed Initiatives #85, #86, #87, and #88: (1) fail to inform voters that the Proposed Initiatives may affect only oil and gas resources belonging to the State of Colorado, and not oil and gas resources belonging to the federal government or private mineral interest owners; (2) use the catch phrase “statewide setback” rather than the more understandable and common word “prohibition”; and (3), with respect to the titles set for Proposed Initiatives 2013–2014 #85, #86, and #87, deceive voters that the Proposed Initiatives bar both state and federal takings claims.

Moreover, Proposed Initiatives 2013–2014 #86, #87, and #88 conflict with the title previously set for Proposed Initiative 2013–2014 #85, and prevent voters

comparing the titles from being able to distinguish among the Proposed Initiatives. Last, the Title Board properly removed reference to the politically polarizing catch phrase “hydraulic fracturing” because the Proposed Initiatives affect oil and gas operations and development beyond use of hydraulic fracturing as a production method.

For all these reasons, the Court should reverse the Title Board’s determination on single subject as to Proposed Initiatives #85, #86, and #87, and remand these Proposed Initiatives to the Title Board with directions to strike the titles and return the Proposed Initiatives to Proponents. Except to the extent that the Court should affirm the Title Board’s determination to remove the catch phrase “hydraulic fracturing” from the titles, the Court should also reverse the Title Board’s determinations as to the language of the titles for Proposed Initiatives #85, #86, #87, and #88, and remand these Proposed Initiatives to the Title Board with directions on how to set clear titles.

IV. Argument

A. The “Not a Taking” Provision Contained in Proposed Initiatives #85, #86, and #87 is an Impermissible Second Subject

1. Standard of Review

This Court has *de novo* review over whether a proposed initiative complies with the single subject requirement in article V, section 1(5.5) of the Colorado

constitution. *See, e.g., In re Ballot Title 2007–2008, #17*, 172 P.3d 871, 876 (Colo. 2007). The Court’s review for single subject does not involve the proposed initiative’s efficacy, construction, or future application. *In re Title, Ballot Title, Submission Clause for 2009–2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010) (citation omitted). When necessary, however, the Court “will characterize the proposal sufficiently to enable review of the Title Board’s action.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999–2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000).

2. The “Not a Taking” Provision is Unrelated to the Stated Purpose of the Proposed Initiatives

A proposed initiative “that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the single-subject requirement.” *In re Ballot Title 1999–2000 No. 104*, 987 P.2d 249, 253 (Colo. 1999). Here, at the Title Board’s April 3 hearing, Proponents’ counsel identified the purpose of the Proposed Initiatives as being “to create a setback requirement for new oil and gas wells from occupied structures.” Exhibit C, 4:11–17. Proponents’ counsel further reiterated this purpose at the Title Board’s April 16 rehearing: “On the single subject issues, I would just say the single subject is the setback, period, underlined, underscored, in bold type. It’s all about the setback.” Exhibit D, 8:11–14.

However, in addition to Proponents' stated purpose to override the state's existing rules concerning the location of oil and gas wells, Proposed Initiatives #85, #86, and #87 include a provision altering the rights and protections afforded to property owners by sections 14 and 15 of the Colorado constitution. To satisfy the single-subject requirement, separate provisions of a measure must be "directly tied to the initiative's central focus." *In re Title, Ballot Title, Submission Clause for 2009–2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010).

Although Proponents' counsel argued that the "not a taking" provision is "interpretative and implementational" (Exhibit C at 5:13–14), both Title Board Member Jason Gelender and Title Board Member Daniel Domenico challenged that rationale with concern that the "not a taking" provision's reach into the realm of constitutionally protected property rights could surprise voters who believe the oil and gas industry is the only group who stands to lose anything under the Proposed Initiatives. That Proponents elected to file Proposed Initiative #88 without the "not a taking" provision suggests that they too had concerns that the "not a taking" provision introduces an impermissible second subject. In the end, both Mr. Gelender and Mr. Domenico found a single subject, but their apprehension about the possible effects the "not a taking" provision will have on

voters merits the *de novo* review afforded to this Court on questions of single subject:

Mr. Gelender: I guess what I would ask is are there conceivably situations where a person could be completely unable to access their already existing mineral rights due to the setback requirement and receive no compensation for that? . . . [S]hould such a situation could [sic] arise, I would wonder if someone voting on this would have a reasonable expectation that something like that could happen, but again, maybe that's delving too far into effects, so I'll leave further discussion if anyone wants to bring it up in a rehearing and move on.¹

Exhibit C, 5:23–6:2; 6:16–24.

Mr. Domenico: I can see Mr. Gelender's point certainly. It could surprise someone who might say, well, you know, look[,] I'd like to impose these regulations but do so with the understanding that kind of the normal rules about if it takes someone's property that, you know, they should be entitled to just compensation under our state constitution and whatever federal claims there might be, so I can see the surprise idea but it seems connected enough I guess that I'm willing to find a single subject.

Exhibit C, 7:18–8:3.

One of the purposes of the single-subject requirement is to prevent proponents from “logrolling” multiple subjects in a way that a voter favoring one of the subjects but not the other is required to vote for both of them in an effort to secure approval of the subject the proponent would like to have enacted. *In re*

¹ When this issue was raised by Petitioners' counsel during the Title Board's April 16 rehearing, there was no further discussion by the Board and Petitioners' motion for rehearing on the single subject issue was summarily and unanimously denied. *See* Exhibit D, 5:11–6:16; 10:9–14

Title, Ballot Title, and Submission Clause, and Summary for 1999–2000 No. 29, 972 P.2d 257, 264–65 (Colo. 1999). This is precisely the concern raised by the Board and is the outcome the single-subject requirement seeks to prevent. To avoid this constitutional violation, the Court should reverse the Title Board’s determination on single subject and remand to the Title Board with instructions to strike the titles and return Proposed Initiatives #85, #86, and #87 to Proponents.

B. The Titles Set for the Proposed Initiatives Improperly Omit Key Provisions, Fail to Explain Incongruous Elements, Use Catch Phrases, and Improperly Conflict with Titles Previously Set

1. Standard of Review

Titles set by the Title Board “must be sufficiently clear and brief for the voters to understand the principal features of what it being proposed.” *In re Ballot Title 1999–2000 No. 258(A)*, 4 P.3d at 1098. The Court grants significant deference to the Board’s determinations on title. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999–2000 No. 256*, 12 P.3d 246, 255 (Colo. 2000). Still, a title must be rejected if it is “misleading, inaccurate, or fails to reflect the central features of the proposed initiative.” *In re Ballot Title 1997–1998 No. 10*, 943 P.2d 897, 901 (Colo. 1997). Similarly, a title must be rejected if it “reinforces voter confusion about the effect of a ‘yes’ or ‘no’ vote” on the proposed initiative. *In re Title 1999–2000 No. 29*, 972 P.2d at 268.

2. The “Not a Taking” Provision Creates an Omission in the Titles Set for Proposed Initiatives #85, #86, and #87

Titles are “critical to the voters’ accurate understanding of a proposal.” *In re Ballot Title 1999–2000 No. 258(A)*, 4 P.3d at 1999. “Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes.” *Id.*

Here, the failure of the titles set by the Title Board for Proposed Initiatives #85, #86, and #87 to inform voters that takings claims under the United States Constitution are unaffected by the “not a taking” provision contained in the Proposed Initiatives is a fatal omission because voters may be misled into believing that the “not a taking” provision bars all takings claims and fully insulates against the risk of any accompanying financial liability.

Indeed, as Proponents’ counsel explained at the Title Board’s April 3 hearing, the Proposed Initiatives in no way bar federal takings claims: “[W]e don’t want to suggest we’re amending the United States Constitution or attempting to do that here.” Exhibit C, 10:25–11:1. However, the lack of information in either the Proposed Initiatives or their titles to indicate that federal takings law is unaffected by the “not a taking” provision may confuse voters who believe they are proactively preventing costly litigation and potential compensation under any law.

As Petitioners' counsel Mike Feeley explained during the Title Board's April 16 rehearing:

Mr. Feeley: [T]he reference in the title to, quote, "not a taking of private property requiring compensation under the Colorado constitution," close quote, without reference to the continuing rights requiring compensation under the United States Constitution is a critical omission and I think really does not advise the average voter of what the implications are.

Exhibit D, 32:21–33:3.

The Title Board is not required to refer to every possible "interplay with existing state and federal laws." *In re Title, Ballot Title and Submission Clause and Summary for 1999–2000* #255, 4 P.3d 485, 498 (Colo. 2000). Still, it would be plainly improper for the Title Board to permit the "not a taking" provision to mislead voters. As such, the titles for Proposed Initiatives #85, #86, and #87 should guard against this possibility by explaining to voters that the "not a taking" provision bars claims and compensation *solely* under the state constitution to indicate to voters that there might be other claims that remain unaffected.

3. The Titles Must Put Voters on Notice that the Applicability of the Proposed Initiatives May Be Limited to Oil and Gas Resources Belonging to the State

The State of Colorado owns more than four million acres of mineral rights across the state that the federal government gave to Colorado largely for the benefit

of funding K–12 education.² The property is managed by the Colorado State Land Board, which leases out the land to private oil and gas companies to develop and operate.³ These oil and gas resources belong to the State of Colorado.

Here, each of the Proposed Initiatives includes language that defines either “oil and gas development” or “oil and gas operations” to mean “exploration for and production of Colorado’s oil, gas, other gaseous and liquid hydrocarbons, and carbon dioxide.” *See* Exhibit B, pp. 1–4 (definition located in Section 2 of each Proposed Initiative). Whatever Proponents’ intent might have been when they drafted the Proposed Initiatives, the language they chose defines the oil and gas resources that are the subject of the Proposed Initiatives as “Colorado’s” oil and gas, thus leaving voters to wonder whether the Proposed Initiatives affect all oil and gas within the state or just oil and gas belonging to the State of Colorado.

To resolve this ambiguity Petitioners’ counsel suggested, at the Title Board’s April 16 rehearing, a compromise solution. Rather than attempt to discern the meaning of “Colorado’s” as it is used in the Proposed Initiatives, the Title Board could simply include that language in the titles so that voters would be on notice of

² Colorado State Land Board, About the SLB, <http://trustlands.state.co.us/Pages/AbouttheSLB.aspx> (last visited May 13, 2014).

³ Colorado State Land Board, Frequently Asked Questions, http://trustlands.state.co.us/NewsandMedia/Documents/General_070109a.pdf (last visited May 13, 2014).

the potential ambiguity, which of course could be further explained in the Blue Book and through the campaigns. *See* Exhibit D, 10:23–11:11.

Mr. Domenico acknowledged this ambiguity and possible fix, but rather than apply the general rules of statutory construction as required by the Court’s case law, simply deferred to Proponents’ desire to leave the language out of the titles if Proponents were willing to “take the risk” that this Court might reverse the Title Board on this ground:

Mr. Domenico: I think Mr. Feeley has an argument about “Colorado’s” in the measure. I’m sort of inclined to think that at best that’s ambiguous and the proponents have told us they don’t mean to limit it to government owned mineral rights and if that is one issue where I’m willing to sort of go with whatever the proponents, if they’re willing to take that risk, that’s consistent with my reading of it, too, and so I’m willing to kind of not accept that as long as the proponents are willing to recognize, you know, if somebody disagrees with our reading of that, they’re running a bit of a risk there I guess.

Exhibit D, 18:17–19:6.

When faced with an interpretive question, the Title Board is permitted to consider the proponents’ intent and meaning of their proposed initiative. *In re Proposed Initiative Concerning Water Rights*, 877 P.2d 321, 327 (Colo. 1994). Equally important, however, is the Board’s duty to explain an incongruous or surprising element of a proposed initiative to voters through the title. *In re Ballot Title 1999–2000 No. 104*, 987 P.2d 249, 259 (Colo. 1999). For example, in *In re*

Ballot Title 1999–2000 No. 104 the proposed initiatives sought to allow for the recall of judges and provided that a signature petition signed by a number of registered electors “not to exceed 5%” of a specified number of votes from a previous election was required to place the recall question on the ballot. *Id.* There, the Court determined that a plain reading the phrase “not to exceed 5%” meant that a single signature would be sufficient to place the recall question on the ballot and, at the same time, that if the number of signatures collected was more than 5% of the specified number of votes from the previous election, then the recall question could not be placed on the ballot. *Id.* The Court held that because the title set by the Title Board used the phrase “not to exceed 5%” but did not explain the provision, the title contained impermissible ambiguity. *Id.* at 260.

Similarly, here, the plain meaning of the Proposed Initiatives’ use of the possessive “Colorado’s” implies ownership and appears to limit the applicability of the Proposed Initiatives only to oil and gas resources belonging to the state. This is an incongruous and surprising element of the Proposed Initiatives that must be included in the titles to at least put voters on notice that the Proposed Initiatives include that language.

4. “Statewide Setback” is an Impermissible Catch Phrase

“Titles may not contain a catch phrase that unfairly prejudices the proposal in its favor.” *In re Ballot Title No. 258(A)*, 4 P.3d at 1098. “Catch phrases are words that work to a proposal’s favor without contributing to voter understanding.” *Id.* at 1100. The Court determines the existence of a catch phrase in the context of contemporary political debate. *Id.* By including a catch phrase in the title for the proposed initiative, the Title Board “tips the substantive debate surrounding the issue to be submitted to the electorate.” *Id.*

The phrase “setback” is a technical term in the oil and gas industry, but when used in the titles with the word “statewide” it takes on a seemingly innocuous and alliterative quality that disguises its actual function as prohibiting the location of oil and gas wells within a certain distance of an occupied structure. Here, the titles set by the Title Board impermissibly suggest that voters should vote in favor of the Proposed Initiatives because they imply without explanation that oil and gas development is being relocated beyond a “setback” area when, in reality, such development is simply being further prohibited. “By 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.*

Here, by using the catch phrase “statewide setback,” the titles set for the Proposed Initiatives improperly ask voters nothing more than whether they would like to “set back” oil and gas development a certain distance from occupied structures, as if it is as benign a question as ensuring sufficient room for a sidewalk between a home’s front door and the neighborhood street. Who would ever vote against such a proposal, particularly when combined with language that appears to bar all takings claims and thus implies there is no financial risk or consequences?

The Proposed Initiatives are asking voters a far more serious question about whether to override existing state rules concerning where oil and gas wells can be located in a way that may result in a total prohibition of oil and gas development in some high density areas. “[T]he 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.” *Id.* Because “statewide setback” is an impermissible catch phrase, the titles should be remanded to the Title Board for correction.

5. The Titles Set for Proposed Initiatives #86, #87, and #88 Improperly Conflict with The Title Set for Proposed Initiative #85

Statutes governing the Title Board’s authority to act are construed and interpreted by the Court *de novo*. *Hayes v. Ottke*, 293 P.3d 551, 554 (Colo. 2013).

Among other requirements, section 1-40-106(3)(b) mandates that titles “shall not conflict with those selected for any petition previously filed for the same election.” Prior case law has made clear that “[s]uch conflict exists where the titles fail to accurately reflect the distinctions between the measures, and voters comparing the titles would not be able to distinguish between the two proposed measures.” *Peredes v. Corry (In re Title, Ballot Title, and Submission Clause 2007–2008 #61)*, 184 P.3d 747, 752 (Colo. 2008). However, what constitutes a “petition previously filed” for the purpose of section 1-40-106(3)(b) is an issue of first impression.

When the issue of conflicting titles was raised by Petitioners’ counsel at the Title Board’s April 16 rehearing, Mr. Gelender shared his interpretation that “these aren’t petitions yet at this stage . . . so I don’t think we’re required to follow the statute at this point.” Exhibit D, 34:16–18. He continued, explaining how the Title Board sets titles when faced with multiple versions of the same proposed initiative:

Mr. Gelender: In this case, I think what we do if I’m interpreting the law correctly is trust the incentives in the situation, which is if proponents have – when it’s the same proponents for these, they have no incentive to go forward with more than one and cause confusion themselves, go to additional expense, and so forth and figure that that will, especially when they’ve gone on the record as saying they’re only going to go through with one, that that should solve the problem.

Exhibit D, 34:25–35:9.

Counsel for the Title Board Maurice Knaizer confirmed the practice, emphasizing that the Board receives assurances from the proponents that they will not go forward and collect signatures on more than one version of their proposed initiative so as not to cause confusion among voters, or among registered electors signing the signature petition. Exhibit D, 35:11–21. But the statute does not contemplate promises from proponents. Rather the statute balances the rights of citizens to initiate ballot measures against the rights of voters to know what they are being asked to vote on by assuring clear title irrespective of the political strategy that might be taken by the proponents of a particular set of proposed initiatives. *See* 1-40-106(3)(b).

