

<p>SUPREME COURT OF COLORADO  2 East 14th Ave.  Denver, CO 80203</p> <hr/> <p>Original Proceeding  Pursuant to Colo. Rev. Stat. § 1-40-107(2)  Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative  2013-2014 #48 (“Labeling Genetically  Modified Food”)</p> <p><b>Petitioners: MARC ARNUSCH and  MARY LOU CHAPMAN</b></p> <p><b>v.</b></p> <p><b>Respondents: LARRY COOPER and  CHERYL GRAY</b></p> <p><b>and</b></p> <p><b>Title Board: SUZANNE STAIERT;  DANIEL DOMENICO; and JASON  GELENDER</b></p>	<p style="text-align: right;">DATE FILED: February 6, 2014 4:49 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p><b>PETITIONERS’ OPENING BRIEF</b></p>	

## 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).

Choose one:

It contains 5,648 words.

It does not exceed 30 pages.

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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, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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/ Mark G. Grueskin* \_\_\_\_\_

Mark G. Grueskin

*Attorney for Petitioners*

**TABLE OF CONTENTS**

STATEMENT OF ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....2

    I. Statement of Facts.....2

    II. Nature of the Case, Course of Proceedings, and Disposition Below. ....3

SUMMARY OF THE ARGUMENT .....6

LEGAL ARGUMENT .....7

    I. The Ballot Title is Misleading to Voters. ....7

        A. Standard of Review.....7

        B. The titles do not inform voters of the essence of the Proposed Initiative: “misbranding” of food stemming from the failure to affix certain labels. ....8

        C. The single subject statement in the title fails to reflect that the Proposed Initiative deals with labeling of some, rather than all, genetically modified foods. ....11

        D. The title incorrectly summarized #48, as it requires labeling only if “the organism from which the food is derived” – not the food product itself – “has been treated with a genetically engineered material” .....12

        E. The title does not inform voters that the failure to comply with the labeling mandate can subject a person to criminal prosecution. ....14

        F. The title does not inform voters that the measure contains an important affirmative defense. ....17

        G. The title does not inform voters of the measure’s unique definitions of “genetically modified” and “genetically engineered,” or even that these are terms defined by #48. ....19

        H. The title does not inform voters that the measure exempts from the labeling requirement processed food that is produced with genetically engineered enzymes or additives.....21

I. The title does not inform voters that the measure applies to raw agricultural commodities but only at the point of retail sale rather than at the point of consumption, where most consumers would use them.....22

J. The title contains the mandated wording of the label even though such detail is not a central measure of the initiative.....24

CONCLUSION .....26

## TABLE OF AUTHORITIES

### Cases

<i>Blake v. King</i> , 185 P.3d 142, 147-48 (Colo. 2008).....	17, 18
<i>In re Proposed Amendment Concerning Unsafe Workplace Env't</i> , 830 P.2d 1031, 1034 (Colo.1992) .....	9
<i>In re Proposed Initiated Constitutional Amendment of Educ.</i> , 682 P.2d 480, 482 (Colo. 1984) .....	23
<i>In re Proposed Initiative on Taxation III</i> , 832 P.2d 937, 941 (Colo.1992).....	19
<i>In re Title, Ballot Title &amp; Submission Clause &amp; Summary for 1999–2000 No. 215</i> , 3 P.3d 11, 16 (Colo.2000).....	14
<i>In re Title, Ballot Title &amp; Submission Clause for Election Reform Amendment</i> , 852 P.2d 28, 32 (Colo. 1993).....	7, 10, 16, 19
<i>In re Title, Ballot Title &amp; Submission Clause for Proposed Initiatives 2001-2002 No. 21 and 22</i> , 44 P.3d 213, 222 (Colo. 2002) .....	24
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for 1999-2000 #258(A)</i> , 4 P.3d 1094, 1098 (Colo. 2000).....	7
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for 1999-2000 No. 104</i> , 987 P.2d 249, 259 (Colo. 1999).....	14
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for Initiative #73</i> , 135 P.3d 735, 740-41 (Colo. 2006) .....	25
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for Initiative 1999-2000 #245(f)</i> , 1 P.3d 739, 744-45 (Colo. 2000).....	20
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for Initiative 1999-2000 #256</i> , 12 P.3d 246, 255 (Colo. 2000).....	8
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary Pertaining to Proposed Initiative Designated Governmental Bus.</i> , 875 P.2d 871, 877 (Colo. 1994).....	19

*In re Title, Ballot Title & Submission Clause, & Summary Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 919, 921 (Colo. 1982).....16

*In re Title, Ballot Title, & Submission Clause for Initiative 2009-2010 #24*, 218 P.3d 350, 353 (Colo. 2009).....10

**Statutes**

C.R.S. § 1-40-101(2).....17

C.R.S. § 1-40-106(3)(b) ..... 7, 8, 9, 15

C.R.S. § 1-40-107(1).....4

C R.S. § 1-40-107(2).....5

C.R.S. § 25-5-405 .....15

**Other Authorities**

Colorado Legislative Council, Research Pub. No. 475–0, *An Analysis of 2000 Ballot Proposals* 35 (2000).....18

## **STATEMENT OF ISSUES PRESENTED**

1. Whether the Title Board erred by failing to refer to “misbranding” in a ballot title that primarily amends misbranding statutes in Colorado law.
2. Whether the title incorrectly suggests this measure regulates labeling of all, rather than some, genetically modified foods
3. Whether the title incorrectly states the initiative mandates labeling for genetically modified food rather than reflect the measure’s actual wording about the organisms from which food is ultimately derived.
4. Whether the Title Board erred by failing to inform voters that violators of this measure can be prosecuted criminally.
5. Whether the Title Board erred by failing to inform voters about the nature of the one affirmative defense dealing with the knowledge of the manufacturer.
6. Whether the title incorrectly failed to indicate that the measure provides new definitions of “genetically modified” and “genetically engineered.”
7. Whether the title needed to inform voters about the measure’s exemption for certain processed food.

8. Whether the Title Board needed to inform voters that raw agricultural commodities are not subject to the labeling mandate, but instead are subject to an in-store signage requirement.
9. Whether the title's inclusion of the text of the approved label was error because such detail is not a central element of the initiative.

## **STATEMENT OF THE CASE**

### **I. Statement of Facts.**

Initiative #48 would amend C.R.S. §§ 25-5-401.5, -402, and -411 to require that a subset of all “genetically modified” or “genetically engineered” foods be subject to Colorado’s existing “misbranding” statutory scheme. *See generally Exhibit A* (attached).

Under #48, manufacturers, distributors, and retailers would be liable under the existing misbranding statute if they fail to clearly and conspicuously label certain genetically engineered or modified food. *Id.* at 3, Proposed § 25-5-411(1)(q). The labeling requirement applies to packaged and raw agricultural goods, but does so in different ways. *Id.* For packaged goods, the label must be affixed to the package itself. *Id.* For raw agricultural goods, a posting needs only to be displayed on the retail store shelf or bin where the goods are presented for

sale but need not be placed on any packaging that a buyer will have at the time of the food's consumption. *Id.*

This measure contains a number of important definitions, including for the first time in the misbranding statute, definitions of “genetically modified” and “genetically engineered,” as well as wide-reaching exemptions from the labeling mandate. It requires the Colorado Department of Public Health & Environment to enforce #48 and limits the availability of private rights of action. However, any violation of the misbranding statute, including one under these provisions, can be addressed by means of a criminal prosecution of the manufacturer. Persons who violate the measure may use the affirmative defense provided for in the initiative that requires a lack of knowledge and a written certification by the food producer. *See Ex. A.*

## **II. Nature of the Case, Course of Proceedings, and Disposition Below.**

Larry Cooper and Cheryl Gray (“Proponents”) proposed Initiative 2013-2014 #48 (“Labeling Genetically Modified Food”) (hereafter “#48”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted a final version of #48 to the Secretary of State. *See Ex. A.*

The initial Title Board (“Board”) hearing was held on December 4, 2013 to establish #48’s single subject and set a title. The Board found that the measure reflected a single subject and set the following title:

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring that the words, "Produced With Genetic Engineering" appear in a clear and conspicuous manner on the label starting on July 1, 2016; exempting certain food that is not packaged for retail sale, alcoholic beverages, animal food, and medically prescribed food; authorizing the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created in connection with the labeling requirements?

Marc Arnusch and Mary Lou Chapman (“Petitioners”) timely filed a Motion for Rehearing (“Motion”), alleging that the title was confusing, misleading, and failed to reflect the intent of the Proponents. *See* C.R.S. § 1-40-107(1). The Rehearing was held on December 18, 2013, at which time the Board granted in part and denied in part the Motion.

