

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

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

**Petitioners:**

DENISE WALTERS and JORGE L. GARCIA,  
Objectors,

vs

**Respondents:**

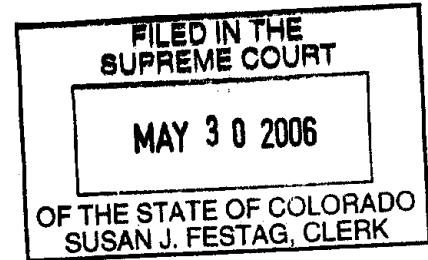
WILLIAM GARCIA  
and MARIA ROCHA-SECRET,  
Proponents,

and

**Title Board:**

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

Attorney for Proponents:  
LAW OFFICE OF JOSEPH I. BODINE, LLC  
Joseph I. Bodine, Atty. Reg.#: 26775  
912 Eighth Avenue  
Greeley CO 80631  
Phone: 970.304.0570 FAX: 970.351.8786  
E-mail: josephbodine@yahoo.com



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Case Number: 06SA140

**PROponents' BRIEF**

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## **I. Issues Presented**

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

## **II. Statement of the Case**

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

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

### **III. Argument**

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

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

initiative language.

The language of the initiative as set forth in subsection 5<sup>1</sup> states, beginning in line 13:

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

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

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<sup>1</sup> Full text of initiative is set forth in Exhibit 1

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

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

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

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

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

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

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



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

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

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

child/children.

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

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

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

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

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

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

#### IV. CONCLUSION

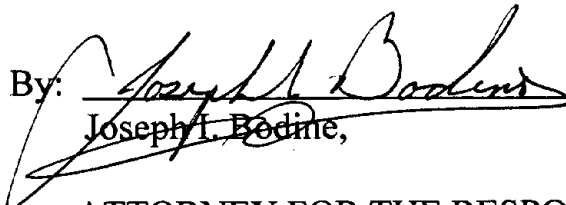
The initiative provides a limited but flexible method for the issuance of waivers and charges the State Board of Education with the responsibility to establish rules for issuance of such waivers. The requirement for parents/legal guardians to be properly informed about the English educational opportunities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

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

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

Respectfully submitted this 30<sup>th</sup> day of May 2006.

LAW OFFICE OF JOSEPH I. BODINE. LLC

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

List of Exhibits

Exhibit 1 - Full Text of Initiative

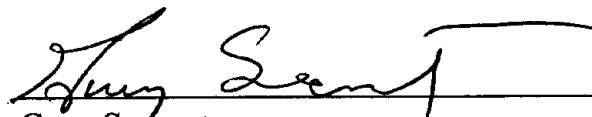
Exhibit 2 - Title, Ballot Title and Submission as set by the Title Board

CERTIFICATE OF SERVICE

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

Edward T. Ramey  
Isaacson Rosenbaum P.C.  
633 17<sup>th</sup> Street - Ste 2200  
Denver CO 80202

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

  
Gary Secrest

Final TS  
**RECEIVED**

APR 06 2006

ELECTIONS/LICENSING  
SECRETARY OF STATE

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

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

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

**THE PEOPLE OF COLORADO FIND AND DECLARE:**

**(1) FINDINGS AND DECLARATIONS.**

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

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

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

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

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

**(2) DEFINITIONS:**

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

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

EXHIBIT  
1



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

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

**Ballot Title Setting Board**

**Proposed Initiative 2005-2006 #95<sup>1</sup>**

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

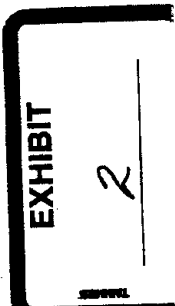
An amendment to the Colorado constitution concerning the use of the English language in public education, and, in connection therewith, requiring school districts to ascertain the number of students unable to perform ordinary classroom work in English and make the information publicly available; requiring 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?

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<sup>1</sup> 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.*