The term “petition” is not defined in section 1-40-102 or elsewhere in article 40. Nor is the term used consistently to refer to one particular type of document or to a particular phase of the initiative process. This is contrary to the Title Board’s construction that a “petition” is something that a proposed initiative turns into at some “later stage” than the rehearing. In fact, section 1-40-107, which concerns the process and procedure for rehearings, refers to a proposed initiative as an “initiative petition” and as simply a “petition.” In addition, section 1-40-102 defines “ballot issue” to mean a “non-recall, citizen initiated petition or legislatively-referred measure”; section 1-40-104 requires the designation of two

individuals to serve as representatives of the proponents “in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed”; and section 1-40-105 directs the proponents of a “petition” to submit their “initiative petition” to the Secretary of State.” Thus, reading the term within the context of section 1-40-106(3)(b), “petition” simply means initiative and section 1-40-106(3)(b) prohibits the Title Board from setting a title that fails to distinguish for voters the differences between that title and any titles that have previously been set.

Here, title was set for Proposed Initiatives #85, and the titles for Proposed Initiatives #86, #87, and #88 were set with virtually identical language. Although the language of the titles is not absolutely identical, discerning the differences requires a line-by-line comparison. At the very least, the Court should remand the titles to the Title Board with instructions to require that the differences between the Proposed Initiatives appear at the very beginning of the titles.

C. Proponents’ Cross-Petitions Lack Merit Because the Title Board Properly Removed References to the Catch Phrase “Hydraulic Fracturing”

As stated in Section IV.B.4 above, “[t]itles may not contain a catch phrase that unfairly prejudices the proposal in its favor.” *In re Ballot Title No. 258(A)*, 4 P.3d at 1098. Moreover, the Court determines the existence of a catch phrase in

the context of contemporary political debate. *Id.* Here, the Title Board considered use of the phrase “hydraulic fracturing” and properly removed it from the titles. The Board determined that the Proposed Initiatives affect oil and gas operations and development beyond use of hydraulic fracturing as a production method and that the phrase is politically charged and polarizing. Exhibit D, 19:17–24:14. The Board’s determination as to the phrase “hydraulic fracturing” should be affirmed.

VI. Conclusion and Relief Requested

For all these reasons, the Court should reverse the Title Board’s determination on single subject as to Proposed Initiatives #85, #86, and #87, and remand these Proposed Initiatives to the Title Board with directions to strike the titles and return the Proposed Initiatives to Proponents. Except to the extent that the Court should affirm the Title Board’s determination to remove the catch phrase “hydraulic fracturing” from the titles, the Court should also reverse the Title Board’s determinations as to the language of the titles for Proposed Initiatives #85, #86, #87, and #88, and remand these Proposed Initiatives to the Title Board with directions on how to set clear titles.

Respectfully submitted: May 13, 2014.

/s/ Sarah M. Clark

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Attorneys for Petitioners

Certificate of Service

I hereby certify that on May 13, 2014, a true and correct copy of this **Consolidated Opening Brief of Petitioners/Cross-Respondents Concerning Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned “Oil and Gas Operations”)** was filed and served electronically through ICCES upon the following attorneys:

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/s/ Paulette M. Chesson
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Ballot Title Setting Board

Proposed Initiative 2013-2014 #85¹

DATE FILED: May 13, 2014 10:54 PM

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

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 1,500 feet from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution.

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 a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 1,500 feet from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution?

*Hearing April 3, 2014:
Single subject approved; staff drafts amended; titles set.
Hearing adjourned 10:55 a.m.*

*Rehearing April 16, 2014:
Motion for Rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.
Hearing adjourned 2:19 p.m.*

¹ Unofficially captioned "Oil and Gas Operations" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #86¹

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

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 2,000 feet from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution.

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 a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 2,000 feet from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution?

*Hearing April 3, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:59 a.m.*

*Rehearing April 16, 2014:
Motion for Rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.
Hearing adjourned 2:28 p.m.*

¹ Unofficially captioned "Oil and Gas Operations" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #87¹

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

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least one half mile from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution.

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 a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least one half mile from the nearest occupied structure; authorizing a homeowner to waive the setback requirement for the homeowner's home; and establishing that the statewide setback requirement is not a taking of private property requiring compensation under the Colorado constitution?

Hearing April 3, 2014:

Single subject approved; staff drafts amended; titles set.

Hearing adjourned 11:02 a.m.

Rehearing April 16, 2014:

Motion for rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 2:32 p.m.

¹ Unofficially captioned "Oil and Gas Operations" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #88¹

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

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 2,000 feet from the nearest occupied structure; and authorizing a landowner to waive the setback requirement for any structure located on the owner's property.

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 a statewide setback requirement for new oil and gas wells, and, in connection therewith, changing existing setback requirements to require any new oil or gas well to be located at least 2,000 feet from the nearest occupied structure; and authorizing a landowner to waive the setback requirement for any structure located on the owner's property?

*Hearing April 3, 2014:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:12 a.m.*

*Rehearing April 16, 2014:
Motion for rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.
Hearing adjourned 2:39 p.m.*

¹ Unofficially captioned “**Oil and Gas Operations**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

MAR 21 2014

DATE FILED: May 13, 2014 10:54 PM
Colorado Secretary of State

2013-2014 #85 - FINAL

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

SWARD 1:12 P.M.

SECTION 1. In the constitution of the state of Colorado, add article XXX as follows:

ARTICLE XXX

Mandatory Setback of Oil and Gas Wells

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

- (a) THAT THE CONDUCT OF OIL AND GAS OPERATIONS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;
- (b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES;
- (c) THAT SUCH IMPACTS ARE MINIMIZED AND MITIGATED BY LOCATING WELLS AWAY FROM OCCUPIED STRUCTURES; AND
- (d) THAT TO PRESERVE THE PUBLIC'S HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO ESTABLISH A STATEWIDE SETBACK REQUIRING NEW OIL AND GAS WELLS TO BE LOCATED AWAY FROM OCCUPIED STRUCTURES, INCLUDING HOMES, SCHOOLS AND HOSPITALS.

Section 2. Grant of authority. THE PEOPLE OF THE STATE OF COLORADO HEREBY ESTABLISH A STATEWIDE SETBACK THAT ALL NEW OIL AND GAS WELLS REQUIRING A STATE OR LOCAL PERMIT, INCLUDING THOSE USING HYDRAULIC FRACTURING, MUST BE LOCATED AT LEAST ONE THOUSAND FIVE HUNDRED FEET FROM OCCUPIED STRUCTURES. FOR PURPOSES OF THIS ARTICLE, "OCCUPIED STRUCTURE" MEANS ANY BUILDING OR STRUCTURE THAT REQUIRES A CERTIFICATE OF OCCUPANCY, OR BUILDING OR STRUCTURE INTENDED FOR HUMAN OCCUPANCY, INCLUDING HOMES, SCHOOLS, AND HOSPITALS. FOR PURPOSES OF THIS ARTICLE, "OIL AND GAS OPERATIONS" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE OWNER OF A HOME MAY WAIVE THIS SETBACK ONLY WITH REGARD TO THE OWNER'S HOME.

Section 3. Not a taking. APPLICATION OF THE STATEWIDE SETBACK ESTABLISHED PURSUANT TO THIS ARTICLE SHALL NOT BE CONSIDERED A TAKING OF PRIVATE PROPERTY NOR REQUIRE THE PAYMENT OF JUST COMPENSATION PURSUANT TO SECTIONS 14 AND 15 OF ARTICLE II OF THE COLORADO CONSTITUTION.

Section 4. Self executing, severability, conflicting provisions. ALL PROVISIONS OF THIS ARTICLE ARE SELF-EXECUTING, ARE SEVERABLE, AND SHALL SUPERSEDE CONFLICTING STATE AND LOCAL LAWS AND REGULATIONS. LAWS AND REGULATIONS MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT CANNOT IN ANY WAY REDUCE THE SETBACK STANDARD OR THE POWERS AND RIGHTS ESTABLISHED IN THIS ARTICLE.

RECEIVED

MAR 21 2014

2013-2014 #86 - FINAL

Colorado Secretary of State

SWARD 1:15 PM

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

SECTION 1. In the constitution of the state of Colorado, add article XXX as follows:

ARTICLE XXX

Mandatory Setback of Oil and Gas Wells

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

(a) THAT THE CONDUCT OF OIL AND GAS DEVELOPMENT, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;

(b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES;

(c) THAT SUCH IMPACTS ARE MINIMIZED AND MITIGATED BY LOCATING WELLS AWAY FROM OCCUPIED STRUCTURES; AND

(d) THAT TO PRESERVE THE PUBLIC'S HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO ESTABLISH A STATEWIDE SETBACK REQUIRING NEW OIL AND GAS WELLS TO BE LOCATED AWAY FROM OCCUPIED STRUCTURES, INCLUDING HOMES, SCHOOLS AND HOSPITALS.

Section 2. Grant of authority. THE PEOPLE OF THE STATE OF COLORADO HEREBY ESTABLISH A STATEWIDE SETBACK THAT ALL NEW OIL AND GAS WELLS REQUIRING A STATE OR LOCAL PERMIT, INCLUDING THOSE USING HYDRAULIC FRACTURING, MUST BE LOCATED AT LEAST TWO THOUSAND FEET FROM OCCUPIED STRUCTURES. FOR PURPOSES OF THIS ARTICLE, "OCCUPIED STRUCTURE" MEANS ANY BUILDING OR STRUCTURE THAT REQUIRES A CERTIFICATE OF OCCUPANCY, OR BUILDING OR STRUCTURE INTENDED FOR HUMAN OCCUPANCY, INCLUDING HOMES, SCHOOLS, AND HOSPITALS. FOR PURPOSES OF THIS ARTICLE, "OIL AND GAS DEVELOPMENT" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE OWNER OF A HOME MAY WAIVE THIS SETBACK ONLY WITH REGARD TO THE OWNER'S HOME.

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RECEIVED

MAR 21 2014

2013-2014 #87 - FINAL

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

Colorado Secretary of State
SWARD 1:15PM

SECTION 1. In the constitution of the state of Colorado, add article XXX as follows:

ARTICLE XXX

Mandatory Setback of Oil and Gas Wells

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

- (a) THAT THE CONDUCT OF OIL AND GAS DEVELOPMENT, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;
- (b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES;
- (c) THAT SUCH IMPACTS ARE MINIMIZED AND MITIGATED BY LOCATING WELLS AWAY FROM OCCUPIED STRUCTURES; AND
- (d) THAT TO PRESERVE THE PUBLIC'S HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO ESTABLISH A STATEWIDE SETBACK REQUIRING NEW OIL AND GAS WELLS BE LOCATED AWAY FROM OCCUPIED STRUCTURES, INCLUDING HOMES, SCHOOLS AND HOSPITALS.

Section 2. Grant of authority. THE PEOPLE OF THE STATE OF COLORADO HEREBY ESTABLISH A STATEWIDE SETBACK THAT ALL NEW OIL AND GAS WELLS REQUIRING A STATE OR LOCAL PERMIT, INCLUDING THOSE USING HYDRAULIC FRACTURING, MUST BE LOCATED AT LEAST TWO THOUSAND SIX HUNDRED FORTY FEET FROM OCCUPIED STRUCTURES. FOR PURPOSES OF THIS ARTICLE, "OCCUPIED STRUCTURE" MEANS ANY BUILDING OR STRUCTURE THAT REQUIRES A CERTIFICATE OF OCCUPANCY, OR BUILDING OR STRUCTURE INTENDED FOR HUMAN OCCUPANCY, INCLUDING HOMES, SCHOOLS, AND HOSPITALS. FOR PURPOSES OF THIS ARTICLE, "OIL AND GAS DEVELOPMENT" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE OWNER OF A HOME MAY WAIVE THIS SETBACK ONLY WITH REGARD TO THE OWNER'S HOME.

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RECEIVED

MAR 21 2014

2013-2014 #88 - FINAL

Colorado Secretary of State

S. WARD 1:15 P.M.

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

SECTION 1. In the constitution of the state of Colorado, add article XXX as follows:

ARTICLE XXX

Mandatory Setback of Oil and Gas Wells

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

- (a) THAT THE CONDUCT OF OIL AND GAS OPERATIONS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;
- (b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES;
- (c) THAT SUCH IMPACTS ARE MINIMIZED AND MITIGATED BY LOCATING WELLS AWAY FROM OCCUPIED STRUCTURES; AND
- (d) THAT TO PRESERVE THE PUBLIC'S HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO ESTABLISH A STATEWIDE SETBACK REQUIRING NEW OIL AND GAS WELLS BE LOCATED AWAY FROM OCCUPIED STRUCTURES, INCLUDING HOMES, SCHOOLS AND HOSPITALS.

Section 2. Grant of authority. THE PEOPLE OF THE STATE OF COLORADO HEREBY ESTABLISH A STATEWIDE SETBACK THAT ALL NEW OIL AND GAS WELLS REQUIRING A STATE OR LOCAL PERMIT, INCLUDING THOSE USING HYDRAULIC FRACTURING, MUST BE LOCATED AT LEAST TWO THOUSAND FEET FROM OCCUPIED STRUCTURES. FOR PURPOSES OF THIS ARTICLE, "OCCUPIED STRUCTURE" MEANS ANY BUILDING OR STRUCTURE THAT REQUIRES A CERTIFICATE OF OCCUPANCY, OR BUILDING OR STRUCTURE INTENDED FOR HUMAN OCCUPANCY, INCLUDING HOMES, SCHOOLS, AND HOSPITALS. FOR PURPOSES OF THIS ARTICLE, "OIL AND GAS OPERATIONS" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE OWNER OF THE SURFACE ESTATE OF REAL PROPERTY MAY WAIVE THIS SETBACK ONLY WITH REGARD TO AN OCCUPIED STRUCTURE LOCATED ON THE OWNER'S PROPERTY.

Section . Self executing, severability, conflicting provisions. ALL PROVISIONS OF THIS ARTICLE ARE SELF-EXECUTING, ARE SEVERABLE, AND SHALL SUPERSEDE CONFLICTING STATE AND LOCAL LAWS AND REGULATIONS. LAWS AND REGULATIONS MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT CANNOT IN ANY WAY REDUCE THE SETBACK STANDARD OR THE POWERS AND RIGHTS ESTABLISHED IN THIS ARTICLE.

REPORTER'S TRANSCRIPT

DATE FILED: May 13, 2014 10:55 PM

BALLOT TITLE BOARD HEARINGS
ON BALLOT INITIATIVES 2013-2014 #85 - #88

APRIL 3, 2014

APPEARANCES:

SUZANNE STAIERT, CHAIR, BALLOT TITLE BOARD AND DEPUTY
SECRETARY OF STATE

EDWARD RAMEY, COUNSEL FOR PROPONENTS GREG DIAMOND AND
CAITLIN LEAHY

DANIEL DOMENICO, BALLOT TITLE BOARD MEMBER AND
SOLICITOR GENERAL

JASON GELENDER, TITLE BOARD MEMBER AND SENIOR ATTORNEY,
OFFICE OF LEGISLATIVE LEGAL SERVICES

1 MS. STAIERT: All right. That takes us to
2 Proposed Initiative 2013-2014 #85.

3 Okay, and Mr. Ramey, do you want to just
4 introduce yourself for the record and your proponents.

5 MR. RAMEY: Certainly. Edward Ramey
6 representing the proponents and the designated
7 representatives. Again, Mr. Diamond and Ms. Leahy are
8 present and I'm substituting for Ms. Tierney, my law
9 partner this morning who is in Disneyworld by the way.

10 MS. STAIERT: Oh, nice.

11 MR. RAMEY: So you know who gets the short
12 straw on that issue.

13 MR. DIAMOND: There's a few things better
14 than the Title Board.

15 MR. RAMEY: Ms. Tierney suggested there was a
16 similarity before she left. I'm not sure.

17 MS. STAIERT: I think we're being mocked
18 again.

19 MR. RAMEY: And I guess I would just ask the
20 Board, one jurisdictional issue first, if you have any
21 questions I'd be happy to respond.

22 MS. STAIERT: And number 85 and 86, just for
23 the record, would it be your intent to only submit one
24 of those --

25 MR. RAMEY: Yes.

1 MS. STAIERT: -- if they're both approved?

2 MR. RAMEY: I guess let me just say something
3 about all that. 85, 86, 87 and 88 are all quite
4 similar.

5 MS. STAIERT: Okay.

6 MR. RAMEY: They're setback measures --

7 MS. STAIERT: Right.

8 MR. RAMEY: -- and they have different
9 setbacks, a few other modifications as well. 89 we
10 just talked about. That sort of stands on its own. Then
11 90 through 93 is a packet as well.

12 MS. STAIERT: Right.

13 MR. RAMEY: All pretty much the same subject.

14 There was also some discussion yesterday
15 about some other measures that were submitted which
16 are versions of these as well which are still pending.
17 I think actually they're going to be filed with the
18 Secretary of State. Some of them may be. They got
19 waiver letters from alleged counsel based on a review
20 and comments that happened here so there's a whole
21 packet of measures with little tweaks to them.