In response to the Motion, the Board made a series of changes to the title to correct its earlier decision. The Board included a key exemption to the misbranding requirements: food from animals that have been fed or injected with genetically modified food. **Exhibit B** (attached) at 54:16-59:1; 78:25-79:18. The Board also reworded the title to provide that the Colorado Department of Public Health & Environment is not merely “authorized” by the measure, but in fact is

“required” to regulate the labeling of genetically modified food. *Id.* at 21:20-22:12. The Board also more clearly described the measure’s limitation on a private right of action, specifying that no private action could be filed “for failure to conform to the labeling requirements” imposed. *Id.* at 35:1-38:5. Finally, the Board clarified that the measure’s labeling provisions apply to “food that has been genetically modified or treated with genetically modified material” to inform voters of the scope of the labeling mandate. *Id.* at 65:5-65:20; 68:18-24; 70:3-71:13. The revised title reads as follows:

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements?

*See id.* at 89:13-90:19; **Exhibit C** (attached).

The Board did not, however, cure remaining deficiencies that were raised at the rehearing, and thus, Petitioners timely filed a petition for review before this Court as authorized by C R.S. § 1-40-107(2).

## **SUMMARY OF THE ARGUMENT**

Proposed Initiative 2013-2014 #48 is an intricate measure, complete with mandates, exceptions, defenses, definitions, regulatory requirements, and limits on private rights of action. These intricacies were not lost on the Title Board; it heard about them but decided that many of these elements went beyond the needs of the prospective petition signer and the electorate at the November, 2014 election. Those decisions were erroneous and the resulting title should at least provide them with a better sense of the central provisions of the measure which they are asked to endorse with a petition signature or a vote, including: a reference to the misbranding statute that is being amended; the fact that “genetically modified” and “genetically engineered” are defined for the first time; and certain exceptions, limitations, and defenses that carve out notable holes in what is otherwise portrayed as a blanket mandate.

The Title Board agreed with Petitioners that the Board’s original title was not adequate, and it revised the title in several important respects. It simply did not go far enough, and the resulting title will not portray the central elements of this measure in a way that will allow a voter to thoughtfully consider its merits. Petitioners respectfully ask that this Court direct the Board to correct the title set for #48 before signatures are gathered on petitions or votes are cast.

## LEGAL ARGUMENT

### I. The Ballot Title is Misleading to Voters.

#### A. Standard of Review.

The Board is charged with setting a title that fully, fairly and accurately informs voters of the central elements of the measure so as to enable them to make a thoughtful decision about its merits. C.R.S. § 1-40-106(3)(b); *see also In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). Avoiding voter confusion is at the heart of the title setting process. *See* C.R.S. § 1-40-106(3)(b) (“[T]he title board shall consider the public confusion that might be caused by misleading titles” and set a title “which shall correctly and fairly express the true intent and meaning” of the proposed measure.). “Although the titles need not state every detail of an initiative or restate the obvious, they must not mislead voters or promote voter confusion.” *1999-2000 #258(A)*, 4 P.3d at 1099. Importantly, “if a choice must be made between brevity and a fair description of essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors.” *In re Title, Ballot Title & Submission Clause for Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993).

This Court will review the Board’s decision *de novo* to determine whether it has satisfied the requirement for a balanced and informative title. In doing so, the

Court grants deference to the Board’s determination. *In re Title, Ballot Title & Submission Clause, & Summary for Initiative 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000). However, this Court will reverse the Board’s decision if the title set will “mislead the voters through a material omission or misrepresentation.” *Id.* at 256.

**B. The titles do not inform voters of the essence of the Proposed Initiative: “misbranding” of food stemming from the failure to affix certain labels.**

Initiative #48 is a comprehensive amendment to the misbranding statute, C.R.S. § 25-5-411, for the purpose of requiring and regulating genetically modified food labeling and also penalizing the failure to comply with this requirement.<sup>1</sup> There is a substantial statutory framework to which this proposed requirement would be added, but the title does not communicate this fundamental context of the proposed labeling provisions. Without that context, the title fails to achieve its central task – to inform voters of the true meaning and intent of the measure. C.R.S. § 1-40-106(3)(b).

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<sup>1</sup> Raised below at Ex. B at 4:14-5:11.

The Board was well aware that the focus of #48 was actually on misbranding, not simple labeling. As one Board member asked and answered during the initial hearing, “should this be described in terms of defining food as misbranded[?] – that’s what we’re actually doing.” **Exhibit D** (attached) at 21:6-8. Thereafter, the proponents agreed that expanding the statutory coverage of “misbranding” of food was their primary objective. In fact, they stated that revision of the misbranding statute found in Proposed § 25-5-411(1)(q) “is really the meat of the initiative.” *Id.* at 25:12-13. Presumably, the “meat” of an initiative is both one of its central provisions and an aspect that is necessary to relate to voters in order to “correctly and fairly express” the substance of the measure. C.R.S. § 1-40-106(3)(b). This testimony is important in determining the wording of the title, because it reflects the proponents’ true intent and desired meaning for their measure. “The proponent of the measure best understands the reasons for initiating the change or addition to the constitution or statutes.... If testimony from such meeting could not be considered by the Board, the requirement of a public meeting would be meaningless.” *In re Proposed Amendment Concerning Unsafe Workplace Env’t*, 830 P.2d 1031, 1034 (Colo.1992). Therefore, the misbranding rubric is an aspect of the initiative that must be related to voters in the ballot title.

One Board member suggested excluding any reference to “misbranding” because, in the event of a close call between whether a provision does or does not need to be described in the title, “fewer words is better.” Ex. B at 89:2-6. In the title setting process, though, “if a choice must be made between brevity and a fair description of essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors.” *Election Reform Amendment*, 852 P.2d at 32. And misbranding is relevant because it is the unmistakable reference point for voters who need to know about the statutory framework for mandates and penalties being enacted. That reference point belongs in the title. *See In re Title, Ballot Title, & Submission Clause for Initiative 2009-2010 #24*, 218 P.3d 350, 353 (Colo. 2009) (reference to a statutory heading that adds specificity to the measure and thus “frames the Initiatives’ text” is properly placed in the ballot title). As the “meat of the initiative” revamps key portions of existing consumer protection statutes, *see* Ex. A at 2 (Proposed § 25-5-411), it is necessary for the Board to include this reference in the title.

The Oregon Supreme Court recently considered a similar ballot measure where certain genetically modified foods would be added to Oregon’s misbranding statute. There, the title used “misbranding” or “misbranded” in several different places including the primary description of the measure (“Some genetically

modified food (defined) for retail sale must be labeled, or is ‘**misbranded.**’”), the statement of the effect of a “yes” vote (“‘Yes’ vote expands definition of ‘**misbranded**’ food to include some genetically engineered food (defined) when not labeled for retail sale . . . .”), and the statement of the effect of a “no” vote (“‘No’ vote retains the current definition of ‘misbranded’ as used in law prohibiting the **misbranding** of food and the manufacture, sale, or delivery of **misbranded** food”). **Exhibit E** (attached) at 2 (emphasis added). In fact, the on-the-ballot summary of the Oregon measure used “misbranding” or “misbranded” four different times to inform voters. *Id.*

#48 is solely concerned with amending Colorado’s misbranding statute. Couching the title in the context of misbranding, as Oregon did, is a more accurate reflection of #48. To ignore the “misbranding” rubric that is so pivotal to this measure was error, and the title should be remanded to the Board so that this omission may be addressed.

**C. The single subject statement in the title fails to reflect that the Proposed Initiative deals with labeling of some, rather than all, genetically modified foods.**

Despite the implication of the single subject line, #48 does not require all “genetically modified” foods to be labeled. Rather, #48 adds a subset of genetically modified foods into the already existing misbranding statute. Once all

of the exemptions in #48 are taken into account, the statement “labeling of genetically modified food” is overly broad and inaccurate.<sup>2</sup>

The measure specifically and intentionally excludes quite a few categories of food products from the labeling requirement, including all meat and dairy products, all restaurant food, all food and drink for animals, and all processed food that is produced with genetically modified enzymes or additives. Given this lengthy list of exemptions, the phrase “concerning labeling of genetically modified food” is too broad and far overstates the reach of #48. By using “some” in the single subject statement, the Board would have accurately summarized what this measure actually seeks to accomplish.

This is precisely how the Oregon ballot title on this topic was worded, as it informed voters that the measure pertained to “[s]ome genetically modified food.” Ex. E at 2 (emphasis added). That reference is clear and eliminates any question that the measure is all-encompassing as to food products.

