

ORIGINAL

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

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

Petitioners:

DENISE WALTERS and JORGE L. GARCIA,
Objectors,

v.

Respondents:

WILLIAM GARCIA and MARIA ROCHA-
SECRET, Proponents,

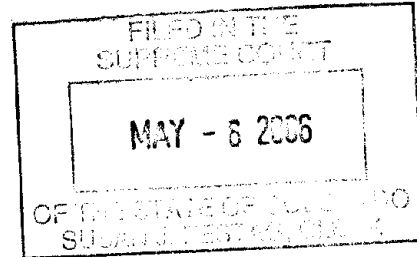
and

Title Board:

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

Attorneys for Petitioners:

Edward T. Ramey, #6748
Isaacson Rosenbaum P.C.
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▲ COURT USE ONLY ▲

Case No.

06SA140

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

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

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #95 on April 19, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005) on April 26, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on May 3, 2006. At the rehearing, the Board granted in part and denied in part Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #95 pursuant to § 1-40-107(2), C.R.S. (2005).

II. Issues Presented

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

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

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

III. Supporting Documentation

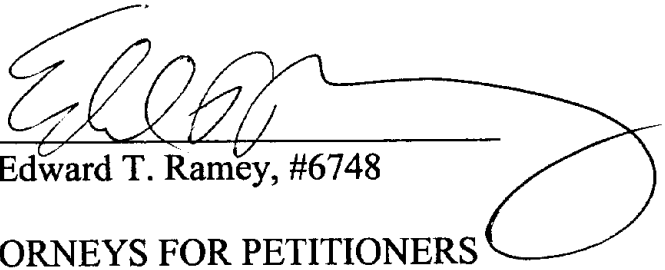
As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

IV. Relief Requested

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

Respectfully submitted this 8th day of May, 2006.

ISAACSON ROSENBAUM P.C.

By: 
Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONERS

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Jorge L. Garcia
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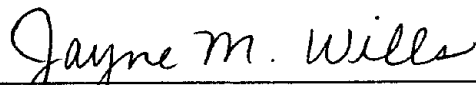
CERTIFICATE OF SERVICE

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

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

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

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



Jayne M. Wills



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

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

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

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

Ginette Dennis

SECRETARY OF STATE

Final #95

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ELECTIONS/LICENSING
SECRETARY OF STATE

Ch
jw

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

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

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

THE PEOPLE OF COLORADO FIND AND DECLARE:

(1) FINDINGS AND DECLARATIONS.

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

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

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

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

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

(2) DEFINITIONS:

(a) "ACCELERATED ENGLISH ACQUISITION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR YOUNG CHILDREN IN WHICH NEARLY ALL CLASSROOM INSTRUCTION IS IN ENGLISH BUT WITH THE CURRICULUM AND PRESENTATION DESIGNED FOR CHILDREN WHO ARE LEARNING THE LANGUAGE. BOOKS AND INSTRUCTIONAL MATERIALS ARE IN ENGLISH AND ALL READING, WRITING, AND SUBJECT MATTER ARE TAUGHT IN ENGLISH. ALTHOUGH TEACHERS MAY USE A MINIMAL AMOUNT OF THE CHILD'S NATIVE LANGUAGE WHEN NECESSARY, NO SUBJECT MATTER SHALL BE TAUGHT IN ANY LANGUAGE OTHER THAN ENGLISH, AND CHILDREN LEARN TO READ AND WRITE SOLELY IN ENGLISH.