22 MS. STAIERT: Uh-huh.

23 MR. RAMEY: Within those packets at most only
24 one will be submitted absolutely.

25 MS. STAIERT: Okay.

1 MR. RAMEY: We can assure you of that.

2 MS. STAIERT: So for today's purposes for our
3 consideration of 85 through 88, only one of those would
4 be submitted and then we'll take care of --

5 MR. RAMEY: Yes.

6 MS. STAIERT: -- any other at a future
7 hearing.

8 All right. Anyone have any questions on the
9 single subject? I mean, it's subduing a few things but
10 I think they're all related to the permit.

11 Why don't you tell us what you think the
12 single subject is.

13 MR. RAMEY: I'd say for all of 85 through 88
14 they create a setback requirement for new oil and gas
15 wells from occupied structures and everything else in
16 there is definitional, interpretative or
17 implementational.

18 MS. STAIERT: Anyone else here wishes to
19 speak on this? No?

20 MR. GELENDER: I think I'm going to ask a
21 question.

22 Mr. Ramey --

23 MR. RAMEY: Sure.

24 MR. GELENDER: -- how on three of these, not
25 88 but the others, how is specifying that this is, the

1 setback requirement is not a taking necessarily and
2 properly connected to the setback requirement?

3 MR. RAMEY: I mean, that I think,
4 Mr. Gelender, is implementational. In other words,
5 I guess the best way to put this is the setback
6 requirements that were being created in those particular
7 measures were stating that under the Colorado
8 Constitution and limited to that I should say -- we're
9 not addressing federal law here -- is not to be deemed
10 the act that we're, the regulation that we're
11 implementing in these measures will not be deemed to be
12 a taking under other constitutional provisions of the
13 Colorado Constitution, so I think it's interpretative
14 and implementational. I don't know if you're angling
15 for whether that's a separate subject or not but I --
16 I don't know how, if you were to argue that that was a
17 separate subject, what you'd basically be saying is we
18 would have to adopt a measure like this without that
19 provision and then have a wholly separate measure that
20 says that other measure we adopted does not constitute
21 a taking. I would respectfully submit that they're part
22 and parcel of the same thing.

23 MR. GELENDER: I guess what I would ask is
24 are there conceivably situations where a person could
25 be completely unable to access their already existing

1 mineral rights due to the setback requirement and
2 receive no compensation for that?

3 MR. RAMEY: Should a situation like that
4 occur, I would submit that there would be a federal
5 right under which that could be addressed.

6 Under the Colorado Constitution, this -- and
7 I can't quite envision how the situation you just
8 described would occur but let's say that it does, where
9 somebody felt at some level that a taking to which they
10 were entitled to just compensation existed, they would
11 certainly have the federal constitutional right to
12 pursue that. All we're saying here is that this
13 regulation is not, is not to be deemed a taking under
14 the, under the Colorado Constitutional definition of a
15 taking.

16 MR. GELENDER: All right. I have a bit of a
17 concern that I wonder if -- well, I guess if we put in
18 the title someone might not be surprised but should
19 such a situation could arise, I would wonder if someone
20 voting on this would have a reasonable expectation that
21 something like that could happen, but again, maybe
22 that's delving too far into effects, so I'll leave
23 further discussion if anyone wants to bring it up in a
24 rehearing and move on.

25 MR. RAMEY: I wish you wouldn't make these

1 invitations for a rehearing but --

2 MS. STAIERT: Doesn't matter whether we
3 invite or not.

4 MR. GELENDER: It was not an invitation,
5 merely an assumption.

6 MR. DOMENICO: I think -- I once had a
7 problem with one of these measures that sort of had its
8 own substantive thing. I don't even remember what it
9 was about but it had a substantive change and then it
10 basically sort of created its own exception to the
11 election rules about who gets priority, basically
12 saying if this and the measure and this other measure
13 pass, this one wins no matter what, and I had a problem
14 with that on a single subject grounds, that you were
15 sort of amending something in a very surprising kind of
16 way that was only related because you really wanted,
17 you know, it was related in that sense. This is a
18 little bit like that but I think less, I mean, I can
19 see Mr. Gelender's point certainly. It could surprise
20 someone who might say, well, you know, look. I'd like
21 to impose these regulations but do so with the
22 understanding that kind of the normal rules about if it
23 takes someone's property that, you know, they should be
24 entitled to just compensation under our state
25 constitution and whatever federal claims there might

1 be, so I can see the surprise idea but it seems
2 connected enough I guess that I'm willing to find a
3 single subject.

4 So then I guess I'll go ahead and move that
5 we find that number 85 constitutes a single subject.

6 MR. GELENDER: Second.

7 MS. STAIERT: All those in favor? Passes
8 unanimately and we'll move to the title.

9 I mean, I think that we could probably just
10 say establishment of a statewide setback for new oil
11 and gas wells and --

12 MR. RAMEY: Madam Chair, can I make a few
13 suggestions about --

14 MS. STAIERT: Oh, please do.

15 MR. RAMEY: I don't mean to --

16 MS. STAIERT: No, go ahead.

17 MR. RAMEY: -- preempt the board.

18 Let me -- I do actually have a few
19 suggestions --

20 MS. STAIERT: Okay.

21 MR. RAMEY: -- for this title, some of which
22 add some things, some of which subtract but let me give
23 it a try and then I'll shut up and let you all debate
24 it.

25 Number one, on the second line after we talk

1 about amendment to the Colorado Constitution concerning
2 the establishment of a statewide setback requiring new
3 oil and gas wells, I would say after oil and gas wells,
4 I would recommend that we insert the phrase including
5 the use of hydraulic fracturing because hydraulic
6 fracturing is obviously a focus of this and I think it
7 would benefit. It appears throughout the text of the
8 measure itself and I think it would benefit public,
9 informing the public to include the same phrase that we
10 have in the measure including the use of hydraulic
11 fracturing on the second line.

12 MR. GELENDER: Why didn't you use fracking?

13 MS. STAIERT: Yeah.

14 MR. RAMEY: Because I would have cat phrase
15 accusations coming at me in every which direction and
16 if the board proposes fracking, I will adamantly object
17 to that, but hydraulic fracturing I think is a neutral
18 term. People know what it means but it doesn't come
19 laden with the stuff that fracking --

20 MR. DOMENICO: I just wanted to suggest.
21 I think I agree with including that, the idea somewhere
22 but maybe not right there. That statement of the single
23 subject is already one of the longest I've ever seen and
24 making it longer seems like a bad idea. I was going to
25 suggest shortening that part of it and maybe adding a

1 little bit to the, you know, actual what it does
2 material aspects part, just my suggestion.

3 MS. STAIERT: Why don't you keep going? Let
4 us know what else you --

5 MR. RAMEY: Okay. Well, I think actually
6 that's the only thing. Well, not quite the only thing
7 I was going to suggest adding.

8 Down at the end of the third line going onto
9 the fourth line, and I guess I would defer to the Board
10 on that and Mr. Gelender will probably draft some of
11 these things but the phrase defining oil and gas
12 operations and occupied structure to me seems
13 unnecessary.

14 MS. STAIERT: Yeah.

15 MR. RAMEY: I mean, enough said about that.
16 I think that could just simply be dropped.

17 Finally, the last phrase where we're dealing
18 with the taking issue again. I don't -- I'm going to
19 suggest that I don't think it's necessary in the title
20 to cite sections by number and article of the Colorado
21 Constitution.

22 MS. STAIERT: Yeah.

23 MR. RAMEY: Nobody except lawyers know what
24 that is, but I do think we want to state Colorado
25 Constitution because we don't want to suggest we're

1 amending the United States Constitution or attempting
2 to do that here, so I guess what I would suggest is
3 that starting on the fifth line it could read
4 establishing that the statewide setback is not a taking
5 of private property under the Colorado Constitution.
6 Just let it go at that.

7 MR. DOMENICO: Weighing in on those comments,
8 first I would say I completely agree with taking out
9 the defining language as well as the Section 14 and 15
10 references.

11 I don't know that it's necessary to specify
12 this applies just to the Colorado Constitution. I mean,
13 there's a supremacy clause. It's existing law. I think
14 I might -- I had when I was working on a draft just
15 saying that establishing that the statewide setback is
16 not a taking of private property requiring just
17 compensation.

18 MR. RAMEY: May I respond to that in two
19 ways? Number one, I'll just alert the Board that using
20 the phrase does not require just compensation. I don't
21 like -- we know what that means but they're sort of,
22 for somebody who's again not dealing with taking
23 clauses and things as a profession, denying someone
24 just compensation sounds ugly.

25 MS. STAIERT: Sounds bad.

1 MR. DOMENICO: I can understand why you don't
2 want it in there but that's what it does, right?

3 MR. RAMEY: Well, I would suggest that by
4 saying it's not a taking, it's not a taking under the
5 Colorado Constitution, that accomplishes the point
6 but --

7 MR. DOMENICO: If we're going to take part
8 of it out, I'd take the taking part out which is goofy
9 lawyer talk.

10 MR. RAMEY: Well --

11 MR. DOMENICO: It's just compensation is.

12 MR. RAMEY: You know, Mr. Domenico, I might
13 argue with that because I think there -- I certainly
14 don't like the just compensation piece. I was going to
15 go in a slightly different direction with you but I
16 think I'll stop there. I think that ladens the title
17 with a concept that frankly is negative to the
18 proponents.

19 Let me come back to that. Let me get my
20 second point in before I totally forget it.

21 Mr. Gelender, there was a period in the past
22 where, you know, and I have seen measures come before
23 the Title Board that seek specifically and directly to
24 amend the United States Constitution and I've made the
25 argument before this Board that it's unfair to suggest

1 that the voters of this state have the power to do that
2 through their initiative process. There was one
3 measure one year that was going -- that literally and
4 directly suggested amending the First Amendment through
5 this process and actually I can't remember how that
6 issue came out. I think the Board just let it go but I
7 still had the same concern, that to suggest that we're
8 -- to allow a suggestion to exist through a title that
9 we're amending more than we can amend, I think is a
10 disservice, so I would -- to the voters, so I would
11 like to limit it to the Colorado Constitution, and MR.
12 Domenico, back to your point. I'm jumping around a
13 little bit. I hear what you're saying. Just
14 compensation or compensation perhaps is part of the
15 remedial concept of a taking. I think the word just,
16 putting in as (indiscernible) does not require just
17 compensation suggests in the title that somehow there
18 is some compensation that would be due and just that is
19 not being provided and frankly I would -- I think I
20 could make a pretty persuasive argument that the sort
21 of regulatory action that's being taken here would not
22 even rise to the level of a regulatory taking in most
23 and perhaps in any situations even under the Colorado
24 Constitution, and I'm afraid if we put a phrase like
25 that in there, we're suggesting that it almost always

1 will and that we've got our hands in somebody's pockets
2 and I don't think that's fair to the proponents.

3 MR. DOMENICO: Well, but Section 3 is part of
4 the measure because presumably they want to avoid the
5 possibility that they'll have to pay just compensation.

6 I think that's -- a taking is to me a more
7 legalistic term than the idea of payment of just
8 compensation and so if we're going to shorten that, I'd
9 be inclined to take out the taking language and just
10 leave the compensation language but --

11 MS. STAIERT: Well and I think, I mean, I
12 think we could fix it by taking out the just part of
13 the compensation.

14 MR. RAMEY: That would help.

15 MR. DOMENICO: Maybe.

16 MS. STAIERT: I mean, that doesn't really
17 mean anything to anybody but us and, you know, I think
18 that he does make an argument that that word just, you
19 know, justice, just, I mean, it could be -- it could be
20 considered catchy, a catch phrase there.

21 MR. RAMEY: Actually I think it would be a
22 catch phrase --

23 MS. STAIERT: Yeah. Well --

24 MR. RAMEY: -- of detriment to the
25 proponents.

1 MS. STAIERT: I mean, I don't know that it's
2 a catch phrase but I don't know that the word just adds
3 anything except in a legal context but not, you know,
4 not to a voter. It could be viewed the way the
5 proponent is suggesting, which is not -- which is not
6 our goal in setting the title.

7 MR. GELENDER: I suggest, and I'm okay, I
8 suggest phrasing things more in the positive and just
9 saying establishing that the statewide setback, and we
10 can talk later about whether the taking language needed
11 is not a taking of private property that requires
12 compensation and then if we want under the Colorado
13 Constitution, I'm okay with that and others.

14 MR. DOMENICO: The only -- the only problem
15 I have with that is this does a little bit more than
16 that. I mean, the way I read it is you can't, you
17 can't pass a statute that would require compensation,
18 I think. Maybe you could. Maybe --

19 MR. RAMEY: I don't think so.

20 MR. DOMENICO: But so it says shall not
21 be considered a taking or nor require a payment of
22 compensation, so I don't know. I guess -- I don't know
23 that we need to go out of our way to avoid for the
24 proponents the negative implications of part of what
25 they're trying to do. I mean, this is what it does.

1 Whether people like it or not is kind of the point
2 we're supposed to be trying to get across to them,
3 let them decide. I'm fine with getting rid of just.
4 I would probably leave in the language about the
5 constitution for the reasons Mr. Ramey suggested,
6 otherwise I'd probably leave it.

7 MR. RAMEY: Okay. Madam Chair, I don't think
8 we would have an objection to the way you stated it and
9 I think Mr. Domenico just said the same thing and that
10 is take out the word just. I mean, having it in there
11 suggests we're doing something that's not just and --

12 MS. STAIERT: Right.

13 MR. RAMEY: -- obviously we don't like it and
14 I do think that would make it a catch phrase and we'd
15 be fighting over that, but if -- whether the word
16 taking in there stays in, I guess I would not object to
17 what Mr. Domenico says. If that's a legalistic word,
18 we could take that out and just say will not require
19 compensation under the Colorado Constitution or you can
20 leave taking in, either way.

21 MS. STAIERT: Well, why don't we make
22 Mr. Gelender's change about that requires just to clean
23 that up and then where do you stand, Mr. Gelender, on
24 the taking word?

25 MR. GELENDER: Well, if you make that change,

1 it's --

2 MS. STAIERT: Oh.

3 MR. GELENDER: -- now you kind of need it,
4 yeah.

5 MS. STAIERT: Well, it was your language so
6 you must like getting rid of the word.

7 MR. GELENDER: Where did my words go? Yeah,
8 I mean, I just have some general sort of clean-up, but
9 down here, yeah, on this I just had, well, what I had
10 had originally was establishing the statewide setback
11 as not a taking of private property requiring just
12 compensation, so either that requires or requiring the
13 same thing really.

14 MS. STAIERT: Okay.

15 MR. GELENDER: I actually have a brief sort
16 of subject matter question for Mr. Ramey if he knows.

17 The language up in the single subject about
18 that require a permit, are there any new oil and gas
19 wells that don't?

20 MR. RAMEY: Not that I know of but I may
21 not --

22 MR. GELENDER: Because that language got
23 added and I don't, I mean, during the review and
24 comment process apparently and I'm not sure sort of why
25 or if it matters.

1 Do the proponents have any thoughts on that?

2 MR. RAMEY: I can say that was in response to
3 a review and comment question.

4 MS. STAIERT: I mean, I just thought, you
5 know, going back to like the top, I mean just the
6 subject, I mean, I would say we'd be better off
7 establishment of a statewide setback for new oil and
8 gas wells and then in connection therewith and put all
9 of that later. I just think --

10 MR. DOMENICO: That was --

11 MS. STAIERT: -- the subject line is not good.

12 MR. DOMENICO: That was what I was going to
13 suggest to you is basically just what you said.

14 MR. RAMEY: While you're doing this, Madam
15 Chair, please don't forget that we'd like to put
16 including hydraulic fracturing.

17 MS. STAIERT: Sure, sure. And I think that
18 goes --

19 MR. RAMEY: Up at the top.

20 MS. STAIERT: Well, that's back to
21 Mr. Domenico's point that if we keep the subject line
22 clean, then we can put the details later --

23 MR. RAMEY: Uh-huh.

24 MS. STAIERT: -- without confusing --

25 MR. RAMEY: Right.

1 MS. STAIERT: So we just move that down and
2 then we say requiring a permit and then rather than
3 defining, we could either put including fracking up
4 above or we can say something about --

5 MR. RAMEY: Hydraulic fracturing.

6 MS. STAIERT: Not fracking. I know. I'm
7 going to use it shorthand but we will use the word
8 hydraulic fracturing in the title. Just a semicolon
9 after structure -- oh, requiring a permit and then how
10 do you all want to deal with the hydraulic fracturing?