**D. The title incorrectly summarized #48, as it requires labeling only if “the organism from which the food is derived” – not the food product itself – “has been treated with a genetically engineered material.”**

#48 concerns the misbranding of foods that are derived from *organisms* that have been treated with genetically modified material. #48 is *not* concerned with

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<sup>2</sup> Raised below in Motion for Rehearing at ¶ A(3) and Ex. B at 4:4-8.

whether the specific end product itself has been treated with genetically modified material. Yet, the current title misleads voters into believing that #48 regulates the ultimate product rather than communicating that it is the organism from which the food product was derived that is covered.

The definition of “genetically engineered” and “genetically modified” included in #48 is clear that the initiative does not concern the treatment of final food products, but rather the organisms from which they are derived:

“(12.5) ‘GENETICALLY ENGINEERED’ OR ‘GENETICALLY MODIFIED’ MEANS FOOD PRODUCED **FROM OR WITH AN ORGANISM OR ORGANISMS** WITH ITS GENETICS ALTERED THROUGH APPLICATION OF . . . .”

Ex. A at 1-2 (Proposed § 25-5-402(12.5)) (emphasis added).

However, the title states that the measure actually addresses “food that has been genetically modified or treated with genetically modified material.” Thus, the title misstates the actual reach of the measure which regulates labeling where the originating organism, not the foodstuff being purchased, has been genetically modified. An accurate title could have referred to “food that is produced from organisms that have been genetically modified....”

Where the Board misstates what the measure actually purports to accomplish, its title must be corrected so that voters at the petition gathering stage

and voters exercising their franchise are not misled. *In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 No. 215*, 3 P.3d 11, 16 (Colo. 2000). In *No. 215*, the title incorrectly informed voters that many more mines would be affected by the initiative than actually would have been affected by the text of the initiative. Such a title was clearly misleading. *Accord, In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 104*, 987 P.2d 249, 259 (Colo. 1999) (title was invalid where there was “a contradiction between the titles and the text of the Initiative”).

Here, the title misleads voters by stating that the measure addresses the ultimate food product rather than the organisms from which it was produced. It is akin to saying that a measure that expressly addresses oil drilling should be described as one that deals with gasoline, plastic, or fleece outerwear – products derived from oil. As such, the title should be rephrased to reflect what #48 actually covers.

**E. The title does not inform voters that the failure to comply with the labeling mandate can subject a person to criminal prosecution.**

The title misleads voters about the serious consequences for failing to comply with #48.<sup>3</sup> The title only refers to a regulatory scheme that exists for enforcement purposes, but the truth is, violations of #48 will subject violators to

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<sup>3</sup> Raised below at Ex. B at 60:15-61:8.

criminal prosecution. C.R.S. § 25-5-405 currently states that any person who violates the State’s misbranding requirements “is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months . . . .”

Voters need to understand that a “yes” vote could subject their local grocer or favorite farmer’s market provider to not only an administrative subpoena, enforcement proceeding, and fine, but up to six months in jail for failing to display the required notification about a genetically modified fruit or vegetable “in a clear and conspicuous manner on the retail store shelf,” as required by #48. *See* Ex. A at 3 (Proposed § 25-5-411(1)(q)).

The purpose of the title, after all, is to reflect the “true intent” of the proponents. C.R.S. § 1-40-106(3)(b). These proponents seek to impose a labeling requirement and make it part of a statute that utilizes criminal penalties. A ballot title should not leave an aspect as significant as this unaddressed. Criminal prosecution for failure to display a label, say, for a potato, in the proper manner would likely surprise many voters. It is therefore entirely appropriate for the Board to describe an initiative’s “significant effects” vis-à-vis existing law, even though the Board is not required to describe all effects an initiative could have in light of existing law. *In re Title, Ballot Title & Submission Clause, & Summary*

*Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 919, 921 (Colo. 1982) (approving title that explained to petition signers and voters “how the initiative fits in the context of existing law”).

The Board was certainly aware that the mention of criminal prosecution could sway a voter’s decision. As one Board member said regarding including criminal prosecution, “I think that (aspect of the measure) **could potentially change a voter’s mind.**” Ex. B at 85:4-7 (emphasis added). Another Board member went further: “**people might be surprised** that if you failed to [comply with #48], there’s not just that someone will tell you you’d better start doing it but you potentially could go to jail [which] is a little bit remarkable.” *Id.* at 86:9-14 (emphasis added). Yet, the Board balked at referring to possible criminal prosecutions in the title and incorrectly decided to exclude any mention of criminal prosecution in the title. *See id.* at 87:6-90:18.

A ballot measure’s penalties are notable enough to deserve mention in the ballot title. In *Election Reform Amendment*, for example, the proposed amendment created “mandatory, nonsuspendable fines for willful violations.” 852 P.2d at 33. The Court held that it was error for the Board to fail to mention these fines in the title. *Id.* at 33-34 (“inclusion of penalty language in the titles is required to ensure

that the titles ‘unambiguously state the principle of the provision sought to be added, amended, or repealed’”) (*citing* C.R.S. § 1-40-101(2)).

The potential use of criminal penalties in the event of violations of #48 warrants providing such information to the voters. By failing to inform voters of this serious consequence, the Board erred.

**F. The title does not inform voters that the measure contains an important affirmative defense.**

The Board also failed to include language that notifies voters that a violator of #48 is exonerated if the violator: (1) did not have specific knowledge that the food was genetically modified; and (2) obtains a sworn statement from the supplier at the time of sale that the seed or food purchased was not genetically modified. *See* Ex. A at 3 (Proposed § 25-5-411(3)). This aspect of the measure is a central feature that warranted inclusion in the title.<sup>4</sup>

Inclusion of the affirmative defense in the ballot title would have been consistent with the Board’s practices and this Court’s decisions. For instance, when the Title Board set a title for a measure extending criminal liability to certain corporate officers, that measure also provided for an affirmative defense where the affected corporate actors had disclosed all relevant facts to the attorney general. *See Blake v. King*, 185 P.3d 142, 147-48 (Colo. 2008). This defense revolved

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<sup>4</sup> Raised below at Ex. B at 81:24-82:6.

around the knowledge and the good faith of the affected party. The Board included a reference to this affirmative defense in the ballot title, and that portion of the title was not challenged – and for good reason. “Although the titles do not describe every detail of the proposed measure, they include the measure’s ‘central features’... (and thus) are ‘fair, clear, and accurate.’” *Id.* at 147. Thus, the title’s inclusion of the initiative’s affirmative defense was proper and, in fact, necessary to provide voters with a fair, clear, and accurate title.

In contrast, the title for #48 omits any reference to the initiative’s sole affirmative defense, one that also is also triggered by the knowledge and good faith of the affected party. The Board thus omitted a central feature of the measure from the title, contrary to the requirements of state statute.

There is nothing novel for voters in seeing references to affirmative defenses in a ballot title.<sup>5</sup> An affirmative defense is a “central feature” of the ballot measure in which it appears, and its omission was error by the Board.

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<sup>5</sup> It is common for the Board to include an affirmative defense in a ballot title. For example, in setting a title for the medical marijuana initiative in 1998, the Board addressed the authorized use of medical marijuana but also included in the title the fact that the measure established “an affirmative defense to Colorado criminal laws for patients and their primary care-givers relating to the medical use of marijuana.” See Colorado Legislative Council, Research Pub. No. 475–0, *An Analysis of 2000 Ballot Proposals* 35 (2000).

**G. The titles do not inform voters of the measure’s unique definitions of “genetically modified” and “genetically engineered,” or even that these are terms defined by #48.**

When an initiative adopts a new definition that creates “a new or controversial legal standard which would be of significance to all concerned with the issues,” the title should alert voters to the existence of the definitions.<sup>6</sup> *See Election Reform Amendment*, 852 P.2d at 34.

#48 provides unique, detailed definitions of the terms “genetically modified” and “genetically engineered.” *See* Ex. A at 1-2 (Proposed § 25-5-402(12.5)). The question for the Board and this Court was whether the definition concerns a term “which is within the common understanding of most voters.” *In re Proposed Initiative on Taxation III*, 832 P.2d 937, 941 (Colo. 1992). In other words, are the terms or phrases as used in the measure “novel or cryptic”? *In re Title, Ballot Title & Submission Clause, & Summary Pertaining to Proposed Initiative Designated Governmental Bus.*, 875 P.2d 871, 877 (Colo. 1994). These definitions may not be novel within the scientific community, but they are certainly cryptic to the ordinary voter. The phraseology of “genetically modified” and “genetically engineered,” as defined, is most likely not part of most voters’ general perception about food production.

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<sup>6</sup> Raised below at Ex. B at 59:22-60:14.

The fact that these terms are thorough and scientifically based does not mean they should be hidden from view. It certainly is true that it is the easier course to omit definitional references from the ballot title. But voters should not have to wonder whether it will be up to the General Assembly or a regulatory agency to define them if the initiative is adopted. Instead, voters should know that, in enacting this measure, they are defining these key terms.