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

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

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

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

(3) CENSUS

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

(4) ENGLISH LANGUAGE EDUCATION

SUBJECT TO THE EXCEPTIONS PROVIDED IN SUBSECTION 5 OF THIS SECTION, ALL CHILDREN IN COLORADO PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH BY BEING TAUGHT IN ENGLISH, AND ALL CHILDREN SHALL BE PLACED IN ENGLISH LANGUAGE CLASSROOMS. CHILDREN WHO ARE ENGLISH LEARNERS SHALL BE EDUCATED THROUGH ACCELERATED ENGLISH ACQUISITION DURING A TEMPORARY TRANSITION PERIOD NOT NORMALLY INTENDED TO EXCEED ONE SCHOOL YEAR. LOCAL SCHOOL DISTRICTS WHICH DETERMINE A TRANSITION PERIOD OF GREATER THAN ONE YEAR IS NECESSARY, MAY REQUEST ADDITIONAL TIME TO TRANSITION TO ACCELERATED ENGLISH ACQUISITION FROM THE STATE BOARD OF EDUCATION. THE STATE BOARD OF EDUCATION SHALL INDIVIDUALLY REVIEW EACH REQUEST FOR ADDITIONAL TIME AND GRANT SUCH REQUEST BASED UPON REASONABLE CAUSE. LOCAL SCHOOL DISTRICTS SHALL BE PERMITTED BUT NOT REQUIRED TO PLACE IN THE SAME CLASSROOM ENGLISH LEARNERS OF DIFFERENT AGES BUT WHOSE DEGREE OF ENGLISH PROFICIENCY IS SIMILAR. LOCAL SCHOOL DISTRICTS SHALL BE ENCOURAGED TO MIX TOGETHER IN THE SAME CLASSROOM ENGLISH LEARNERS FROM DIFFERENT NATIVE-LANGUAGE GROUPS BUT WITH THE SAME DEGREE OF ENGLISH FLUENCY. ONCE ENGLISH LEARNERS ACQUIRE A GOOD WORKING KNOWLEDGE OF ENGLISH AND ARE ABLE TO DO REGULAR SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE MAINSTREAM CLASSROOMS. FOREIGN LANGUAGE CLASSES FOR CHILDREN WHO ARE PROFICIENT IN

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

(5) PARENTAL WAIVERS

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

(6) ENFORCEMENT

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

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

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

(7) STANDARDIZED TESTING FOR MONITORING EDUCATION PROGRESS

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

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

(8) SEVERABILITY

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

(9) INTERPRETATION

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

(10) EFFECTIVE DATE

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

William Garcia
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Maria Rocha-Secret
912 8th Avenue
Greeley, CO 80631
970-339-3125

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APR 26 2006

**ELECTIONS / LICENSING
SECRETARY OF STATE**

1:30pm

BALLOT TITLE BOARD

MOTION FOR REHEARING

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

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

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

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

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

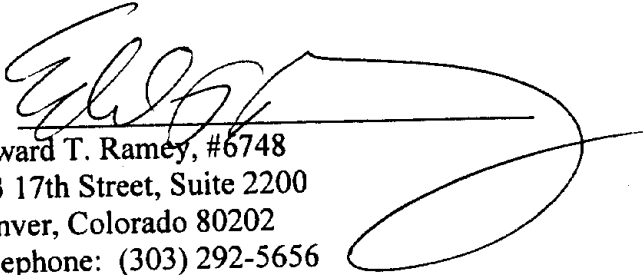
4. The title is misleading in that it states that waivers into "classes using bilingual education or other educational methodologies" must be obtained on an annual basis. There is nothing in the text of the initiative limiting the ability of a school district to provide a waiver of any duration or requiring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

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

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

Respectfully submitted this 26 day of April, 2006.

ISAACSON ROSENBAUM P.C.

By: 
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Telephone: (303) 292-5656
Facsimile: (303) 292-3152

ATTORNEYS FOR PETITIONERS

Petitioners' Addresses:

Denise Walters
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Ft. Collins, CO 80521

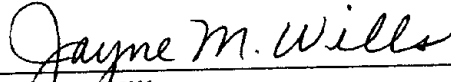
Jorge L. Garcia
1252 Hickory Drive
Erie, CO 80516

CERTIFICATE OF SERVICE

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

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

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



Jayne M. Wills

Ballot Title Setting Board

Proposed Initiative 2005-2006 #95¹

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

An amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; exempting from such requirements those children whose parents or legal guardians obtain waivers allowing the children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least twenty students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available.

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

Shall there be an amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring children to be taught by using the English language in their classrooms and requiring children who are learning English to be educated through an accelerated English acquisition process that is intended to last one year or less; exempting from such requirements those children whose parents or legal guardians obtain waivers allowing the children to transfer to classes using bilingual education or other educational methodologies and establishing restrictive requirements for the waivers; requiring schools that grant any waivers to offer bilingual education or other educational methodologies when they have at least twenty students in the same grade who receive a waiver and in all other cases permitting students to transfer to a public school in which bilingual education or other methodologies are offered; charging the department of education with enforcing the measure by placing school districts on accreditation watch or withdrawing accreditation from school districts; and requiring schools to annually test children learning English, enrolled in second grade or higher, using a standardized nationally accepted test of English proficiency, and to make the aggregated results of the test publicly available?

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

Hearing April 19, 2006:

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

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:15 p.m.

Hearing May 3, 2006:

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

Hearing adjourned 4:09 p.m.