11 MR. DOMENICO: Well, it's not a permit;
12 doesn't have to be located anywhere.

13 MS. STAIERT: Oh, yeah.

14 MR. DOMENICO: So it would, I think you could
15 say something there where you say, you say --

16 MS. STAIERT: Requiring a permit for oil and
17 gas --

18 MR. DOMENICO: Requiring any new oil and
19 gas well including those using hydraulic fracturing.
20 I don't know if you want to use, turn a couple of
21 commas around that or not. I'm probably okay either way
22 but that's I think -- I think that's pretty good. When
23 we're ready, I have a question about the next line.

24 MS. STAIERT: All right.

25 MR. DOMENICO: Well, so my question about the

1 next line is, A, whether it's necessary, the bit about
2 the homeowner and B, if I'm reading Section 2 right,
3 which does, that tracks Section 2, which says a
4 homeowner, the owner of a home may waive it only with
5 regard to the owner's home but obviously occupied
6 structures is a lot broader than homes and so my
7 question has been, is this -- I guess you could read it
8 either way.

9 One, does this mean basically anybody who
10 owns, you know, some other building, an office building
11 or a school, a warehouse, can't waive it at all or --

12 MR. GELENDER: In context I think we do have
13 to say that because 88 has broader than the homeowner
14 and it applies to all those other folks --

15 MR. DOMENICO: So --

16 MR. GELENDER: -- so I think it
17 differentiates from the rest.

18 MR. DOMENICO: Well, that's my question.
19 So if I own a warehouse, I can't waive this but if
20 that's my home, I can? That's what I'm curious about.

21 MR. RAMEY: Mr. Domenico, I think Mr. Gelender
22 just identified the issue. Coming out of the review
23 and comment hearings, again that question arose and the
24 text of the measures except for 88 I think says that
25 the waiver can only come from a homeowner with regard

1 to their home. 88 is broader and I think would scoop
2 up most of the other situations that you're describing
3 and the proponent is going to have to make a decision
4 of which measure they want to run with but I think
5 we're sort of required to stay with the text of the
6 various measures and this one only allows a waiver for
7 homeowners of their home.

8 MR. DOMENICO: Okay. So I guess my question
9 would be if that line weren't in there, I'm not sure I
10 would read it as saying, I mean, I would think that
11 people might be able to waive it generally. I'm just
12 not sure how that would work out.

13 MS. STAIERT: I mean, I don't know. I mean,
14 in a zoning context, once you got a setback, you got a
15 setback and if you want to get a waiver, you can't do
16 it yourself. You have to, you know, get the government
17 to give you the waiver so --

18 MR. DOMENICO: Right.

19 MS. STAIERT: -- I think it does become an
20 important part of the measure and especially because
21 the difference in these measures is going to be
22 essentially that. I think it would be important for
23 people to know that you're not, that they would have
24 the right to waive it as to their own home so they
25 understand that that's their choice if they want to

1 allow that development and if they want to maybe make
2 a deal with the oil and gas people or whatever.

3 I mean --

4 MR. DOMENICO: Okay. Okay, that's fine.

5 MR. GELENDER: Could that is not a taking of
6 private property requiring compensation, could that be
7 an implied saying it is a giving of private property
8 requiring compensation?

9 MS. STAIERT: No. I'm not inclined to do
10 that.

11 MR. DOMENICO: No. I mean, taking is a
12 little bit of legal word as I mentioned but I'm not
13 sure how to fix it other than going back to what we
14 were talking about before and reject it.

15 MS. STAIERT: You have anything?

16 MR. GELENDER: Not on that issue, no.

17 MS. STAIERT: On anything else?

18 MR. GELENDER: I think I might just further
19 shorten the, I mean, to me, and maybe this is --
20 essentially it's a setback requirement, not just a
21 setback. I think in the single subject I'd get rid of
22 the establishment of and just say concerning a
23 statewide setback requirement for new oil and gas
24 wells.

25 MS. STAIERT: That's fine.

1 MR. GELENDER: I don't know that I'm going to
2 convince anyone else on this. I actually don't think
3 we need the language regarding hydraulic fracturing.
4 I mean, we're covering any oil and gas well that
5 encompasses ones that do it by hydraulic fracturing and
6 I don't know what value it adds besides more words.

7 MR. RAMEY: May I respond to that, Madam
8 Chair?

9 MS. STAIERT: Sure.

10 MR. RAMEY: Briefly.

11 MS. STAIERT: I don't agree with him but go
12 ahead.

13 MR. RAMEY: I'm going to be quiet.

14 MS. STAIERT: No. Go ahead.

15 MR. RAMEY: I would just say, Mr. Gelender, I
16 mean I certainly take your point but I don't think
17 there's any mystery behind these measures that this is
18 largely about hydraulic fracturing and I think the
19 public has a right to know that for better or worse and
20 it may be from our perspective, it may end up being
21 worse. I don't know. But to conceal that and suggest
22 that somehow it involves something else, I think the
23 title should disclose it.

24 The measure -- the measure is very specific
25 in the language of the measure about that and I'd like

1 to bring it into the title so --

2 MS. STAIERT: Well, and my problem with it is
3 a little different than that and that is just that
4 there's so much kind of information, misinformation,
5 you know, people trying to distinguish, well, hydraulic
6 fracturing is not really drilling and so it's, you
7 know, I mean from the other side of it would somebody
8 think oh, we're just talking about new drilling and
9 we're not talking about fracturing because, you know,
10 the advertising has told me that fracturing isn't the
11 same, so, you know, I mean, it has been confused enough
12 and I'm not saying I really understand, you know, the
13 geology of the whole thing but I think it becomes
14 important enough to mention and it could be confusing
15 to people and they could accuse us of trying to hide
16 that fact.

17 MR. RAMEY: Madam Chair, I would agree.
18 I mean, it is -- the text of the measure makes it clear
19 that that is central. I don't want to obfuscate the
20 fact that this is about hydraulic fracturing in large
21 part.

22 MR. DOMENICO: Well, I said I was willing to
23 leave it in there and I am but the discussion has made
24 me think that it's starting to sound even without using
25 fracking like a catch phrase, that we're using it as

1 shorthand to help the public debate which is not really
2 what we're supposed to be doing here, but I'm willing
3 to leave it in there although I agree with Mr. Gelender
4 that by definition, any new oil and gas well includes
5 those using hydraulic fracturing or whatever else they
6 might use and isn't really necessary.

7 On the other hand, at this point I'm willing
8 to leave it in there but I don't -- I don't think it's
9 our job to sort of help differentiate, you know, this
10 kind of drilling from another. Our job is to describe
11 the measure and that it does and it's other people's
12 job to clarify what that means or what's important
13 about it.

14 MR. RAMEY: Mr. Domenico -- if I may, Madam
15 Chair?

16 MS. STAIERT: Yeah.

17 MR. RAMEY: I would agree 100 percent with
18 everything you just said were it not for the fact that
19 in the text of the measure, the proponents go out of
20 their way to make it very clear that this is what we're
21 looking at and to leave that out of the, of the title
22 that's supposed to be informative I think would really
23 obfuscate the point of the measure and I really --
24 respectfully, I don't think it rises to the level of a
25 catch phrase unfairly influencing the debate one way or

1 the other. I mean, hydraulic fracturing is what it is.

2 Now, we start attaching pejorative words to
3 it or use a term that gets used in a pejorative fashion
4 all the time like fracking, then I think we cross that
5 line but I don't know what else you call hydraulic
6 fracturing other than do what --

7 MR. DOMENICO: Well, you call it a new oil
8 and gas well.

9 MR. RAMEY: I don't see --

10 MR. DOMENICO: Mr. Gelender's point.

11 MR. RAMEY: But then I think, I think you are
12 obfuscating not intentionally but I think the title
13 would then obfuscate the primary purpose of this
14 measure and again, the language of the measure goes
15 out, goes out of its way to say that. It would be
16 different had we not said that in the language of the
17 measure, I think.

18 MR. GELENDER: Maybe add those using the
19 hydraulic fracturing process.

20 MR. DOMENICO: I think that hydraulic
21 fracturing, there's drilling, there's several different
22 parts to the whole process.

23 MR. RAMEY: Well --

24 MS. STAIERT: I mean, it's really up to you
25 two. You know where I stand on it.

1 MR. DOMENICO: I mean, in reconsidering,
2 yeah, I'm not going to feel strong and I have been on
3 other initiatives arguing for two days that
4 incorporating a little bit of purpose into these is not
5 the end of the world so I feel a little bit on the
6 wrong side of my own ideology and not loving the
7 inclusion of hydraulic fracturing here. I guess it
8 doesn't rise -- I think I agree it doesn't rise to the
9 level of catch phrase although it is sort of
10 unnecessary and starts trending in that direction a bit
11 but all that considered, I'll reconsider and sort of
12 swallow my objections to it.

13 MS. STAIERT: All right. Do you have
14 anything else you want to talk about?

15 MR. DOMENICO: I don't know.

16 Do we -- I forget our usual practice with
17 numbers in the titles. That was my only thought is
18 whether we would want to use, you know --

19 MS. STAIERT: Be shorter.

20 MR. DOMENICO: -- numerals instead of
21 spelling it out. I think normally in a title as
22 opposed to a measure --

23 MS. STAIERT: Yeah.

24 MR. DOMENICO: -- we do but --

25 MS. STAIERT: I think we do, too.

1 MR. DOMENICO: Let's see. I think the only
2 other thing it has whether we on line 4 can just say
3 for instead of with regard to and that's all I've got.

4 MS. STAIERT: Okay. All right. Let me read
5 it.

6 An amendment to the Colorado Constitution
7 concerning a statewide setback requirement for new oil
8 and gas wells and in connection therewith requiring any
9 new oil and gas well including those using hydraulic
10 fracturing to be located at least 1500 feet from the
11 nearest occupied structure authorizing a homeowner to
12 waive the setback for the homeowner's home and
13 establishing that the statewide setback is not a taking
14 of private property requiring compensation under the
15 Colorado Constitution.

16 MR. DOMENICO: I would move that we set the
17 title as just write it as it appears on the screen for
18 Proposed Initiative 2013-2014, number 85.

19 MR. GELENDER: Second.

20 MS. STAIERT: All those in favor? Aye.
21 That takes us to item 13 on the agenda which is
22 Proposed Initiative 2013-2014, number 86.

23 Mr. Ramey, you want to just make your record
24 and then tell us what's different.

25 MR. RAMEY: Certainly, Madam Chair, Edward

1 Ramey again representing the proponents, designated
2 representatives. Mr. Diamond, Ms. Leahy are present and
3 I'm substituting for Ms. Tierney I guess I should say
4 again.

5 Number 86 is very, very, very similar to 85.
6 The primary differences would be the size of the
7 setback which becomes 2,000 feet under 86 instead of
8 1500. There is also a new, it's not a new definition
9 but a new identifier term for definition. In 86,
10 instead of oil and gas operations, it refers to oil and
11 gas development which is in response to review and
12 comment memorandum and I can address that with the
13 Board and also a waiver letter for another initiative
14 that addressed that if the Board wants to know where
15 that came from but the definition is the same so
16 basically we've taken the same thing and called it,
17 instead of an elephant we've called it a pachyderm but
18 it's exactly the same thing and that is it. This has
19 not a taking language in it otherwise I think it's the
20 same, so I'll stop there at the jurisdictional level
21 before getting to the title, hopefully before getting
22 to the title.

23 MR. DOMENICO: I think we've had a pretty
24 detailed discussion. I would move we find a single
25 subject for Proposed Initiative 2013-14 number 86.

1 MR. GELENDER: Second.

2 THE COURT: All those in favor. Aye. All
3 right. So you want to just use the language from last
4 time, Steve, and then put in 2,000?

5 MR. DOMENICO: So the only thing changing is
6 the setback requirement which is 2,000 feet.

7 MR. RAMEY: Yes.

8 MS. STAIERT: Right.

9 MR. GELENDER: Well --

10 MS. STAIERT: Well, we'll talk about whether
11 we're going to change the other.

12 MR. RAMEY: Well, the oil and gas
13 development, if you want to change that.

14 MR. DOMENICO: In reference to definitions,
15 once we -- with what we actually set so I think we'll
16 be --

17 MS. STAIERT: Yeah.

18 MR. DOMENICO: I think we got rid of that,
19 right?

20 MS. STAIERT: Yeah. I think we just need
21 to --

22 MR. DOMENICO: Change the number.

23 MS. STAIERT: Yeah.

24 MR. DOMENICO: Once we got rid of any
25 reference.

1 MS. STAIERT: So as it reads now it's an
2 amendment to the Colorado Constitution concerning a
3 statewide setback requirement for new oil and gas wells
4 and in connection therewith requiring any new oil and
5 gas well including those using hydraulic fracturing to
6 be located at least 2,000 feet from the nearest
7 occupied structure, authorizing a homeowner to waive
8 the setback for the homeowner's home and establishing
9 that the statewide setback is not a taking of private
10 property requiring compensation under the Colorado
11 Constitution.

12 Mr. Ramey, you have any comments on it?

13 MR. RAMEY: No, I think that is fine as the
14 title reads.

15 MR. GELENDER: Brief technical point. I'm
16 afraid this will go back to 85, too. I think we need a
17 semicolon after home instead of a comma on line 4.

18 MR. DOMENICO: We can just go back for 85 for
19 that as well.

20 MS. STAIERT: Yeah.

21 MR. GELENDER: With that one change, then
22 I would move that the Board set the title for Proposed
23 Initiative 2013-14, number 86, as just read and with
24 the semicolon as it appears on the screen.

25 MR. DOMENICO: Second.

1 MS. STAIERT: All those in favor. Aye.
2 Passes unanimously and that takes us to agenda item 14,
3 which is Proposed Initiative 2013-2014, number 87 and
4 Mr. Ramey, you want to go ahead and make your record
5 and then we'll talk about what's different in this one.

6 MR. RAMEY: Certainly, Madam Chair. Edward
7 Ramey substituting for Martha Tierney representing the
8 proponents and the designated representatives.
9 Ms. Leahy and Mr. Diamond are present.

10 87 is again essentially the same thing except
11 in this case, again the term development is used
12 instead of operations in the text of the measure which
13 would not affect the title and the setback length has
14 changed to 2,640 feet. Otherwise I think it's
15 identical.

16 MS. STAIERT: Want to do the single subject
17 first?

18 MR. DOMENICO: I'm sorry. I would move that
19 we find a single subject for Proposed Initiative
20 2013-14 number 87.

21 MR. GELENDER: Second.

22 MS. STAIERT: All those in favor? Aye. All
23 right. So we'll wait for Steven to put up the language
24 unless it's already -- oh, we're just going to change
25 the -- okay.

1 MR. DOMENICO: So just to question, should we
2 just say a half mile?

3 MR. GELENDER: Well, I was going to ask the
4 same question at any rate so --

5 MS. STAIERT: Do you have any issues with
6 half mile?

7 MR. RAMEY: We can live with half a mile,
8 absolutely.

9 MS. STAIERT: Okay.

10 MR. RAMEY: I hadn't done the math but --

11 MS. STAIERT: Yeah, I'm so glad I didn't ask
12 how you came up with that number because I would have
13 sounded so stupid.

14 MR. RAMEY: If I recall, Mr. Domenico has a
15 Samsung calculator with him.

16 MR. DOMENICO: Right. The nerds on the Title
17 Board will get exposed.

18 MS. STAIERT: Exactly.

19 MR. DOMENICO: Converting feet to miles.
20 I guess we could say eight-tenths of one kilometer if
21 we really wanted.

22 MS. STAIERT: No.

23 MR. DOMENICO: Right. Eight laps on the
24 track.

25 MS. STAIERT: All right. So the way it reads

1 right now, an amendment to the Colorado Constitution
2 concerning a statewide setback requirement for new oil
3 and gas wells and in connection therewith requiring any
4 new oil and gas well including those using hydraulic
5 fracturing to be located at least one-half mile from
6 the nearest occupied structure, authorizing a homeowner
7 to waive the setback for the homeowner's home and
8 establishing that the statewide setback is not a taking
9 of private property requiring compensation under the
10 Colorado Constitution.

11 MR. DOMENICO: I would move that we set the
12 title for Proposed Initiative 2013-14 number 87 as just
13 read and as it appears on the screen.

14 MR. GELENDER: Second.

15 THE COURT: All those in favor? Aye. All
16 right.

17 That takes us to agenda item number 15, which
18 is Proposed Initiative 2013-2014 number 88. Mr. Ramey.

19 MR. RAMEY: Madam Chair, Edward Ramey
20 substituting for Martha Tierney representing the
21 proponents of number 88 and the designated
22 representatives. Mr. Diamond and Ms. Leahy are
23 present.

24 This measure is similar except for two
25 things, similar to 85 through 87 except for two primary

1 things.