The ballot title approved by the Oregon Supreme Court previously discussed specified that these pivotal terms were defined in the proposed measure by referring to “[s]ome genetically modified food (**defined**)”. Ex. E at 2 (emphasis added). Certainly, Colorado voters deserve at least this much notice or even a slightly more ample warning from the Title Board that this measure defines these key phrases.

By including a prompt, such as “as defined in the measure,” the title would at least provide notice to interested voters to refer to the initiative text for further information. *See In re Title, Ballot Title & Submission Clause, & Summary for Initiative 1999-2000 #245(f)*, 1 P.3d 739, 744-45 (Colo. 2000) (holding that the Title Board correctly included a portion of the initiative’s definition in the title). The failure to do so deprives interested voters of information that can directly affect their overarching comprehension of the measure before them.

**H. The title does not inform voters that the measure exempts from the labeling requirement processed food that is produced with genetically engineered enzymes or additives.**

In addition to the exemptions currently laid out in the title, #48 also exempts “any processed food that would be subject” to the misbranding statute “solely because one or more processing aids or enzymes were produced or derived with genetic engineering.”<sup>7</sup> Ex A. at 3 (Proposed § 25-5-411(q)(IV)). A “processing aid” may be a substance that remains in the ultimate food product or is removed from it. If it remains, it may do so only at “insignificant levels” or at least not in such a concentration as to “significantly increase” the constituent elements at issue. *See id.* at 1 (Proposed § 25-5-402(20.5)). In other words, under #48, a food will not be treated as if it were genetically modified – even though it was genetically modified – as long the processing aid used leaves only an “insignificant” footprint.

Voters would likely be surprised to learn that #43 does not apply to such processed foods that are, in fact, genetically modified. The proponents have the prerogative to leave undefined terms such as “insignificant,” but the Board does not have leeway to fail to refer to a major exception that voters would not presume to be included in a labeling measure. The Title Board should have given voters

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<sup>7</sup> Raised below in Motion for Rehearing, ¶ A(8).

notice of this unlikely element of the initiative, and because it did not, the title set was deficient.

**I. The title does not inform voters that the measure applies to raw agricultural commodities but only at the point of retail sale rather than at the point of consumption, where most consumers would use them.**

The title indicates that *all* genetically modified food will carry a label. *See* Ex. C (“requiring food that has been genetically modified or treated with genetically modified material to be labeled”). But this indication is incorrect and misleading.<sup>8</sup> Any consumer who eats a food product that has been packaged will see the label affixed to the product they are about to eat or drink. In contrast, a person who consumes raw agricultural goods, such as fruits and vegetables, will not have access to any such label at the time of consumption. This is a material distinction that should be outlined in the title.

According to #48, the label for raw agricultural goods “shall be displayed in a clear and conspicuous manner on the **retail store shelf or bin** in which such commodity is placed for sale by the retailer.” Ex. A at 3 (Proposed § 25-5-411(q)) (emphasis added). The current title promises that consumers will have access to a “label” which never exists in connection with raw agricultural products. The title states that the measure “requir[es] food that has been genetically modified or

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<sup>8</sup> Raised below in Motion for Rehearing, ¶ A(12).

treated with genetically modified material to be labeled.” Yet for fresh fruits and vegetables, no “label” will be found on such food or the bags or other containers in which it is transported. Both the person who shops for a packaged processed food and the person who eats it at home or in the office will have access to a label. But only the shopper for raw agricultural commodities will have access to the information about possible genetic modification; the family member or guest who opens the refrigerator will have no label to review – a fact that the unknowing voter will not appreciate, based on the ballot title set by the Board.

The title clearly fails to describe the manner in which genetically modified foods will be labeled, and misleads voters into believing that all labels will be placed on the goods themselves. As this Court has stated, “[i]n the absence of . . . brief but critical phrases,” a title cannot “fairly reflect the contents” of a proposed initiative. *In re Proposed Initiated Constitutional Amendment of Educ.*, 682 P.2d 480, 482 (Colo. 1984). Given the impression left on voters by the language used, the title should at least be modified to correctly describe the absence of anything but in-store signage for raw agricultural commodities.

**J. The title contains the mandated wording of the label even though such detail is not a central measure of the initiative.**

The title contains the actual text of the label regarding genetic modification of food: “Produced with genetic engineering.”<sup>9</sup> It is not apparent what unique insight the wording of the label will provide to voters, either in the petition circulation stage or, if sufficient signatures are gathered, on the ballot. In fact, it would seem that this is a level of detail that does not address the primary objective of title setting. “The titles, standing alone, should be capable of being read and understood, and capable of informing the voter of **the major import of the proposal, but need not include every detail.**” *In re Title, Ballot Title & Submission Clause for Proposed Initiatives 2001-2002 No. 21 and 22*, 44 P.3d 213, 222 (Colo. 2002) (emphasis added). How is the Title Board to discern between topics of major import and mere details? The former will “allow the voter to understand the effect of a yes or no vote on the measure.” *Id.*

The words used on a label do not advance voter understanding about the underlying legal change proposed. The label’s verbiage is an implementation detail, rather than a major provision of the measure, and therefore is not appropriate for inclusion in the ballot title. *See In re Title, Ballot Title & Submission Clause, & Summary for Initiative #73*, 135 P.3d 735, 740-41 (Colo.

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<sup>9</sup> Raised below in Motion for Rehearing at ¶ B.

2006) (aspects of an initiative's implementation do not rise to the level of central provisions of the measure).

This very issue was raised by at least one Board member. He wondered openly about the label's wording, saying "I don't know if that's certainly important enough to have to be in there or not." Ex. D at 13:6-8. Ultimately, the Board included this reference, but it cannot be said that voters need this language in order to discern what this measure addresses or whether they should support it.

In short, the words on the label do not provide useful information to the voter. And the label certainly is not more important to the voter than the other omissions made by the Board outlined above. Therefore, it should be removed from the title.

## CONCLUSION

The Board erred by failing to include in the title key elements of #48. In contrast, it included other language (such as the label wording) that is not central to the legal change proposed. The ballot title should be returned to the Board for correction, consistent with the claims advanced in this appeal.

Respectfully submitted this 6th day of February, 2014.

*s/ Mark G. Grueskin*

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Mark G. Grueskin, #14621

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**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I, Mark G. Grueskin, hereby affirm that a true and accurate copy of the **PETITIONERS' OPENING BRIEF** was sent this day, February 6, 2014, via electronic service to the proponents and their counsel at:

Larry Cooper  
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*s/ Mark G. Grueskin*  
\_\_\_\_\_

DATE FILED: February 6, 2014 4:50 PM

# EXHIBIT A

**RECEIVED**

**NOV 22 2013**

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

**S.WARD**

**1:30 P.M.**

**2013-14 #48 – FINAL TEXT**

**Colorado Right to Know Act  
(Statutory Amendment)**

*Text of Measure:*

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

**SECTION 1.** In Colorado Revised Statutes, add 25-5-401.5 as follows:

**25-5-401.5. LEGISLATIVE DECLARATION.** (1) THE ELECTORATE OF COLORADO HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(1) LABELING OF GENETICALLY MODIFIED FOOD IS INTENDED TO PROVIDE CONSUMERS WITH THE OPPORTUNITY TO MAKE AN INFORMED CHOICE OF THE PRODUCTS THEY CONSUME AND TO PROTECT THE PUBLIC'S HEALTH, SAFETY AND WELFARE;

(2) PERSONS WITH CERTAIN RELIGIOUS, CULTURAL AND MORAL BELIEFS OBJECT TO CONSUMING GENETICALLY MODIFIED FOOD BECAUSE OF OBJECTIONS TO TAMPERING WITH THE GENETIC MAKEUP OF LIFE FORMS AND THE RAPID INTRODUCTION AND PROLIFERATION OF GENETICALLY ENGINEERED ORGANISMS;

(3) U.S. FEDERAL LAW DOES NOT PROVIDE FOR THE REGULATION OF THE SAFETY AND LABELING OF GENETICALLY MODIFIED FOOD;

(4) THE LONG TERM HEALTH, SAFETY AND ENVIRONMENTAL CONSEQUENCES OF GROWING AND CONSUMING GENETICALLY MODIFIED FOOD ARE NOT YET FULLY RESEARCHED AND ARE NOT YET WELL UNDERSTOOD BY SCIENCE;

(5) CONSUMERS HAVE A RIGHT TO KNOW IF THE FOOD THEY ARE CONSUMING HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING.