2 Number one, the not a taking provision is not
3 part of number 88 and secondly, as Mr. Gelender I think
4 noted earlier or Madam Chair, perhaps you noted it, the
5 waiver provision is different here. It doesn't apply
6 to just a homeowner and their home. It deals with --
7 and the title by the way that has been proposed does
8 not have the correct language in it from the text but
9 it deals with a surface estate, owner of a surface
10 estate of real property waiving the setback only with
11 regard to an occupied structure located on that owner's
12 property, so the title would have to I think, assuming
13 we get to the title, would have to reflect that.

14 MR. DOMENICO: I would move that we find a
15 single subject for Proposed Initiative 2013-14 number
16 88.

17 MR. GELENDER: Second.

18 MS. STAIERT: All those in favor? Aye.

19 All right. Let's do the 2,000, take out the
20 -- oh, looks like you already did. Taking and then we
21 can talk about the --

22 MR. DOMENICO: Well --

23 MS. STAIERT: Oh, we didn't --

24 MR. DOMENICO: -- he's got the -- do you want
25 to go to --

1 MR. RAMEY: Do you want to go back to the --

2 MS. STAIERT: Yeah, let's go back to --

3 MR. DOMENICO: We need to be back on --

4 MS. STAIERT: -- what we --

5 MR. DOMENICO: Yeah.

6 MS. STAIERT: -- which was the 86.

7 MR. DOMENICO: Doesn't matter.

8 MS. STAIERT: Yeah. It doesn't have to do

9 2,000.

10 MR. DOMENICO: I can handle it.

11 MS. STAIERT: All right. And then take out

12 lines 5 and 6, take those out and then up on line 4,

13 that's where the and will be and then we'll talk about

14 what that language is going to say.

15 MR. GELENDER: Yeah but I think we just say

16 authorizing -- I think we probably have to just track

17 this language -- the owner of the surface estate of

18 real property -- well, if someone has a better way.

19 MR. DOMENICO: Oh, I would just say property

20 owner I think. I mean --

21 MR. GELENDER: Okay.

22 MR. DOMENICO: Because I'm trying, I mean, I

23 understand the concern and why it's probably in the

24 measure but I'm trying to picture -- I'm trying to

25 picture any other property owner that would somehow

1 waive it. I guess my point is I can't think of any,
2 anybody who would have a structure on the owner's
3 property that wouldn't qualify.

4 MR. RAMEY: Mr. Domenico, Madam Chair, my
5 only thought would be --

6 MS. STAIERT: I'm just getting
7 (indiscernible).

8 MR. RAMEY: Okay.

9 MS. STAIERT: I'm not having you forcibly
10 removed.

11 MR. RAMEY: I was going to say people
12 suddenly came in both doors and they looked very mean.
13 I don't know.

14 MR. DOMENICO: (Indiscernible) showed up.

15 MR. RAMEY: Yeah.

16 MS. STAIERT: It was sort of strange that
17 they came in on opposite sides.

18 MR. RAMEY: The only other alternative, and
19 Mr. Domenico, I defer completely to the Board on this,
20 instead of property owner, I suppose you could use
21 landowner.

22 MR. DOMENICO: Even better. That makes sense
23 to me I think. Either way, yeah. I think I would -- I
24 think I would go with an indefinite article, a instead
25 of the but, in front of landowner --

1 MR. RAMEY: Uh-huh.

2 MR. DOMENICO: Authorizing the landowner to
3 waive the setback -- I'm not quite sure that's right,
4 to waive the setback. I missed that.

5 MS. STAIERT: Maybe we just say waive the,
6 well -- we'd almost have to put it up there in the
7 subject.

8 MR. DOMENICO: A little bit harder than --

9 MS. STAIERT: Yeah.

10 MR. GELENDER: What would we have to put in
11 the subject?

12 MS. STAIERT: Setback for a (indiscernible).

13 MR. GELENDER: Oh.

14 MS. STAIERT: You know what I mean? It's not
15 the setback from the land, is it? It's the setback
16 from the structure.

17 MR. DOMENICO: Right. That's what I was
18 trying to figure. I mean --

19 MS. STAIERT: If you put it up above, it
20 would be fine.

21 MR. GELENDER: Well, we just said a home
22 before. Why are we not just saying for any occupied
23 structure?

24 MR. DOMENICO: Yeah, so it would be for, only
25 for a structure located --

1 MS. STAIERT: For a structure located on the
2 property. Were we going to change that to property or
3 did we just --

4 MR. DOMENICO: Yes, I think I might still
5 prefer property, you know, authorizing a property owner
6 to waive the setback for a structure located on the
7 owner's property.

8 MS. STAIERT: Okay.

9 MR. DOMENICO: And actually, well, this is
10 interesting. I don't know if we actually have to say
11 occupied. I mean, theoretically you can't waive it if
12 you have like on a ghost town sitting there or
13 something.

14 MR. RAMEY: Actually the setback wouldn't
15 apply.

16 MS. STAIERT: Then it doesn't apply.

17 MR. RAMEY: I'm sorry.

18 MR. DOMENICO: That's a good point. Well,
19 but that, I mean, you're right. You don't need to
20 waive it for anything other than an occupied structure
21 but --

22 MR. RAMEY: Right.

23 MR. DOMENICO: So actually -- I mean, I would
24 be comfortable just saying for a structure or
25 structures. You could have two occupied structures on

1 your property.

2 MS. STAIERT: Structures, take out the a and
3 put in the --

4 MR. DOMENICO: Well, one way, we could change
5 it authorizing property owners to waive the setback for
6 structures located on their property might be one way
7 to solve that. I don't know if it helps but just from
8 my own background, we usually just use the singular
9 when we draft. I would just say a property owner to
10 waive the setback for any structure but --

11 MS. STAIERT: Okay.

12 MR. DOMENICO: That's fine. Any structure --

13 MS. STAIERT: Located on your property.

14 MR. DOMENICO: Now, for his or her -- well,
15 the nightmare of using their for a singular possessive,
16 hence the owners.

17 MS. STAIERT: The owner.

18 MR. DOMENICO: Yeah, which is just inelegant
19 but that makes it perfect for the Title Board.

20 MS. STAIERT: Exactly.

21 MR. GELENDER: Well, it could be a corporate
22 owner so the his or her thing doesn't work either.

23 MR. DOMENICO: Right.

24 MS. STAIERT: All right. So the way it reads
25 right now is an amendment to the Colorado Constitution

1 concerning a statewide setback requirement for new oil
2 and gas wells and in connection therewith requiring any
3 new oil and gas well including those using hydraulic
4 fracturing to be located at least 2,000 feet from the
5 nearest occupied structure and authorizing a property
6 owner to waive the setback for any structure located on
7 the owner's property.

8 MR. DOMENICO: So I guess it's to me --

9 UNIDENTIFIED SPEAKER: Go for it.

10 MS. STAIERT: Uh-huh.

11 MR. DOMENICO: I move that we set the title
12 for Proposed Initiative 2013-14 number 88 as just read
13 and as it appears on the screen.

14 MR. GELENDER: Second.

15 MS. STAIERT: All those in favor? Aye.

16 All right.

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1 STATE OF COLORADO)
2) ss. CERTIFICATE
3 COUNTY OF DENVER)
4

5 I, Christopher Boone, Certified Electronic
6 Court Reporter and Notary Public within and for the
7 State of Colorado, certify that the foregoing is a
8 correct transcription from the digital recording of
9 the proceedings in the above-entitled matter.
10

11 I further certify that I am neither counsel
12 for, related to, nor employed by any of the parties
13 to the action in which this hearing was taken, and
14 further that I am not financially or otherwise
15 interested in the outcome of the action.
16

17 In witness whereof, I have affixed my
18 signature this 12th day of May, 2014.
19

20 My commission expires August 16, 2014.
21

22
23 _____
24 Christopher Boone,
25 AAERT Certified Electronic Court Reporter

<p style="text-align: center;">A</p> <p>AAERT 42:25 able 21:11 above-entitled 42:9 absolutely 3:24 33:8 access 5:25 accomplishes 12:5 accusations 9:15 accuse 24:15 act 5:10 action 13:21 42:13 42:15 actual 10:1 adamantly 9:16 add 8:22 26:18 added 17:23 adding 9:25 10:7 address 29:12 addressed 6:5 29:14 addressing 5:9 adds 15:2 23:6 adopt 5:18 adopted 5:20 advertising 24:10 affect 32:13 affixed 42:17 afraid 13:24 31:16 agenda 28:21 32:2 34:17 agree 9:21 11:8 23:11 24:17 25:3 25:17 27:8 ahead 8:4,16 23:12 23:14 32:4 alert 11:19 alleged 3:19 allow 13:8 22:1 allows 21:6 alternative 37:18 amend 12:24 13:9 amending 7:15 11:1 13:4,9 amendment 9:1 13:4 28:6 31:2 34:1 40:25 angling 5:14 anybody 14:17 20:9 37:2</p>	<p>apparently 17:24 APPEARANCES 1:15 appears 9:7 28:17 31:24 34:13 41:13 applies 11:12 20:14 apply 35:5 39:15 39:16 approved 3:1 APRIL 1:7 argue 5:16 12:13 arguing 27:3 argument 12:25 13:20 14:18 arose 20:23 article 10:20 37:24 aspects 10:2 assuming 35:12 assumption 7:5 assure 4:1 attaching 26:2 attempting 11:1 ATTORNEY 1:21 August 42:20 authorizing 28:11 31:7 34:6 36:16 38:2 39:5 40:5 41:5 avoid 14:4 15:23 Aye 28:20 30:2 32:1,22 34:15 35:18 41:15</p> <hr/> <p style="text-align: center;">B</p> <p>B 20:2 back 12:19 13:12 18:5,20 22:13 31:16,18 36:1,2,3 background 40:8 bad 9:24 11:25 BALLOT 1:4,5,17 1:20 based 3:19 basically 5:17 7:10 7:11 18:13 20:9 29:16 benefit 9:7,8 best 5:5 better 2:13 18:6 23:19 36:18 37:22</p>	<p>bit 6:16 7:18 10:1 13:13 15:15 20:1 22:12 27:4,5,10 38:8 board 1:4,17,20,21 2:14,20 8:17 9:16 10:9 11:19 12:23 12:25 13:6 29:13 29:14 31:22 33:17 37:19 40:19 Boone 42:5,24 brief 17:15 31:15 Briefly 23:10 bring 6:23 24:1 broader 20:6,13 21:1 building 20:10,10</p> <hr/> <p style="text-align: center;">C</p> <p>CAITLIN 1:19 calculator 33:15 call 26:5,7 called 29:16,17 care 4:4 case 32:11 cat 9:14 catch 14:20,22 15:2 16:14 24:25 25:25 27:9 catchy 14:20 central 24:19 certainly 2:5 6:11 7:19 12:13 23:16 28:25 32:6 CERTIFICATE 42:2 Certified 42:5,25 certify 42:7,11 Chair 1:17 8:12 16:7 18:15 23:8 24:17 25:15 28:25 32:6 34:19 35:4 37:4 change 7:9 16:22 16:25 30:11,13,22 31:21 32:24 39:2 40:4 changed 32:14 changing 30:5 choice 21:25</p>	<p>Christopher 42:5 42:24 cite 10:20 claims 7:25 clarify 25:12 clause 11:13 clauses 11:23 clean 16:22 18:22 clean-up 17:8 clear 24:18 25:20 Colorado 5:7,13 6:6,14 9:1 10:20 10:24 11:5,12 12:5 13:11,23 15:12 16:19 28:6 28:15 31:2,10 34:1,10 40:25 42:1,7 come 9:18 12:19,22 20:25 comfortable 39:24 coming 9:15 20:22 comma 31:17 commas 19:21 comment 17:24 18:3 20:23 29:12 comments 3:20 11:7 31:12 commission 42:20 compensation 6:2 6:10 7:24 11:17 11:20,24 12:11,14 13:14,14,17,18 14:5,8,10,13 15:12,17,22 16:19 17:12 22:6,8 28:14 31:10 34:9 completely 5:25 11:8 37:19 conceal 23:21 conceivably 5:24 concept 12:17 13:15 concern 6:17 13:7 36:23 concerning 9:1 22:22 28:7 31:2 34:2 41:1 confused 24:11 confusing 18:24</p>	<p>24:14 connected 5:2 8:2 connection 18:8 28:8 31:4 34:3 41:2 consideration 4:3 considered 14:20 15:21 27:11 constitute 5:20 constitutes 8:5 constitution 5:8,13 6:6 7:25 9:1 10:21,25 11:1,5 11:12 12:5,24 13:11,24 15:13 16:5,19 28:6,15 31:2,11 34:1,10 40:25 constitutional 5:12 6:11,14 context 15:3 20:12 21:14 Converting 33:19 convince 23:2 corporate 40:21 correct 35:8 42:8 counsel 1:18 3:19 42:11 COUNTY 42:3 couple 19:20 Court 30:2 34:15 42:6,25 covering 23:4 create 4:14 created 5:6 7:10 cross 26:4 curious 20:20</p> <hr/> <p style="text-align: center;">D</p> <p>DANIEL 1:20 day 42:18 days 27:3 deal 19:10 22:2 dealing 10:17 11:22 deals 35:6,9 debate 8:23 25:1,25 decide 16:3 decision 21:3 deemed 5:9,11 6:13</p>
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BALLOT TITLE BOARD HEARINGS
ON BALLOT INITIATIVES 2013-2014 #85 - #88

APRIL 16, 2014

APPEARANCES:

SUZANNE STAIERT, CHAIR, BALLOT TITLE BOARD AND DEPUTY
SECRETARY OF STATE

EDWARD RAMEY, COUNSEL FOR PROPONENTS GREG DIAMOND AND
CAITLIN LEAHY

DANIEL DOMENICO, BALLOT TITLE BOARD MEMBER AND
SOLICITOR GENERAL

JASON GELENDER, TITLE BOARD MEMBER AND SENIOR ATTORNEY,
OFFICE OF LEGISLATIVE LEGAL SERVICES

MIKE FEELEY ON BEHALF OF OBJECTORS

1 MS. STAIERT: And that takes us to the next
2 motion for rehearing which is on Proposed Initiative
3 2013-2014 number 85. Mr. Feeley.

4 MR. FEELEY: Good afternoon, Madam Chair,
5 members of the Board. My name is Mike Feeley. I'm
6 with Brownstein Hyatt Farber Schreck and I'm appearing
7 on behalf of the objectors.

8 Let me address the jurisdictional issues
9 first.

10 MS. STAIERT: Yeah, if we could start with
11 single subject, I think that'd be helpful.

12 MR. FEELEY: I will. Let me address another
13 jurisdictional matter as well.

14 MS. STAIERT: Okay.

15 MR. FEELEY: At the hearings on Initiatives
16 85 through 88, counsel for the proponents was clear
17 that the purpose of these initiatives was to further
18 limit the development and operations of oil and gas.

19 As was addressed a little earlier, I think in
20 connection with Initiative 82 I think by Mr. Domenico,
21 the Title Board's job is not to construe the
22 proponent's intent but the Board is required to
23 consider the initiative's language to insure it reaches
24 the right decisions on a single subject in title and
25 the Supreme Court reminds us in the case of Kemper v.

1 Hamilton, 172 P.3d 871 that in examining it, we apply
2 the rules of statutory construction and accord the
3 language of the measure its plain meaning.

4 Here in Initiative 85 and this is true of 86,
5 87, 88 as well but dealing specifically with 85, the
6 language of the measure affects purpose and meaning in
7 a way that could not be ignored. The term oil and gas
8 operations is specifically defined in that proposal to
9 mean exploration for and production of Colorado's oil,
10 gas, other gaseous and liquid hydrocarbons and carbon
11 dioxide and as the Chair noted earlier, it's all in the
12 definition, it's all controlled by the definition.

13 Whatever the proponent's intent might be,
14 they consciously chose to qualify the type of oil and
15 gas exploration and production affected by the
16 initiative. They did so with the use of the possessive
17 word Colorado's -- that's Colorado apostrophe S. That
18 leaves the average voter to believe that the initiative
19 only affects oil and gas belonging to the State of
20 Colorado and not private or federal mineral interests
21 or the voter would wonder or be unclear as to whether
22 the initiative affects only oil and gas mineral rights
23 belonging to the State of Colorado and not private or
24 federal mineral interests.

25 If I may approach, let me hand a couple of

1 documents to the Board. I'll grab one for myself.

2 Colorado, that is, the State of Colorado owns
3 approximately four million acres of mineral rights all
4 across the state. Ownership of the surface estate and
5 mineral estate were granted to the state by the federal
6 government in 1867. They are managed by the State Land
7 Board largely for the benefit of public K-12 schools.

8 Those minerals under those 40 million acres
9 are Colorado's oil, gas, other gaseous and liquid
10 hydrocarbons and carbon dioxide. Either the Board must
11 reflect the unambiguous language in the title or it
12 must not set the title because the purpose of the
13 initiative cannot be comprehended.