**SECTION 2.** In Colorado Revised Statutes, 25-5-402, add (8.5), (9.5), (12.5), (15.5), (16.5), (20.3), (20.5), and (21.5) as follows:

**25-5-402. Definitions.** As used in this part 4, unless the context otherwise requires:

(8.5) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

(9.5) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT BEING DESTROYED OR ALTERED UPON COMPLETION OF SUCH REACTIONS.

(12.5) "GENETICALLY ENGINEERED" OR "GENETICALLY MODIFIED" MEANS FOOD PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH ITS GENETICS ALTERED THROUGH APPLICATION OF:

(a) IN VITRO AND IN VIVO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBITANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

**2013-14 #48 – FINAL TEXT**

(b) METHODS OF FUSING CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS, AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION SUCH AS CONJUGATION, TRANSDUCTION, AND HYBRIDIZATION.

(c) A FOOD SHALL OTHERWISE BE CONSIDERED TO BE GENETICALLY ENGINEERED IF:

(I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN TREATED WITH A GENETICALLY ENGINEERED MATERIAL; EXCEPT THAT THE USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL COMMODITIES MAY NOT BE CONSTRUED TO MEAN THAT SUCH COMMODITIES ARE PRODUCED WITH A GENETICALLY ENGINEERED MATERIAL; OR

(II) THE FOOD CONTAINS AN INGREDIENT, COMPONENT, OR OTHER ARTICLE THAT IS GENETICALLY ENGINEERED.

(15.5) “MANUFACTURER” MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.

(16.5) “ORGANISM” MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION OR TRANSFERRING GENETIC MATERIAL.

(20.3) “PROCESSED FOOD” MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY AND INCLUDES ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

(20.5) “PROCESSING AID” MEANS:

(a) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

(b) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS FOUND IN THE FOOD; OR

(c) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

(21.5) “RETAILER” MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

**SECTION 3:** In Colorado Revised Statutes, 25-5-411, add (1)(q), (1)(r), (3) and (4) as follows:

**25-5-411. Definitions of “misbranding”.** (1) A food shall be deemed to be misbranded:

**2013-14 #48 – FINAL TEXT**

(q) BEGINNING JULY 1, 2016, IF IT HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING, UNLESS THE WORDS “PRODUCED WITH GENETIC ENGINEERING” APPEAR IN A CLEAR AND CONSPICUOUS MANNER ON ITS LABEL, IN THE CASE OF PACKAGED FOOD. IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS “PRODUCED WITH GENETIC ENGINEERING” SHALL BE PLACED IN A CLEAR AND CONSPICUOUS MANNER ON THE CONTAINER USED FOR PACKAGING, HOLDING OR TRANSPORT BY THE MANUFACTURER, AND SHALL BE MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER. THIS PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

(I) FOOD OR DRINK FOR ANIMALS;

(II) CHEWING GUM;

(III) ALCOHOLIC BEVERAGES;

(IV) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SUBSECTION (q) SOLELY BECAUSE ONE OR MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

(V) ANY FOOD WHICH IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER:

(a) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(b) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(VI) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED OR INJECTED WITH ANY FOOD PRODUCED WITH GENETIC ENGINEERING OR ANY DRUG THAT HAS BEEN PRODUCED THROUGH MEANS OF GENETIC ENGINEERING; OR

(VII) MEDICALLY PRESCRIBED FOOD.

(3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION IF IT IS PRODUCED BY A PERSON WHO:

(a) GROWS, RAISES, OR OTHERWISE PRODUCES SUCH FOOD WITHOUT KNOWLEDGE THAT THE FOOD WAS CREATED WITH SEED OR OTHER FOOD THAT WAS DERIVED IN ANY WAY THROUGH A PROCESS OF GENETIC ENGINEERING; AND

(b) OBTAINS A SWORN STATEMENT FROM THE PARTY THAT SOLD TO SUCH PERSON THE SEED OR FOOD THAT SUCH SUBSTANCE HAS NOT BEEN KNOWINGLY ENGINEERED, WAS ENTIRELY SEGREGATED FROM, AND HAS NOT KNOWINGLY BEEN COMMINGLED WITH A FOOD OR FOOD COMPONENT THAT MAY HAVE BEEN CREATED THROUGH A PROCESS OF GENETIC ENGINEERING. THE SWORN STATEMENT MUST BE OBTAINED AT THE TIME THE SEED OR FOOD IS DELIVERED FROM THE SELLER.

(4) THERE IS NO PRIVATE RIGHT OF ACTION AGAINST A DISTRIBUTOR, MANUFACTURER, OR RETAILER THAT SELLS OR ADVERTISES FOOD FOR FAILURE TO CONFORM TO THE LABELING

**2013-14 #48 – FINAL TEXT**

REQUIREMENTS UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.

(5) THE DEPARTMENT SHALL PROMULGATE REGULATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 25-5-420 CONCERNING THE PROCEDURES FOR PROMULGATING SUCH REGULATIONS, TO CARRY OUT THE LABELING REQUIREMENTS OF PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION. SUCH REGULATIONS MAY PRESCRIBE THE PROCEDURES FOR INSPECTIONS AND TESTING OF PRODUCTS TO ENSURE COMPLIANCE WITH PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.

INITIATIVE TITLE SETTING REVIEW BOARD  
Secretary of State Aspen Conference Room

DATE FILED: February 6, 2014 5:15 PM

1700 Broadway

Denver, Colorado

Wednesday, December 18, 2013

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Motion for Rehearing  
2013-2014 #48 - Labeling Genetically Modified Food

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APPEARANCES:

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## P R O C E E D I N G S

(The matter commenced in open session with all parties present at the hour of 9:30 a.m. on Wednesday, December 18, 2013.)

MS. STAIERT: Good morning. This is a meeting of the Title Setting Board. The date is December 18th, 2013. We're meeting in the Aspen Room at the Secretary of State's office, 1700 Broadway. The time is 9:30 a.m.

And we have one item on the agenda today, which is 2013-2014 #48, Labeling of Genetically Modified Food. And this matter comes on for a rehearing.

Is the proponent present?

MR. ROGERS: Good morning, Madame Chair. Trey Rogers here for the Proponents. Larry Cooper and Cheryl Gray are here with us this morning.

MS. STAIERT: Thank you.

And it looks like the Petitioner is present.

MR. GRUESKIN: Good morning, Madame Chair. Mark Grueskin on behalf of the Petitioners.

MS. STAIERT: And they're present?

MR. GRUESKIN: They're not present.

MS. STAIERT: They're not present. Okay.

Mr. Grueskin, do you want to just start out

1 and tell the Board about your motion?

2 MR. GRUESKIN: I'd love to. Thank you.

3 I know the Board has gone through the  
4 motion, and rather than redo that or kind of repeat what  
5 you've already read, I've actually gone back into the  
6 Measure and found that there are a number of issues that  
7 need to be addressed in addition to what we've raised and  
8 we think is an extension of what we've raised.

9 And rather than tic off all of those  
10 issues, Madame Chair, with your permission, I've actually  
11 taken a shot at re-crafting a valid title, and it seems to  
12 me that may be a more efficient way for the Board to  
13 consider some of these.

14 MS. STAIERT: That would be great. If you  
15 have copies of that, if you could just tender them to --

16 MR. GRUESKIN: I do. I'm not sure -- let  
17 me see. Let's see, I'm not sure I have enough for  
18 everyone.

19 So with the Board's permission, I would  
20 like to tic through some of the notable issues -- and I  
21 think there are at least five -- in addition to covering  
22 in a more thorough and accurate way the exemptions and the  
23 coverage of the Measure.

24 No. 1 can be found in the first phrase.  
25 This really isn't a measure that concerns labeling of

1 genetically modified foods. It has exemptions. It has  
2 limitations. It has certain genetically modified foods  
3 that are left out or by design taken out of the Measure.

4 And the statement that it addresses  
5 genetically labeling of genetically modified foods is  
6 inaccurate and we think misleading. We think it's more  
7 appropriate to say that it mandates additional labeling of  
8 some foods and then being specific.

9 And we think that the next phrase, as we  
10 indicated in our motion, is not really a central element  
11 of what the label actually says or doesn't say, it  
12 probably isn't as critical to voters as where the Measure  
13 extends to and what it doesn't extend to.

14 And this brings up a second issue, which I  
15 think is really important. This entire measure is about  
16 the misbranding of food and under the statute what sorts  
17 of remedies and requirements are triggered related to the  
18 misbranding of food.

19 Misbranding is never even referred to in  
20 the Title, and we think that that ought to be to the  
21 extent that the essence of the Measure really is the  
22 proposed change to Section -- Colorado Revised Statute,  
23 Section 25-5-411, the definition of "misbranding," in  
24 which all of this measure fundamentally takes place. We  
25 think there ought to be some reference so that people

1 understand the context of what's going on.

2 This isn't simply an administrative  
3 requirement, this is an inclusion within the Colorado  
4 Revised Statutes of a requirement and a set of remedies  
5 related to misbranding.

6 And hence, we had indicated in this next  
7 phrase that the Measure treats certain food as misbranded  
8 in Colorado if it meets the criteria of genetically  
9 modified or genetically engineered as defined in the  
10 Measure. We think that that reference to a definition in  
11 the Measure is important.

12 There is no definition currently. And  
13 while we could, and have not asked the Board to do so,  
14 incorporate these new definitions because they are so  
15 technical, we ought to at least indicate in the Title  
16 itself that there are definitions to which voters can  
17 refer. So that phrase would basically address misbranding  
18 for genetically modified or genetically engineered food  
19 that is not labeled as such.

20 The bulk of the titled amendments that we  
21 have proposed here track fairly well are a motion for  
22 rehearing, and while I'm happy to go through them, it  
23 seems to me that may not be the best use of your time.

24 We do think that, for instance, something  
25 like animal food -- well, in fact, the Measure addresses

1 food and drink for animals, and we just think that that's  
2 -- if it was in the Measure, presumably it had a purpose  
3 and presumably it was significant, and we made other  
4 comparable changes.

5 We believe that the omission of the limited  
6 labeling requirement relative to your cultural commodities  
7 deserve treatment in the Measure.

8 But then on the sixth line from the bottom  
9 that begins "Engineered, semi-colon," this title suggests,  
10 because of the reference to regulations by the Department  
11 of Public Health, that it is simply an administrative  
12 issue. In fact, it is not. This is plugging a new  
13 labeling requirement mandate into a statute that imposes  
14 criminal prosecution for violations. And for voters not  
15 to understand that, I think is important.

16 And it is triggered -- I understand that  
17 the Board isn't required to list every potential effect of  
18 a measure, but this is one in which the Proponents  
19 included a specific reference to the regulatory process.  
20 And the Title, left alone, indicates that it is merely a  
21 regulatory process and that there are no other potential  
22 penalties. And we think that is grossly misleading and  
23 think that the phrase that we had suggested ought to be  
24 inserted.

25 As we raised in the motion, the Title says

1 that there are -- that there is regulatory authority that  
2 is authorized. In fact, it requires, it mandates, it uses  
3 the word "require" in connection with these labeling  
4 requirements. And C-D-P-H-E is responsibility. And we  
5 think that what is authorized is regulations for  
6 inspection and testing. And, therefore, that phrase ought  
7 to be clarified.

8           And lastly, the suggestion that in the  
9 Title, as it exists, is that there is no private right of  
10 action created in connection with labeling requirements is  
11 not accurate. It's limited to certain cases, those cases  
12 in which the question is whether or not there has been  
13 conformance with labeling requirements.

14           And, likewise, the Title omits the  
15 reference to the fact that the restriction on a private  
16 right of action relates to sale, as well as advertising,  
17 and that this issue relates to manufacturers, distributors  
18 or retailers.

19           So there are parties to whom -- or for whom  
20 a private right of action will still be applicable,  
21 parties that are not covered by those definitions. And we  
22 think that that's important for the Title to reflect.

23           So I have done what I promised I wouldn't  
24 do, which is to take you through my proposed redraft, but  
25 I'm certainly available for any questions.

1 MS. STAIERT: Any questions?

2 MR. DOMENICO: Well, I do have some  
3 questions, but I'm not sure what the right process should  
4 be going forward, how we want to start. Yeah. I mean,  
5 there may be some that the Proponents --

6 MS. STAIERT: Right.

7 MR. DOMENICO: -- are on board with. There  
8 may be some we have to discuss. So I'm not quite sure how  
9 you want to proceed.

10 MS. STAIERT: Right. Let's go ahead and  
11 hear from the Proponents.

12 MR. ROGERS: Thank you, Madame Chair.

13 The Supreme Court case law, as you all know  
14 well, has told us that the Title for an initiative should  
15 be succinct, that they need not reflect all of the details  
16 or nuances of a measure and that even when the initiative  
17 concerns several complicated issues the Title should be  
18 brief.

19 That's what you did two weeks ago. You  
20 drafted a title for this measure that meets those  
21 requirements.

22 The Objectors would have you add every  
23 detail of the Measure. In fact, I think if the Objectors  
24 kind of obviate the need for the Title Board, we should  
25 just reprint the Measure itself, if they had their way.

1           That's not what the statute and the Supreme  
2 Court have told us is the duty of this Board. So for  
3 those reasons we ask you to deny the motion for rehearing  
4 and leave the Title as you drafted it two weeks ago.

5           I don't want to get into yet the specific  
6 18 points raised in the objection. I think it probably  
7 makes more sense to take those as they come up, if that's  
8 appropriate, Madame Chair, but I would like to address the  
9 new arguments that Mr. Grueskin has made.

10           You know, the deadline for filing a motion  
11 for rehearing was a week ago. We did not see in the  
12 motion filed a week ago an objection to the concerning  
13 language. We did not see, as of the deadline a week ago,  
14 an argument about incorporating misbranding, the  
15 definition of misbranding or reference to the fact that  
16 the initiative would be within the misbranding section of  
17 code.

18           We did not see, as of the deadline a week  
19 ago, an objection to the Title's failure to reference that  
20 criminal prosecution would be available for violation of  
21 the new labeling requirements.

22           We did not see in the motion that was filed  
23 an objection that the Title did not reference the  
24 requirement or the provision authorizing inspections.

25           So these are late, these new arguments. It

1 is not fair on the morning of the hearing, at the  
2 beginning of the hearing for the Objectors to raise these  
3 new arguments. And so I would suggest those new arguments  
4 brought up today for the first time that is not brought up  
5 in the written motion filed a week ago should be rejected  
6 out of hand by the Board.

7 Unless you've got specific questions, I'll  
8 stop there. I think it's probably a more efficient  
9 process to deal with the specific objections on at a time,  
10 if that makes sense.

11 MS. STAIERT: Any questions?

12 MR. DOMENICO: Well, I think he answered --  
13 my first question was going to be whether there were any  
14 of the suggested list of changes that you were either in  
15 favor of or okay with. I think you answered that in the  
16 negative, right?

17 MR. ROGERS: I did.

18 MR. DOMENICO: Okay. Well, that was going  
19 to be where I was going to start. So I'm not sure where  
20 you want to go from there.

21 MS. STAIERT: Well, given that they're  
22 objecting to each item, I think we can just go back  
23 through either looking at the Title that the Objectors  
24 have proposed or looking at the motion itself.

25 I tend to agree with the Objectors, that

1 it's a little bit easier to work off of a draft than it is  
2 off of a motion, but it's whatever the Board's pleasure is  
3 on that.

4 And I suppose, first off, we need to decide  
5 the issue of whether we're going to consider the new items  
6 that have been raised. Maybe that's a good place to  
7 start.

8 MR. GRUESKIN: Can I address that issue,  
9 Madame Chair?

10 MS. STAIERT: Sure.

11 MR. GRUESKIN: There's nothing in the  
12 statute that requires that a motion for rehearing be  
13 exhaustive. It's simply a time line. It establishes a  
14 point beyond which no objection may be raised.

15 In addition, I would note that anybody  
16 who's sitting here has authority under the statute to come  
17 up and say something and then appeal that issue to the  
18 Supreme Court under 1-40-107. Therefore, if anyone  
19 sitting here could say anything about the Title, certainly  
20 the Proponents, having been put on notice that there was  
21 going to be a title challenge, cannot be said to have been  
22 unfairly surprised.

23 In addition, it's their measure. Unless  
24 they are surprised that the Measure deals with things like  
25 misbranding or the statute includes criminal prosecution,

1 it seems to me that there is no surprise that can possibly  
2 adhere to that. And, therefore, I think you're authorized  
3 to take up each and every issue that we've raised.

4 MS. STAIERT: Mr. Rogers, do you have any  
5 legal argument about -- regarding that point, the point  
6 you've raised about -- you raised it kind of two ways.  
7 You said an unfair surprise, and then you did seem to sort  
8 of make the argument that the petitioners are now  
9 rebutting, which is that there does need to be some  
10 specificity in the motion for rehearing. Do you want to  
11 make any further legal arguments about that?

12 MR. ROGERS: Well, sure. So I think the  
13 statute very clearly sets forth the deadline for the  
14 filing of a motion for rehearing. It certainly looks to  
15 me from the way that the statute is written that the  
16 filing of that motion sets the parameters around the  
17 issues that can be considered by the Board.

18 For instance, I think if some -- someone,  
19 either the Objectors or a citizen appearing here to offer  
20 comment, couldn't raise a single subject issue. That  
21 wasn't raised in a motion for rehearing. No one could  
22 come here today, I would suggest, and raise the issue that  
23 there are changes that are outside of the review and  
24 comment process. It would go beyond the review and  
25 comment process.