14 Now, as to the single subject issues, we
15 believe that the Board cannot set title if the
16 initiative contains multiple subjects and that's the
17 case with Initiative 85.

18 The first subject is an override of the
19 State's current rules prohibiting oil and gas wells
20 from being within 500 feet of any building and
21 requiring special approval within 1,000 feet of
22 buildings with large numbers of people such as schools,
23 hospitals, or nursing homes.

24 A second and separate subject contained
25 within Initiative 85 is the authorization of homeowners

1 to waive the prohibition making it impossible for
2 voters who are divided, that is, require a vote yes or
3 no on expanding or overriding the current prohibition
4 but allowing the waiver. It is not necessary for the
5 institution of a prohibition or in overriding the
6 current rules and regulations to allow a waiver and a
7 voter might very well be in favor of the prohibition
8 within 1500 feet and be opposed to a homeowner waiving
9 that prohibition. They don't necessarily depend upon
10 one another.

11 A third subject that's separate and this
12 subject is perhaps most removed from the other subjects
13 contained within Initiative 85, asked the voters to
14 nullify the state constitutional just compensation
15 provisions, asking voters on one hand to limit the
16 State's power to develop its oil and gas minerals and
17 on the other hand to expand the State's power to take
18 property without paying for it.

19 Now, one could easily envision that a voter,
20 or excuse me, the independence of those two provisions,
21 that is the prohibition within 1500 feet of a home and
22 the elimination of the State's power or the expansion
23 rather of the State's power to take property without
24 paying for it are totally unrelated to one another. One
25 could easily accomplish a prohibition of oil and gas

1 within any certain limit and expect that the government
2 would continue to pay just compensation for land that
3 up until the passage of this initiative would be -- is
4 a fundamental constitutional right.

5 I think with those separate subjects and with
6 the earlier problem that I think creates a
7 jurisdictional problem for the Board to set title in
8 any sense, that there are problems with Initiative 85
9 and a title should not be set.

10 I'll be happy to address the -- any title
11 issues once the Board has an opportunity to consider
12 these matters.

13 MS. STAIERT: Any questions?

14 MR. FEELEY: I'm sorry. If I can answer any
15 questions. Thank you.

16 MS. STAIERT: Thank you.

17 All right. Mr. Ramey.

18 MR. RAMEY: Madam Chair, Edward Ramey on
19 behalf of the proponents and since we do have a new
20 initiative, I'll say that Mr. Diamond and Ms. Leahy are
21 both still present in the room.

22 With regard to the first argument to the
23 extent I understand it and I apologize because it's the
24 first I heard and it wasn't in the written motion, at
25 least I didn't read it in there. Perhaps it was.

1 I'm trying to think of the best way to
2 respond to this.

3 The language of the measure itself says that
4 all new oil and gas wells requiring a state or local
5 permit including those using hydraulic fracturing must
6 be subject to a particular setback requirement who
7 happens to own the underlying mineral interests and
8 that phrase is not addressed.

9 Mr. Feeley is correct that oil and gas
10 operations is then defined as meaning the exploration
11 of production of Colorado's oil, gas and other gaseous
12 and liquid hydrocarbons.

13 Putting the phrases together, I would submit
14 to the Board that the clear intent of this measure, and
15 I mean that in an interpretative way because we do have
16 to go with the language, we always have interpretative
17 language, is that these are resources within the State
18 of Colorado and it's immaterial who owns them, whether
19 it be the federal government with the State of Colorado
20 private owners, whatever the case might be. If they
21 require a state or local permit, then they would be
22 subject to the setback requirements.

23 Now again there may be a situation, and I
24 frankly don't -- I personally have no idea -- where the
25 setback requirement would bounce against some other

1 federally imposed restriction limitation entitlement or
2 something. I don't know what that would be but if it
3 is, then that would have to be sorted out, you know, in
4 due course because we can't preempt federal law and
5 there's no suggestion in this measure that we're
6 attempting to do that, so again, just from reading the
7 measure as a whole, we are not, the measure by its
8 language does not attempt to restrict the oil and gas
9 reserves in question to those happened to be owned by
10 the State of Colorado.

11 On the single subject issues, I would just
12 say the single subject is the setback, period,
13 underlined, underscored, in bold type. It's all about
14 the setback. The takings provision if you will,
15 addressing the impact of the two sections in Article 2
16 regarding a taking is implementational. The inclusion
17 of hydraulic fracturing, again only, it's an oil and
18 gas operation that's part of that and it applies only
19 in the context of the setback and authorizing the
20 homeowner to waive the setback requirement is again
21 purely implementational and I would come back to I
22 guess the analogy that I used in connection with number
23 89 a few months ago, that would it make sense to adopt
24 the measure, let's just say the setback, and then have
25 to adopt another measure that says oh, by the way, that

1 first measure shall not be considered a taking under
2 the Colorado Constitution, then another measure that
3 would say, oh, yeah, by the way, when we say oil and
4 gas operations, we certainly meant to include hydraulic
5 fracturing and in another measure that would say oh, by
6 the way with regard to that first measure, homeowners
7 can waive the setback. It's all one topic. It all
8 folds together. Nothing's incongruous and they're all
9 connected so I would submit that there is a single
10 subject and that reading the measure together, I'm not
11 sure it's even jurisdictional in nature but the measure
12 does not talk about affecting only oil and gas
13 interests that happen to be subject to the ownership of
14 the State of Colorado if I understood Mr. Feeley's
15 statement. Thank you.

16 MR. DOMENICO: Well, and if you pass number
17 89, right, it'll all qualify as Colorado so it's all
18 part of the problem there.

19 MR. RAMEY: I would quibble with that,
20 Mr. Domenico, because I think the --

21 MR. DOMENICO: Just kidding, Mr. Ramey.

22 MR. RAMEY: -- State's interest would be as
23 a trustee.

24 MR. DOMENICO: Just trying to enjoy myself
25 here.

1 MR. RAMEY: At my expense.

2 MR. DOMENICO: That's right.

3 MR. RAMEY: As we always do.

4 MS. STAIERT: Luckily the two of us can be
5 recalled.

6 MR. DOMENICO: That's right.

7 MS. STAIERT: There's hope.

8 MR. DOMENICO: Soon.

9 All right. Well, I'm inclined to believe we
10 still have a single subject here. I understand the
11 arguments but I don't think that they rise to the level
12 of separate subjects and so unless anybody has other
13 comments, I'll go ahead and move that we deny the
14 motion for rehearing on the single subject issue.

15 UNIDENTIFIED SPEAKER: Second.

16 MS. STAIERT: All those in favor?

17 UNIDENTIFIED SPEAKERS: Aye.

18 MS. STAIERT: Let's move on to the title.

19 MR. FEELEY: I have some suggested language.

20 MS. STAIERT: Okay. Wonderful. Thank you.

21 MR. FEELEY: Thank you, members of the Title
22 Board.

23 I will note or perhaps revisit an issue I
24 raised that the title draft omits the limited reach of
25 the initiative that caused the initiative use to use

1 the possessive Colorado's and it should be amended to
2 reflect that limitation.

3 I don't think -- I think that it's important
4 that the voter not be required to read the initiative
5 as a whole or the title as a whole but in fact the use
6 of the specific language must be given its plain
7 meaning and words mean something and the use of a
8 possessive means something and therefore I would ask
9 that language to reflect that specific use of the
10 possessive and the limited nature be incorporated into
11 the title.

12 The title fails to explain to voters that the
13 initiative overrides current statewide rules that
14 prohibit the location of oil and gas wells within
15 certain distances of buildings and occupied -- and
16 occupied buildings.

17 Instead, the title improperly implies the
18 initiative is creating, is establishing something new
19 and filling a void as to something that is not already
20 there. I think the initiative should reflect the fact
21 that this is, this is recognizing exactly that.

22 Section -- let's see. There are some use of
23 the word, some words which we believe constitutes catch
24 phrases. The use of the phrase statewide setback has an
25 alliterative quality that makes its true plain language

1 meaning and should be replaced with the more common
2 word prohibition because that's what we're talking
3 about here. We're not necessarily talking about a
4 setback and you'll see from the initiatives that are
5 following this one, that this is really a prohibition
6 on oil and gas operations or oil and gas development
7 within a certain period of time. This is a prohibition
8 I think is a more accurate description of what's taking
9 place should this initiative be enacted into law.

10 The term new is vague and undefined and
11 should be replaced or at least qualified with a more
12 specific language of initiative concerning its
13 application to wells that need a state or local permit.
14 The title doesn't currently reflect that and I would
15 suggest that the use of hydraulic fracturing is
16 politically charged and its inclusion is likely to
17 appeal to voter emotion without contributing to the
18 public understanding of the relationship between the
19 initiative and the technology. I realize it can get
20 worse. We don't have the word fracking in here but
21 certainly hydraulic fracturing has become a very hot
22 political issue here that generates emotion in the vote
23 one way or the other and should be avoided in trying to
24 advise the voter of exactly what is in the initiative
25 that's a catch phrase that's pejorative and with those,

1 I made some suggestions that I've passed out to the
2 Board which addresses those specific recommendations
3 for making an initiative that we think is clearer and
4 more accurate description of the initiative that's
5 proposed.

6 If I can answer any questions.

7 MR. GELENDER: I think one that might be
8 relevant, so I lost it for a second.

9 On the -- oh, on the new oil and gas wells
10 and the permit, are there any new ones that don't
11 require permits?

12 MR. FEELEY: I don't know the answer to that.
13 I think that they all require permitting and therefore
14 the term new, I think it's just a more accurate
15 explanation of what's contained in the initiative with
16 the reference to the language that's in the initiative
17 itself that is more helpful to the voters'
18 understanding.

19 MR. GELENDER: Well, I think new is in there
20 to simply say if you've already got your oil and gas
21 well, you don't have to move it if it's within the new
22 setback requirements, so I think it certainly serves a
23 purpose. We're not requiring all wells -- we're not
24 requiring existing wells to be moved, just new ones and
25 apparently all of them if there are no new ones that

1 don't require permits to meet these requirements.

2 MR. FEELEY: I think it's six of one a half
3 dozen of another. I mean, it's only prospective in
4 nature anyway. The term new is probably not as
5 descriptive as to the language that the proponents
6 could set forth in the initiative itself.

7 MR. GELENDER: Okay. And then just
8 responding briefly to your general points. First I'd
9 say that I don't know that alliteration is a catch
10 phrase makes so I don't find that argument compelling.
11 I think people know what new means and it's in this
12 context, differentiation from existing and it's
13 probably pretty necessary. I am inclined to agree with
14 you. I don't think hydraulic fracturing is while not
15 as bad as fracking is necessary or helpful in this
16 title. I lost that argument last time and we'll see if
17 it goes better this time and I think I'll let others
18 comment on whether we think -- I am inclined to think
19 that it does matter that there are some existing
20 setback regulations that we probably should think hard
21 about referencing in some way. Thank you.

22 MR. FEELEY: Anything further?

23 MR. RAMEY: Madam Chair.

24 MS. STAIERT: Oh, go ahead.

25 MR. RAMEY: I'm sorry. Do you want to hear

1 from the proponents?

2 MS. STAIERT: Yeah, go ahead.

3 MR. RAMEY: Edward Ramey, Madam Chair.

4 Most of what Mr. Gelender just said a few
5 moments ago I would agree with so I'm not going to just
6 reiterate all that in terms of the catch phrases and so
7 forth.

8 I guess I will say two things. I don't want
9 to take apart at this point Mr. Feeley's suggested
10 title changes except for two things. I really don't
11 think it's necessary to have a comparative in there of
12 the setback that this creates, that this new measure
13 creates and whatever the existing is, whatever the
14 existing, and actually that might change between now
15 and election day for all the dickens we know so, you
16 know, I think that would be both unnecessary and, I
17 mean, it's sort of this comparative thing that I'm not
18 sure is appropriate in a title.

19 We are creating a specific setback,
20 here's what it is, period, so I would argue against
21 Mr. Gelender on that.

22 On the hydraulic fracturing, let me just
23 rejoin that issue again. We all agree I think that I
24 think we fought the Board at one point maybe just
25 tongue in cheek from Mr. Domenico, I don't know, should

1 we put fracking in there or not. We certainly didn't
2 want it. I mean, that's a catch phrase with bells and
3 whistles on it.

4 Hydraulic fracturing I don't think is. As
5 proponents, we're certainly willing to take the risk
6 and heaven knows we're going to get a Supreme Court
7 challenge so, I mean, that will be addressed. I don't
8 know what else to call it that makes sense to the
9 people and I think it's important to tell the voters
10 that a primary impact of this thing is on that
11 particular kind of operation. I don't want to hide
12 that as just oil and gas operations and have people
13 thinking that it doesn't involve sort of the most
14 preeminent kind of oil and gas operation that's in the
15 news today and that that's what this is directed at.
16 Of course it is. So I think it's important that we
17 alert the voters to that and not hide it from them.

18 I will concede with Mr. Feeley that, well, I
19 won't concede anything but I'm comfortable, I am
20 absolutely comfortable that we will see that challenged
21 if it remains in the title and I think it should
22 because I think it's informative but it will be
23 addressed in a challenge to the Supreme Court and we'll
24 get an answer but as the proponents who bear the risk
25 of that, we're willing to assume that risk.

1 MR. FEELEY: May I?

2 MS. STAIERT: Sure. Go ahead.

3 MR. FEELEY: I think Mr. Ramey's description
4 of the inclusion of the words hydraulic fracturing
5 actually makes the point. It is a hot button issue.
6 That's why it's there. If you look at the initiative
7 itself, this deals with oil and gas wells requiring a
8 state, a regulation of oil and gas wells requiring a
9 state or local permit and then, comma, including
10 hydraulic fracturing. They've called this particular
11 aspect of drilling out and it's far more than that and
12 it's been done so because it is. It's not fracking but
13 it's the next step from fracking and clearly with the
14 public discussion that's been going on for quite some
15 time now and movies made and blogs and all that, it's
16 become a catch phrase and we think that it is singling
17 out one aspect of drilling that is dealt with in this
18 bill and is really the intent behind the initiative as
19 well.

20 MR. DOMENICO: Well, I can just say I was
21 inclined I think almost entirely to agree with
22 Mr. Gelender's statements, both with what he was
23 inclined to reject in the proposed changes from that
24 Mr. Feeley provided, what he was willing to consider
25 which my understanding included basically two aspects

1 of it.

2 One, this line about hydraulic fracturing and
3 two, whether we need to signal that this is a change
4 not a completely new concept.

5 Those two things I agree are worth discussing
6 and maybe the rest I thought I was inclined to leave
7 alone, so maybe we can start there. Is there anything
8 else we should discuss besides making those two
9 potential changes?

10 MS. STAIERT: I don't think we need to make
11 the changes about, I mean, I don't have a problem
12 saying we're changing the current one but generally we
13 don't put what the old law was when we write these so
14 I'm not really inclined to do that. I'm fine debating
15 the hydraulic fracturing issue again because I just
16 can't get enough of it.

17 MR. DOMENICO: Well, so -- oh, I did I think
18 maybe want to get Mr. Feeley or I guess no, Mr. Ramey
19 to, I think he basically made this point but I think
20 Mr. Feeley has an argument about Colorado's in the
21 measure. I'm sort of inclined to think that at best
22 that's ambiguous and the proponents have told us they
23 don't mean to limit it to government owned mineral
24 rights and if that is one issue where I'm willing to
25 sort of go with whatever the proponents, if they're

1 willing to take that risk, that's consistent with my
2 reading of it, too, and so I'm willing to kind of not
3 accept that as long as the proponents are willing to
4 recognize, you know, if somebody disagrees with our
5 reading of that, they're running a bit of a risk there
6 I guess.

7 MR. RAMEY: Mr. Domenico, Ed Ramey on behalf
8 of the proponents.

9 We're willing to take that risk in response
10 to your question and while I'm up here, that had to
11 happen, and again, I mean, the point is we're not
12 regulating oil and gas drilling in Nebraska. That's --
13 I'll stop with that.

14 MR. GELENDER: And while you're up here, as
15 you said --

16 MR. RAMEY: Yeah.

17 MR. GELENDER: Tell me why as a voter I
18 shouldn't want to know that we're now having a uniform
19 statewide setback that applies in all situations that
20 overrides what a government agency presumably with some
21 expertise and charged in regulating this area,
22 overriding their setbacks which as I understand it are
23 variable depending on if you're in a rural area, an
24 urban area, what type of structures you're dealing
25 with. I mean, as a voter don't I want to know that?

1 MR. RAMEY: With all that language you just
2 said in the title?

3 MR. GELENDER: Not with that language but --

4 MR. RAMEY: Okay.

5 MR. GELENDER: -- in general that there's
6 something -- notice -- what I put is notice that there
7 is something existing out there that if you go down and
8 read the blue book, you can find out a little more
9 about what it is.