1           So, you know, I think a fair reading of the  
2 statute is that the filing of the motion puts some  
3 sideboards around the issues that the Board can take up.

4           Certainly, any member of the public can  
5 come and make a comment about the matters raised in the  
6 motion, but the reason there's a deadline, the reason  
7 there's a week between the filing deadline and this  
8 hearing is so that the Proponents have an opportunity to  
9 review the objections and prepare a response.

10           It's simply not fair or appropriate to  
11 allow entirely new arguments to be raised after they were  
12 not identified in the written objection filed -- motion  
13 for rehearing filed a week ago.

14           MS. STAIERT: So the Statute 1-40-107,  
15 subsection (b) states: That a motion for rehearing must  
16 be typewritten and set forth with particularity the  
17 grounds for a --

18           MR. DOMENICO: May I?

19           MS. STAIERT: Go ahead, yes.

20           MR. DOMENICO: So I tend to agree with  
21 Mr. Rogers that this sort of allows, if not encourages,  
22 kind of sandbagging the Proponents and us by bringing  
23 things in that nobody has had a chance really to think  
24 through or prepare to respond to.

25           On the other hand, we've taken, I think, a

1 very liberal view of the provision you just read and we  
2 have addressed motions for rehearing that essentially just  
3 say the Board should reconsider because the Title is  
4 incomplete and misleading.

5           And adopting Mr. Rogers' view would either  
6 require us to simply ignore a motion like that, which I'd  
7 probably be fine with, or it would encourage people to  
8 file that kind of motion, and then everybody would be  
9 guessing completely about what was going on. I think our  
10 practice in the past has been to consider these things.

11           In addition, sometimes we get into -- these  
12 rehearings start considering making one change here, and  
13 then we're just sort of on our own or with everybody who's  
14 present decide that's something that now we need to make  
15 this other change to improve it. And we've done that in  
16 the past, I know. Maybe we shouldn't have. But I think  
17 that's basically been our power practice.

18           So I'm sort of inclined to look a little  
19 bit skeptically toward the newly raised things but not to  
20 kind of view them as completely outside of our  
21 jurisdiction essentially to consider.

22           MS. STAIERT: And I tend to agree with  
23 that. You know, it's been a very kind of new process. A  
24 lot of times the question that we end up with on a  
25 rehearing looks nothing like the question that we had on

1 an initial hearing.

2           You know, if the -- if the motion as stated  
3 -- if we had a situation where the -- Mr. Grueskin was  
4 coming forward and now raising a single-subject issue, I  
5 might be more inclined to understand Mr. Rogers' point  
6 that, you know, this is brand new, out-of-the-blue,  
7 raising a second jurisdictional type of an argument. And  
8 that, I would think, is more kind of along the lines of  
9 sandbagging than I would be sort of thinking about and  
10 going through different changes that need to be made,  
11 because even when you file a motion and to -- to your  
12 point, a lot of times we do it ourselves where, you know,  
13 somebody suggests one change and then that sort of -- they  
14 didn't suggest it in their motion, but it then has a  
15 domino effect of having other things changed in the  
16 questions.

17           But I am somewhat sympathetic to  
18 Mr. Rogers' argument, and if there's some other kind of a  
19 combination you would want, like, you know, continuing it  
20 or taking a break or coming back in the afternoon or  
21 something like that that would be fair to all sides, you  
22 know, I'd probably be more inclined to look at that rather  
23 than to preclude them from making those arguments.

24           MR. GELENDER: First of all, I'd say I sort  
25 of generally agree that we can consider all of the new

1 arguments, especially since they're, to a large extent, at  
2 least somewhat overlapping with what's in the motion.

3           Madame Chair, I think what I would do is  
4 sort of recommend a way to proceed, which is, I think, the  
5 first thing we should do, as we typically do, is look at  
6 our single subject and then at least suggest a new one and  
7 see, you know, what we like and if we're comfortable with  
8 what we did before and want to change it.

9           And then I actually would go through the  
10 written grounds for reconsideration in the motion. The  
11 reason for my preference for that rather from starting  
12 with the alternative title is that I am very sympathetic  
13 to the argument that this quite simply looks like a wall  
14 of text to me, and I think it's a bit too much to use as a  
15 starting point, however much of it we may end up  
16 incorporating in one form or another.

17           MR. DOMENICO: I'm fine with that. I tend  
18 to agree, in fact.

19           MS. STAIERT: All right, then, why don't we  
20 just go through the motion for the rehearing. Is that  
21 your suggestion?

22           MR. GELENDER: I think so, unless you want  
23 to just start with the single subject first, because I  
24 think once we have the single subject locked down, the  
25 rest maybe flows a little more easily.

1 MR. DOMENICO: You know, in my review of  
2 these grounds for reconsideration, you know, I think there  
3 are a few of them that are certainly worth giving hard  
4 consideration to and some others that maybe are a bit less  
5 worthy of that.

6 MR. GELENDER: That's fine.

7 MS. STAIERT: And I'm fine with that.

8 I guess I should ask -- I don't have a  
9 sign-up sheet. I guess before we start working, I should  
10 see if there's anybody else who wanted to comment. No?  
11 Okay. No. Okay.

12 All right. Let's look at the single  
13 subject then. Currently, it's a change to the Colorado  
14 Revised Statutes concerning labeling of genetically  
15 modified food.

16 MR. GELENDER: I think I'd start with the  
17 point that -- from the suggested changes by the Objectors.  
18 On the mandating additional language, I do think makes  
19 sense.

20 You know, the some of foods in place of  
21 genetically modified, to me is not helpful to the voters  
22 because some could mean anything.

23 You know, the Measure does say genetically  
24 modified or produces genetic engineering, which are  
25 different things, but I'm not sure for the voters' purpose

1 that genetically modified isn't broad enough to cover them  
2 both since we don't use ands, so that would be my starting  
3 point.

4 MR. DOMENICO: Okay. I mean, I frankly  
5 thought the single subject was fine the way it was.

6 Genetically engineered and genetically  
7 modified in the Measure, as I read it, have the same  
8 definition and essentially mean the same thing. So I'm  
9 not that concerned about putting them both in there.

10 Again, we're not re-writing the statute,  
11 which is what I get a little bit of the feel that we're  
12 sort of just writing another statute here. We're writing  
13 a title for voters who are, for the most part, not lawyers  
14 looking at these as kind of defined legal terms.

15 So I think that the Title, as it was, was  
16 yes, it is -- the single subject is more general than the  
17 precise contours of the Measure, but that's okay, in my  
18 view. The single subject is just supposed to tell you  
19 basically what your talking about.

20 If anything, I think it's overly specific  
21 already. But I would probably just have left it as  
22 concerning labeling of genetically modified foods. I  
23 think that's accurate as a statement that a layperson  
24 would understand what the Measure is about, which is what  
25 we're trying to do with that clause.

1 I'd be -- I suppose I'd be okay with  
2 mandating additional or with just additional, because it's  
3 true genetically modified foods already have certain  
4 labeling requirements like other foods already do. And so  
5 I guess I'd be okay with that.

6 "Additional" was a most tempting word to  
7 me.

8 MS. STAIERT: So then that would look like  
9 basically a change to the Colorado Revised Statutes either  
10 concerning additional or mandating additional labeling of  
11 genetically modified foods, but we'd be okay -- I mean,  
12 I'm okay with mandating additional. I'm okay with the  
13 mandating. What do you think?

14 MR. GELENDER: I think I'm okay with sort  
15 of any variant. I'm not -- Mr. Domenico is -- I think  
16 reminded me that, you know, the single subject is just  
17 sort of very general notice of the about, and we can use  
18 the trailer to get more specific about it, so ...

19 MS. STAIERT: Mr. Rogers, you want to --  
20 you look like you want to get up.

21 MR. ROGERS: I was perching there.

22 Well, the Proponents would object to the  
23 use of the term "additional." The use of the term  
24 "additional" would suggest to the voter that there is  
25 already some requirement for the labeling of genetically

1 modified food. There is -- that requirement does not  
2 exist in law today. So I think that the use of the word  
3 "additional" would tend to mislead voters.

4 "Mandating" -- I think in our discussion  
5 two weeks ago, we suggested that instead of "concerning"  
6 that we use the word "requiring," so I don't -- you know,  
7 mandating, requiring, concerning I think is not a big  
8 issue, but additional is problematic.