10 MR. RAMEY: You know, we would not object to
11 that, Mr. Gelender.

12 I think that the threat of what Mr. Feeley
13 was trying to say, I think what you're trying to say is
14 this is a change. It's not just a new setback that
15 we're establishing. This does change the current
16 landscape and I would agree with Madam Chair's
17 statement as well, that we don't need to recite what
18 all the various and sundry setbacks are but to say it's
19 a change is fine. I don't -- I would not quibble with
20 you at all on that point, and my third point, while I'm
21 still up here, the calling out of hydraulic fracturing.
22 I mean, it's interesting that that's got such a tension
23 between Mr. Feeley and me which sort of makes the
24 point.

25 I would say this. The language of the

1 measure itself, forget about the title for a moment.
2 The language of the measure calls out hydraulic
3 fracturing. It says oil and gas operations including
4 hydraulic fracturing. That's important to the language
5 of the measure. It was important enough to the
6 proponents to have it in that language and to somehow
7 catch phrase issues aside, emotion aside, other words
8 that we could use aside, not to inform the public what
9 this is about, you know, I think sort of trumps the
10 catch phrase concern up to a point. It doesn't
11 authorize putting catch phrases in but unless we're
12 real sure that this is an outrageous catch phrase, we
13 should inform the public what it's about and yeah, it
14 may influence their vote. I mean, that's an informed
15 public, so I would advocate leaving hydraulic
16 fracturing in. I would go with Madam Chair's statement
17 about, and Mr. Gelender's, yours as well, about
18 pointing out that this is a change. That's totally
19 appropriate, and I'm not all worried about Colorado's.
20 You know, we'll certainly take the risk on that. The
21 point is we're not affecting Nebraska or Kansas or
22 purporting to.

23 MS. STAIERT: Even if you, even if you want
24 to know, what if you're just over the border of
25 Nebraska but within -- no, just kidding.

1 MR. RAMEY: Well, I don't think --

2 MS. STAIERT: No.

3 MR. RAMEY: I have an answer to that but I
4 don't think you want me to go there.

5 MS. STAIERT: But even if you hadn't said
6 including hydraulic fracturing, that would be true
7 anyway, wouldn't it? I mean, it is, right? Even if the
8 measure had just stopped and said oil and gas, that
9 would have --

10 MR. GELENDER: As it would be true with
11 countless other --

12 MS. STAIERT: Right. He could have called it
13 fracking. He could have called it anything and I mean
14 I guess if it fits the definition of what he's --

15 MR. GELENDER: I think the point is because
16 of the, you know, perspective we have on the term
17 hydraulic fracturing, that's exactly why it was put in
18 the initiative. I mean, it could have been a laundry
19 list of different drilling techniques that are affected
20 by this initiative including, you know, timing and
21 hours and, you know, types of drilling materials and
22 all kinds of different things but what was done was
23 said we're dealing with oil and gas operations
24 including hydraulic fracturing and that's specifically
25 done to draw attention to it. That is by definition a

1 catch phrase and it's done so without educating the
2 voter as to the totality of the initiative and the
3 effect on all kinds of different aspects of drilling
4 and while I'm here, so I do think it's important to
5 remove that catch phrase just because it's not helpful
6 for understanding the total, but while I'm here, in
7 terms of changing, what are we changing? We are
8 changing the current prohibition so I appreciate the
9 concession by Mr. Ramey with regard to or the
10 acknowledgement that proponents would be willing to
11 accept the fact that this constitutes a change but I
12 think it's important to say exactly what's being
13 changed as well and what's being changed is the current
14 prohibition within certain distances of certain
15 occupied structures and other buildings.

16 MR. DOMENICO: All right. So why don't
17 I start by saying I think I've changed my mind about
18 the hydraulic fracturing language and come around to
19 Mr. Gelender's position.

20 It seems to me to be if not a catch phrase,
21 at least potentially misleading and certainly not truly
22 immaterial in the sense that as the Chair just pointed
23 out, the measure does the same thing whether that's in
24 there or not. The reason I find it potentially
25 misleading is as Mr. Ramey and Mr. Feeley have both

1 pointed out, this is what's in people's minds, this is
2 an important thing that's going on. It's a discussion
3 that's already taking place. Seeing that in there
4 might suggest that the setback we're talking about
5 relates to those and somebody might say, well, yes, for
6 wells that use hydraulic fracturing, we should have
7 this new statewide 1500 foot setback but I'm inclined
8 to think maybe others should have different limits and
9 I'm a little concerned that would be misleading. And
10 since I don't think it's material in the sense that I
11 don't think it changes the actual effect of the
12 measure, I'm inclined to let the public debate raise
13 the fact that this involves hydraulic fracturing rather
14 than our title.

15 So with that, Steve, I think you can probably
16 pull that now.

17 So the second issue then is just
18 acknowledging sort of that there are existing setback
19 rules and I think what I would do and I don't love the
20 positioning of it but for flow purposes, I think it
21 makes sense, is right after therewith, just adding in
22 the phrase overriding existing setback requirements
23 which also covers the fact that the existing ones are
24 apparently non-waivable. If not as clearly as
25 Mr. Feeley would like, at least it accounts for that

1 and that can be an argument for the blue book process
2 and then just put an and right after that.

3 Then with that I think I'm pretty comfortable
4 with the title.

5 MR. GELENDER: So the other way I was
6 thinking of dealing with that was just saying
7 concerning a change to the statewide setback
8 requirement upon line one and then not including the --
9 to me that's probably enough and we wouldn't need to
10 restate it again later but I don't know.

11 MR. DOMENICO: I think I'm going to -- it's
12 -- I don't object to that. I think my way goes with
13 your usual practice of keeping the single subject
14 simpler and doing the description in the trailer but
15 I'm fine either way.

16 MR. GELENDER: Yeah, I'm probably fine either
17 way. If we went with your previous suggestion, I might
18 have switched around the order of those two clauses and
19 left requiring as the initial thing after in connection
20 therewith and then saying, putting the and overriding
21 existing setback requirements after occupied structure.
22 All right.

23 So I can live with either getting rid of
24 change to the or leaving it --

25 MR. DOMENICO: I think I'd prefer it that

1 way, just to keep the single subject a little shorter.

2 MR. GELENDER: I'm fine with it.

3 MR. DOMENICO: Okay. I guess you want to
4 read it, what we have in there?

5 MS. STAIERT: Can you pull up -- hard time
6 reading this time up there.

7 An amendment to the Colorado Constitution
8 concerning a statewide setback requirement for new oil
9 and gas wells and in connection therewith requiring any
10 new oil and gas well to be located at least 1500 feet
11 from the nearest occupied structure and overriding
12 existing setback requirements authorizing a homeowner
13 to waive the setback for the homeowner's home and
14 establishing that the statewide setback is not a taking
15 of private property requiring compensation under the
16 Colorado Constitution.

17 Do you have a comment?

18 MR. RAMEY: Madam Chair, yes, Edward Ramey on
19 behalf of the proponents.

20 All okay except the word overriding. I would
21 meet Mr. Gelender and Mr. Domenico halfway and make
22 that changing instead of overriding if possible.

23 I think -- where does it change it?

24 MR. DOMENICO: By eliminating the existing
25 one.

1 MR. RAMEY: Yeah. I mean, but it's a change.
2 That's what changes do. I think change is a more
3 neutral word. That's one thing I'm concerned with as
4 well. Overriding seems to suggest that there's -- that
5 an existing setback requirement is there and another
6 one comes in and sort of preempts it or something of
7 that nature. What we're doing is changing --

8 MR. DOMENICO: Like with what's happening you
9 mean?

10 MR. RAMEY: Well, Mr. Feeley would certainly
11 agree.

12 I would submit on behalf of the proponents to
13 changing the existing setback requirement is far more
14 neutral and far less laden with sort of a power precept
15 to it so --

16 MS. STAIERT: Yeah.

17 MR. RAMEY: So we would request that I meet
18 the two of you halfway and --

19 MS. STAIERT: I would agree. I think that
20 overriding can imply you're having to take out what's
21 properly in the system and override it so I don't --
22 it's like at the grocery store when they override
23 your --

24 MR. GELENDER: I would suggest that the
25 current requirements are properly in the system and

1 this is the voters overriding the local and state
2 decision makers who have addressed the issue before.
3 I think it's an accurate description of exactly what's
4 taking place.

5 MS. STAIERT: But then it would be accurate
6 every time --

7 MR. DOMENICO: How about eviscerating.

8 MS. STAIERT: Eviscerating.

9 MR. DOMENICO: I like that better. I like
10 that better.

11 MR. GELENDER: Obliterating.

12 MR. DOMENICO: So I mean I'm obviously okay
13 with overriding. If we were going to -- if we were
14 going to go to changing, I think it would make sense to
15 alter the grammar of that clause a little bit and
16 actually it would go back to something more similar to
17 Mr. Gelender's structure and it would say something
18 like in connection therewith, changing existing setback
19 requirements so any new oil and gas law, et cetera, et
20 cetera, et cetera.

21 MR. GELENDER: If both of you are for
22 changing, then that's, you know, fine by me. As a
23 proponent on a very different issue I've used earlier
24 this year, you know I feel there's the phrase unfairly
25 bland or maybe unnecessarily bland. You know, a lot of

1 times we try so hard to be neutral that we're not
2 informative and I feel like overriding is more
3 informative but I'm not going to fight for it.

4 MR. DOMENICO: Well, there's lots of ways to
5 write a satisfactory --

6 MR. GELENDER: Right. So let's pick one
7 and --

8 MR. DOMENICO: -- title.

9 MR. GELENDER: -- yes, proceed. Madam Chair,
10 do you want to invoke your authority?

11 MS. STAIERT: I don't have any if I'm two to
12 one.

13 MR. DOMENICO: There is just one slight
14 thing. Can we just add the word requirement after
15 setback on line 5? That kind of bugged me.

16 MS. STAIERT: Only if we can change -- no,
17 I'm just kidding.

18 MR. DOMENICO: That's fine. And actually I
19 guess on line 6, too. Yeah. Okay. Should I move this
20 is --

21 MS. STAIERT: Sure. You guys are --

22 MR. DOMENICO: Now it's going to me.

23 MS. STAIERT: I mean, it's not going to get a
24 no vote out of me or anything.

25 MR. DOMENICO: No, I'm not --

1 MS. STAIERT: I just don't like the word.

2 MR. DOMENICO: No, well, I made a potential
3 suggestion for changing it --

4 MS. STAIERT: Alliterating?

5 MR. DOMENICO: No, not obliterating or
6 decimating. No. It was to sort of say changing the
7 existing setback requirements to require any new oil
8 and gas well to be located blah, blah, blah.

9 MS. STAIERT: Okay.

10 MR. DOMENICO: I'm happy with either one.
11 I understand Mr. Gelender's point that overriding is a
12 little more forceful and I understand Mr. Ramey's point
13 that overriding is a little more forceful and that they
14 have different perspectives on whether that's good or
15 bad.

16 MS. STAIERT: I mean, I just think if we have
17 a choice between using a word that's neutral, I'd
18 prefer to use the --

19 MR. DOMENICO: All right. I'll defer to
20 that. That's fine.

21 MR. GELENDER: Then you wanted it moved up
22 then?

23 MR. DOMENICO: Well, the only way I could
24 think of that didn't get kind of goofy -- I find that
25 sort of strange -- would be to say changing at the

1 beginning of, before requiring, changing existing
2 setback requirements to require.

3 MS. STAIERT: You want to collapse it again
4 and we'll read it again?

5 Okay, so this is an amendment to the Colorado
6 Constitution concerning a statewide setback requirement
7 for new oil and gas wells and in connection therewith
8 changing existing setback requirements to require any
9 new oil and gas wells to be located at least 1500 feet
10 from the nearest occupied structure authorizing a
11 homeowner to waive the setback requirement for the
12 homeowner's home and establishing that the statewide
13 setback requirement is not a taking of private property
14 requiring compensation under the Colorado Constitution.

15 MR. DOMENICO: Can I just say one tiny thing
16 and I apologize for this, but we say new oil and gas
17 wells in the single subject but then we say any new oil
18 and gas wells. Shouldn't it be in the second reference
19 -- and before to say it's both categories but to say
20 oil or gas oil?

21 MS. STAIERT: Right. Okay.

22 MR. DOMENICO: And with that, I would move
23 that we -- grant the motion for rehearing to the
24 extent that we modify the title and adopt the title as
25 it appears on the screen for Proposed Initiative

1 2013-14 number 85.

2 MR. GELENDER: Second.

3 MS. STAIERT: All those in favor?

4 UNIDENTIFIED SPEAKERS: Aye.

5 MS. STAIERT: Aye. All right. That takes us
6 to motion for rehearing on Proposed Initiative
7 2013-2014 number 86 and Mr. Feeley.

8 MR. FEELEY: Well, let me adopt first of all
9 by reference my earlier arguments with regard to 85 and
10 just take a couple of moments on a couple of additional
11 subjects. I really want to point out from the
12 jurisdictional perspective I guess Section 3 of
13 Initiative 86. I think that that is particularly
14 misleading.

15 As counsel for the proponent noted at the
16 previous hearing, nothing in the measure would affect
17 federal rights of any party to seek just compensation
18 or pursue taking its claim, or taking its claim under
19 federal law and without a law degree or a deep
20 understanding of the relationship between federal and
21 state constitutional law, a reference to, the reference
22 in the title to, quote, "not a taking of private
23 property requiring compensation under the Colorado
24 Constitution", close quote, without reference to the
25 continuing rights requiring compensation under the

1 United States Constitution is a critical omission and I
2 think really does not advise the average voter of what
3 the implications are. It is an omission significant, a
4 significant omission in 86, 87, 88 and I would suggest
5 in 85 even though I may have overlooked that.

6 A second point and I'll address all my issues
7 because these are remarkably similar and that's exactly
8 my second point. I think Mr. Domenico earlier this
9 morning, I wasn't here but I heard dealt with questions
10 about similar language in initiatives and what the
11 responsibility of the Title Board is at this point in
12 time with regard to that.

13 At the initial hearing the proponent's
14 counsel described Initiatives 85 through 88 as a packet
15 of initiatives with the same subject and gave
16 assurances that the proponents will only be going
17 forward with one, but the case law construing Colorado
18 Revised Statutes 140-106(3)(b), they construe that
19 statute to mean that an impermissible conflict in title
20 exists where the titles fail to accurately reflect the
21 distinctions between the measures and voters comparing
22 the titles would not be able to distinguish between the
23 two proposed measures.

24 When they say they're moving forward, only
25 going forward with one, what does that mean? They're

1 going forward with eight as of today and this is the
2 last board meeting except for cleanup matters. These
3 are all very similar. The public is not aware and I
4 think this raises a new subject in light of the
5 adoption of 85 and I think the board needs to address
6 it. I think there's too many of these that are not
7 just similar but identical and an assurance that only
8 one would be going forward is irrelevant. I think the
9 Board needs to address 86 and I'll anticipate it with
10 87 and 88 and the case law construing the statute.

11 MR. GELENTER: I'd like to address that
12 particular point and I'll certainly defer to our
13 counsel if he disagrees with me. I have not spoken
14 with him about this before but as I read the statute,
15 it talks about a conflict between a previously filed
16 petition and these aren't petitions yet at this stage.
17 It becomes a petition later so I don't think we're
18 required to follow the statute at this point.

19 I think what our past practice has been is to
20 avoid setting similar titles when we have different
21 proponents in the danger of just that, you know, to
22 prevent the situation where opponents of one measure
23 deliberately try to get a similar title for something
24 else that create voter confusion.

25 In this case I think what we do if I'm

1 interpreting the law correctly is trust the incentives
2 in the situation which is if proponents have -- when
3 it's the same proponents for these, they have no
4 incentive to go forward with more than one and cause
5 confusion themselves, go to additional expense and so
6 forth and figure that that will, especially when
7 they've gone on the record as saying they're only going
8 to go through with one, that that should solve the
9 problem.

10 MS. STAIERT: That was my understanding.

11 UNIDENTIFIED SPEAKER: It's the latter
12 interpretation that we've always taken. The idea was
13 that you wanted to prevent measures that looked similar
14 and confused the voters proposed by a few different
15 sets of proponents but in the past we've always had the
16 situation where proponents may have adopted, the same
17 proponents may have adopted similar measures and slight
18 tweaks and we've always accepted the promise that they
19 would only submit one and the view of the Board has
20 been that that is sufficient to avoid any potential
21 confusion to the voters or the signers.

22 MR. DOMENICO: Well, I agree with that. I'm
23 less concerned about this, these 85 through really 88
24 or all the way through 93 causing that kind of problem
25 partly because of the reasons stated, partly because I

1 don't think they conflict. I think they do get across
2 the material differences between them where there are
3 material differences.

4 My concern at least, was at least as much
5 with some of the other measures that we've set titles
6 for with different proponents that have similar and
7 that we might set later that have somewhat similar
8 impacts. I'm not sure that affects this so much as
9 some of the local government ones and some of those
10 other things, but I mean, to be we've complied with the
11 statute even if it applies by saying, you know, this
12 one's -- even if both of these were on the ballot, I
13 don't think they'd be confusing. Annoying perhaps but
14 not confusing.

15 MR. GELENDER: So I guess my first suggestion
16 would be to essentially conform this title to what we
17 did on 85 so far as they're similar.

18 MR. DOMENICO: Have we had a motion on the
19 jurisdictional aspects of it first?

20 MS. STAIERT: Oh.

21 MR. DOMENICO: Should we?

22 MR. GELENDER: Yeah, I'm sorry.

23 MS. STAIERT: Yeah, we haven't.

24 MR. DOMENICO: Sorry.

25 MR. GELENDER: That's all right.

1 MR. DOMENICO: So then I'll move that we deny
2 the motion for rehearing on any jurisdictional
3 arguments including single subject, incorporating all
4 the comments made previously.

5 MR. GELENDER: I'll second.

6 MS. STAIERT: All those in favor.

7 UNIDENTIFIED SPEAKERS: Aye.

8 MS. STAIERT: Aye. All right.

9 MR. DOMENICO: We are (indiscernible)
10 homeowner. You're right. Okay. Do we need to read it
11 in again or should I just move it?

12 MS. STAIERT: I'll read it in again.

13 An amendment to the Colorado Constitution
14 concerning a statewide setback requirement for new oil
15 and gas wells and in connection therewith changing
16 existing setback requirements to require any new oil or
17 gas well to be located at least 2,000 feet from the
18 nearest occupied structure authorizing a homeowner to
19 waive the setback requirement for the homeowner's home
20 and establishing that the statewide setback requirement
21 is not a taking of private property requiring
22 compensation under the Colorado Constitution.

23 MR. RAMEY: Madam Chair?

24 MS. STAIERT: Uh-huh.

25 MR. RAMEY: About 10 words? We just --

1 Mr. Feeley incorporated his comments I think with
2 regard to this one as made. With regard to the
3 previous initiative number 85, we would do the same.
4 That discussion's been had and we don't have to have
5 it again but I think we'll both do the same probably
6 for 87 and 88 as well. We'll do it all again.

7 MS. STAIERT: Okay. All right. Thank you.

8 MR. DOMENICO: In that case I would move that
9 we grant the motion for rehearing to the extent that we
10 adopt -- have changed -- modify the -- I'm sorry --
11 modify the title and that we adopt the title as it
12 appears on the screen for Proposed Initiative 2013-14
13 number 86.

14 MR. GELENDER: Second.

15 MS. STAIERT: All those in favor?

16 UNIDENTIFIED SPEAKERS: Aye.

17 MS. STAIERT: Aye. All right. That takes us
18 to motion for rehearing on Proposed Initiative
19 2013-2014 number 87.

20 MR. FEELEY: Madam Chair, we would
21 incorporate by reference our comments and arguments
22 with regard to our two previous discussions regarding
23 85 and 86.

24 MR. RAMEY: Madam Chair, Edward Ramey on
25 behalf of the proponents. That was Mike Feeley by the

1 way speaking a moment ago.

2 We would also incorporate our comments for 85
3 and 86 with regard to 87 on behalf of the proponents.

4 MS. STAIERT: Want to do single subject?

5 MR. DOMENICO: Sure. Then I will move that
6 we likewise incorporating our previous discussion on 85
7 and 86, deny the motion for rehearing on any
8 jurisdictional grounds including single subject.

9 MR. GELENDER: Second.

10 MS. STAIERT: All those in favor?

11 UNIDENTIFIED SPEAKERS: Aye.

12 MS. STAIERT: Aye. All right. All right.

13 As it reads now it's an amendment to the Colorado
14 Constitution concerning a statewide setback requirement
15 for new oil and gas wells and in connection therewith
16 changing existing setback requirements to require any
17 new oil or gas well to be located at least one half
18 mile from the nearest occupied structure authorizing a
19 homeowner to waive the setback requirement for the
20 homeowner's home and establishing that the statewide
21 setback requirement is not a taking of private property
22 requiring compensation under the Colorado Constitution.

23 MR. DOMENICO: All right. Then I would move
24 we grant the motion for rehearing to the extent that
25 we've amended the title and adopt the title as it

1 appears on the screen for Proposed Initiative 2013-14
2 number 87.

3 MR. GELENDER: Second.

4 MS. STAIERT: All those in favor?

5 UNIDENTIFIED SPEAKERS: Aye.

6 MS. STAIERT: Aye.

7 MR. RAMEY: Madam Chair, excuse me. Could we
8 get the title on the big screen also? Thank you.

9 UNIDENTIFIED SPEAKER: I want to just note a
10 couple of differences.

11 MS. STAIERT: I've never understood the
12 picture taking. Why do you take the pictures?

13 UNIDENTIFIED SPEAKER: I don't even have a
14 camera. I don't know.

15 UNIDENTIFIED SPEAKER: Because they don't
16 want to wait for us to release the results.

17 MS. STAIERT: Which is like later tonight?

18 UNIDENTIFIED SPEAKER: Usually, yeah.
19 Sometimes it's 24 hours.

20 MR. DOMENICO: It is about the saddest thing
21 I've ever seen.

22 MS. STAIERT: I never understood it.

23 MR. DOMENICO: I had assumed that it was
24 because the titles are works of towering and surpassing
25 genius that should be recorded by taking a picture of

1 the Mona Lisa and be put in a museum somewhere.

2 MS. STAIERT: Okay. Anyway. All right. So
3 the next item on the agenda is a motion for rehearing
4 on proposed initiative 2013-2014 number 88.

5 MR. FEELEY: Thank you. Madam Chair, members
6 of the Title Board. Mike Feeley on behalf of the
7 objectors. There are a couple of subtle distinctions
8 with respect to Initiative 88. It's very similar to 86
9 in terms of the 2,000 foot prohibition and also refers
10 to oil and gas operations rather than oil and gas
11 development and also there is the omissions, the
12 omission of the language regarding takings. I think
13 that'll be significant down the road but it's, finally
14 there's another change with regard to the waiver and
15 this says that the waiver can -- let me make sure I get
16 that right. It affects the surface estate owner not
17 the homeowner. I think those distinctions, well, first
18 of all let me incorporate by reference the comments and
19 the arguments made with respect to the three previous
20 initiatives. I think that the distinctions in 88 sort
21 of speak for themselves and we've probably covered that
22 ground right now but so I'll just note in passing the
23 distinctions. I think it is -- they're significant for
24 reasons that the Title Board has already addressed in
25 previous initiatives.

1 MS. STAIERT: Thank you.

2 MR. RAMEY: Madam --

3 MR. DOMENICO: Yes, I think so.

4 MR. RAMEY: Madam Chair, Edward Ramey on
5 behalf of the proponents.

6 We incorporate our prior comments as well
7 with regard to the other initiatives.

8 Two things. Number one, the difference
9 between homeowner and the language, that's where we
10 came up with property owner which is reflected in the
11 title of this measure and the title as presently
12 construed or presently formulated, the takings
13 provision is not present, so we addressed that last
14 time so --

15 MS. STAIERT: Okay.

16 MR. RAMEY: -- I'm envisioning that subject
17 to all the reservations everybody's made, that you will
18 do a change similar to the one you just did but making
19 sure it's the takings phrase --

20 MS. STAIERT: Right.

21 MR. RAMEY: -- is out of there and that
22 property owner as opposed to homeowner is duly
23 reflected.

24 MS. STAIERT: Right.

25 UNIDENTIFIED SPEAKER: And maybe we'll start

1 with the basics. Steve, I think we should conform the
2 language so whatever is, after in connection therewith
3 we had the changing from the other ones.

4 MR. DOMENICO: Let me go ahead and move on
5 the jurisdictional questions right, so I move that we
6 deny the motion for rehearing, again incorporating the
7 comments that have been made on the measures 85 through
8 87 that are relevant, deny it as to jurisdiction issues
9 including single subject.

10 MR. GELENDER: Second.

11 MS. STAIERT: All those in favor?

12 UNIDENTIFIED SPEAKERS: Aye.

13 MS. STAIERT: Aye.

14 MR. GELENDER: I want to do or in place of
15 and on line 9 on the first and -- line 9. Then
16 requirement after setback on line 10. Looks good.

17 So I have a vague recollection that we
18 discussed property owner versus landowner and such but
19 I'm reading it, landowner seems better to me but I
20 think we discussed it and changed our mind about that
21 but I don't recall why.

22 MS. STAIERT: We did and I don't remember
23 why.

24 MR. GELENDER: I guess my point is property,
25 of course, as everybody who went to law school

1 understands, is a bundle of sticks that includes not
2 only the surface estate but various other things and
3 this is pretty clear that it's not just any property
4 owner. It's only the surface owner.

5 Landowner strikes me as getting at that more
6 clearly without raising potential problems that I at
7 least can understand.

8 MS. STAIERT: I'm fine with it. But it
9 doesn't apply to the boat, car.

10 MR. GELENDER: The person who owns the
11 sub-surface property rights more importantly.

12 MR. DOMENICO: You want landowner to be one
13 word or two?

14 MR. GELENDER: I don't know.

15 MR. DOMENICO: We'll see. What's the
16 initiative say? Oh, it doesn't.

17 MR. GELENDER: I would probably make it one
18 word is my inclination.

19 MR. DOMENICO: Okay. Spellcheck says it's
20 okay so --

21 MS. STAIERT: Oh, okay.

22 MR. DOMENICO: -- it must be okay.

23 MS. STAIERT: It must be fine then.

24 MR. DOMENICO: Want to read it in?

25 MS. STAIERT: What?

1 MR. DOMENICO: Do you want to read it in or
2 are we --

3 MS. STAIERT: Oh, yeah.

4 This is an amendment to the Colorado
5 Constitution concerning a statewide setback requirement
6 for new oil and gas wells and in connection therewith
7 changing existing setback requirements to require any
8 new oil or gas well to be located at least 2,000 feet
9 from the nearest occupied structure and authorizing a
10 landowner to waive the setback requirement for any
11 structure located on the owner's property.

12 MR. DOMENICO: All right. I would move that
13 we grant the motion for rehearing to the extent that
14 we've amended the title and adopt the title as it
15 appears on the screen for Proposed Initiative 2013-13
16 Number 88.

17 MS. STAIERT: Second. All those in favor?

18 UNIDENTIFIED SPEAKERS: Aye.

19 MS. STAIERT: Aye. All right.

20

21

22

23

24

25

1 STATE OF COLORADO)
2) ss. CERTIFICATE
3 COUNTY OF DENVER)
4

5 I, Christopher Boone, Certified Electronic
6 Court Reporter and Notary Public within and for the
7 State of Colorado, certify that the foregoing is a
8 correct transcription from the digital recording of
9 the proceedings in the above-entitled matter.

10

11 I further certify that I am neither counsel
12 for, related to, nor employed by any of the parties
13 to the action in which this hearing was taken, and
14 further that I am not financially or otherwise
15 interested in the outcome of the action.

16

17 In witness whereof, I have affixed my
18 signature this 12th day of May, 2014.

19

20 My commission expires August 16, 2014.
21

22

23

24 _____

25 Christopher Boone,
AAERT Certified Electronic Court Reporter

<p style="text-align: center;">A</p> <p>AAERT 46:25 able 33:22 above-entitled 46:9 absolutely 16:20 accept 19:3 23:11 accepted 35:18 accomplish 5:25 accord 3:2 accounts 24:25 accurate 12:8 13:4 13:14 28:3,5 accurately 33:20 acknowledgement 23:10 acknowledging 24:18 acres 4:3,8 action 46:13,15 actual 24:11 add 29:14 adding 24:21 additional 32:10 35:5 address 2:8,12 6:10 33:6 34:5,9,11 addressed 2:19 7:8 16:7,23 28:2 41:24 42:13 addresses 13:2 addressing 8:15 adopt 8:23,25 31:24 32:8 38:10 38:11 39:25 45:14 adopted 35:16,17 adoption 34:5 advise 12:24 33:2 advocate 21:15 affect 32:16 affixed 46:17 afternoon 2:4 agency 19:20 agenda 41:3 ago 8:23 15:5 39:1 agree 14:13 15:5,23 17:21 18:5 20:16 27:11,19 35:22 ahead 10:13 14:24 15:2 17:2 43:4 alert 16:17</p>	<p>Alliterating 30:4 alliteration 14:9 alliterative 11:25 allow 5:6 allowing 5:4 alter 28:15 ambiguous 18:22 amended 11:1 39:25 45:14 amendment 26:7 31:5 37:13 39:13 45:4 analogy 8:22 Annoying 36:13 answer 6:14 13:6 13:12 16:24 22:3 anticipate 34:9 anybody 10:12 anyway 14:4 22:7 41:2 apart 15:9 apologize 6:23 31:16 apostrophe 3:17 apparently 13:25 24:24 appeal 12:17 APPEARANCES 1:15 appearing 2:6 appears 31:25 38:12 40:1 45:15 application 12:13 applies 8:18 19:19 36:11 apply 3:1 44:9 appreciate 23:8 approach 3:25 appropriate 15:18 21:19 approval 4:21 approximately 4:3 APRIL 1:7 area 19:21,23,24 argue 15:20 argument 6:22 14:10,16 18:20 25:1 arguments 10:11 32:9 37:3 38:21</p>	<p>41:19 Article 8:15 aside 21:7,7,8 asked 5:13 asking 5:15 aspect 17:11,17 aspects 17:25 23:3 36:19 assume 16:25 assumed 40:23 assurance 34:7 assurances 33:16 attempt 8:8 attempting 8:6 attention 22:25 ATTORNEY 1:21 August 46:20 authority 29:10 authorization 4:25 authorize 21:11 authorizing 8:19 26:12 31:10 37:18 39:18 45:9 average 3:18 33:2 avoid 34:20 35:20 avoided 12:23 aware 34:3 Aye 10:17 32:4,5 37:7,8 38:16,17 39:11,12 40:5,6 43:12,13 45:18,19</p> <hr/> <p style="text-align: center;">B</p> <p>back 8:21 28:16 bad 14:15 30:15 ballot 1:4,5,17,20 36:12 basically 17:25 18:19 basics 43:1 bear 16:24 beginning 31:1 behalf 1:23 2:7 6:19 19:7 26:19 27:12 38:25 39:3 41:6 42:5 believe 3:18 4:15 10:9 11:23 bells 16:2 belonging 3:19,23</p>	<p>benefit 4:7 best 7:1 18:21 better 14:17 28:9 28:10 43:19 big 40:8 bill 17:18 bit 19:5 28:15 blah 30:8,8,8 bland 28:25,25 blogs 17:15 blue 20:8 25:1 board 1:4,17,20,21 2:5,22 4:1,7,10,15 6:7,11 7:14 10:22 13:2 15:24 33:11 34:2,5,9 35:19 41:6,24 Board's 2:21 boat 44:9 bold 8:13 book 20:8 25:1 Boone 46:5,24 border 21:24 bounce 7:25 briefly 14:8 Brownstein 2:6 bugged 29:15 building 4:20 buildings 4:22 11:15,16 23:15 bundle 44:1 button 17:5</p> <hr/> <p style="text-align: center;">C</p> <p>CAITLIN 1:19 call 16:8 called 17:10 22:12 22:13 calling 20:21 calls 21:2 camera 40:14 car 44:9 carbon 3:10 4:10 case 2:25 4:17 7:20 33:17 34:10,25 38:8 catch 11:23 12:25 14:9 15:6 16:2 17:16 21:7,10,11 21:12 23:1,5,20</p>	<p>categories 31:19 cause 35:4 caused 10:25 causing 35:24 certain 6:1 11:15 12:7 23:14,14 certainly 9:4 12:21 13:22 16:1,5 21:20 23:21 27:10 34:12 CERTIFICATE 46:2 Certified 46:5,25 certify 46:7,11 cetera 28:19,20,20 Chair 1:17 2:4 3:11 6:18 14:23 15:3 23:22 26:18 29:9 37:23 38:20,24 40:7 41:5 42:4 Chair's 20:16 21:16 challenge 16:7,23 challenged 16:20 change 15:14 18:3 20:14,15,19 21:18 23:11 25:7,24 26:23 27:1,2 29:16 41:14 42:18 changed 23:13,13 23:17 38:10 43:20 changes 15:10 17:23 18:9,11 24:11 27:2 changing 18:12 23:7,7,8 26:22 27:7,13 28:14,18 28:22 30:3,6,25 31:1,8 37:15 39:16 43:3 45:7 charged 12:16 19:21 cheek 15:25 choice 30:17 chose 3:14 Christopher 46:5 46:24 claim 32:18,18 clause 28:15 clauses 25:18</p>
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