9 MR. DOMENICO: Oh, this reminds me of a  
10 conversation we had long ago about -- I mean, the -- this  
11 is what it's about, the way it's -- the current title is  
12 that kind of old-fashion, traditional way that we do it  
13 where the concerning clause is just what it's about, what  
14 it's concerning, and, in fact, I once suggested using the  
15 word "about" instead of "concerning." But it sounds less  
16 legally, and so we've rejected that.

17 And then later on the "after in connection  
18 with" is supposed to, when we use this format, say what it  
19 does, the requiring, the mandating, the exempting. So if  
20 we're going -- I think we need to do one or the other,  
21 either use this as just an explanation of what it's about  
22 or get rid of the whole format of in connection therewith,  
23 et cetera.

24 And I think we sort of went back and forth  
25 on this last time and decided to go with the traditional

1 format.

2 So I would leave it "concerning" for that  
3 reason, or switch to a ballot, as I've suggested in the  
4 past, and then leave the details of what the mandate is  
5 and what the requirements are to the rest of it.

6 MR. GELENDER: If that's a motion to just  
7 leave the single subject as we have it, I would make that  
8 motion.

9 MR. DOMENICO: Then I'll second it.

10 MS. STAIERT: All right. Then all those in  
11 favor?

12 MR. DOMENICO: Aye.

13 MS. STAIERT: Aye.

14 MR. GELENDER: Aye.

15 MS. STAIERT: All right. So we'll leave  
16 that as is, which then takes us to what it does.

17 MR. GELENDER: At this point I think do we  
18 want to go through the grounds for reconsideration?

19 MS. STAIERT: Sure.

20 MR. GELENDER: I think the first one does  
21 actually make a good point in that the language of the  
22 Measure does -- is mandatory with the department shall  
23 promulgate regulations, so that's seems like a legitimate  
24 change to make.

25 MR. DOMENICO: Yeah. So I'm not -- I don't

1 have strong feelings about that one. Mr. Grueskin's  
2 point, I guess, was that it's -- the requirements are also  
3 about inspection and testing and labeling apparently in  
4 the last section of the Measure.

5 I'm not totally convinced that the  
6 provision is all that material frankly to a voter, that  
7 some state agency would have regulatory authority seems  
8 unsurprising to me and not all that material.

9 But, yeah, if we want to change the word  
10 "authorizing" to "requiring," I'm okay with that.

11 MS. STAIERT: That's fine with me.

12 MR. GELENDER: Okay.

13 MS. STAIERT: Okay. What's the next one?  
14 Do you want to talk about private rights of action. I  
15 would have been fine just striking that whole thing.

16 MR. GELENDER: I think I'd like to actually  
17 hear from the Objector a little more on this one exactly  
18 what private rights of action are going to exist here. I  
19 mean, we heard some of the very hypothetical, well,  
20 there's other people, but I don't really know who those  
21 people are in the real world what could actually happen.

22 MS. STAIERT: Mr. Grueskin, do you want to  
23 come up and talk to us about private rights of action?

24 MR. GRUESKIN: Sure. So let me give you a  
25 solid example.

1 MS. STAIERT: Let me just by asking, is  
2 that something you think is central to the -- are you  
3 suggesting that be stricken or are you suggesting that be  
4 changed?

5 MR. GRUESKIN: I think it should be  
6 changed.

7 MS. STAIERT: Okay. All right. Go ahead.

8 MR. GRUESKIN: The Measure specifically  
9 addresses in terms of private rights of action, retailers,  
10 distributors, manufacturers, all of which are defined  
11 terms.

12 I'll give you a for instance. It's someone  
13 who is not covered by those three terms. Someone who owns  
14 a grain silo, does not manufacture and does not retail.  
15 That is a person who neither distributes; that is someone  
16 who simply lends their facility for the purpose of storing  
17 a grain that may or may not be genetically modified; that  
18 is not a person who is producing or processing any sort of  
19 seed; that is not a person who, under definition of  
20 distribution, is distributing or transporting; that is  
21 someone who is storing a grain and, therefore, that person  
22 is still subject to whatever rights of action may exist.  
23 But they certainly have not been exempted.

24 So why not just say that these are the  
25 people -- I'm not asking you to define manufacturer,

1 distributor and retailer in the Title, but obviously  
2 interested parties can go to the Measure. But there are  
3 private rights of action. DATE FILED: February 6, 2014 5:15 PM

4 In addition to, the private right of action  
5 exclusion relates to whether or not you conform to  
6 labeling requirements as one of these three parties.

7 The issue -- there's nothing in the Measure  
8 that takes the private right of action over suing for some  
9 other reason out of the arsenal of potential plaintiffs'  
10 attorneys and, therefore, the only conformance to labeling  
11 requirements is covered by this exclusion. And I think  
12 that's relevant. And so that is a little bit of  
13 background as to why there -- the language that you've  
14 included isn't functionally or legally accurate.

15 MS. STAIERT: All right. Oh, go ahead,  
16 Mr. Rogers.

17 MR. ROGERS: So let's start with this:  
18 This initiative does not create a private right of action  
19 and there is no private right of action currently in this  
20 title. In fact, the Title -- the section very clearly  
21 gives enforcement authority to the Department of Health  
22 and -- Public Health and Environment.

23 So for instance, in 25-5-405, we see that  
24 violation is a misdemeanor. Well, that's something that  
25 can be prosecuted by the district attorney.

1           In 25-5-404, we see that the Department may  
2 seek an injunction for violation of the statute.

3           In 25-5-420, we see the Department has  
4 enforcement in rule-making authority.

5           In 25-4-421, the Department has the  
6 authority -- the right to inspect.

7           So this is a statute that is clearly set up  
8 to be administered and enforced by the Department of  
9 Public Health and Environment. There is no private right  
10 of action. So this is really a red herring.

11           Now, why, when we wrote the initiative, did  
12 we limit -- did we say that this creates no private right  
13 of action against distributors, manufacturers or  
14 retailers? The reason for that is that if you look at  
15 (q), which is really the meat of the initiative, so that's  
16 Section -- new subsection (q), it creates new duties. Who  
17 does it create new duties for? For producers -- sorry,  
18 for distributors, manufacturers and retailers.

19           So when we said no private right of action  
20 is created against distributors, manufacturers and  
21 retailers, we simply mirrored the list of those for whom  
22 we have created a new duty.

23           Let me go to the grain silo operator. If  
24 the grain silo operator doesn't fall into any of these  
25 categories, then he is not regulated, he is not impacted

1 in any way, shape or form by this measure.

2 We can walk through the language of (q).  
3 We see a labeling requirement on the first few lines and  
4 we see that those regulated are the manufacturer on line  
5 7: The labeling shall be maintained by the distributor --  
6 also on line 7 -- displayed in a clear and conspicuous  
7 manner on the retail store shelf. Well, that's maintained  
8 by the retailer.

9 In fact, we go on to say: Or bin in which  
10 such commodity is displayed for sale by the retailer.

11 So we've simply mirrored the language  
12 concerning a private right of action to the new duties  
13 that are created under (q).

14 There's no reason to think that there could  
15 possibly be a private right of action created by this  
16 initiative against any party other than those identified.

17 And, you know -- sorry, let me -- one more  
18 thing. I think in the staff draft we had language -- we  
19 had additional language in this section of the proposed  
20 title. That additional language, I believe, was something  
21 along the lines of no private right of action is created  
22 against distributors, manufacturers and retailers. And I  
23 think Mr. Domenico asked to have that stricken as  
24 unnecessary. I would agree that it is unnecessary to  
25 insert those additional words in the Title.

1 MS. STAIERT: All right. Go ahead.

2 MR. GRUESKIN: It's important to note that  
3 the Measure specifically talks about the function of  
4 storage. Let me take you to what Mr. Rogers has said is  
5 the meat of the provision, Paragraph (q)(3)(b). This is  
6 that whole sworn statement.

7 You know, you can take yourself out of the  
8 chain of liability for misbranding if it's produced by a  
9 person who grows non-genetically engineered food and  
10 obtains a statement that it's been entirely segregated  
11 from and has not been knowingly commingled with a food or  
12 food component that has been genetically engineered.

13 In other words, there may not be -- the  
14 point is I don't know. It's not this Board's obligation  
15 to figure out whether or not silo operators in fact could  
16 be held liable, but there are functions that have nothing  
17 to do with manufacturers, distributors and retailers that  
18 are covered here. And why would you not put the language  
19 of the Measure in because frankly it is not true that no  
20 private right of action is created in connection with the  
21 labeling requirements. The truth is, there's no private  
22 right of action created in connection with manufacturers,  
23 distributors and retailers. That's the specific wording  
24 of the Measure. Why would you not acknowledge that?

25 So I have a feeling I'm close to a dead

1 horse. I'm going to walk away from it.

2 MS. STAIERT: Okay.

3 MR. DOMENICO: Well, I do have a little bit  
4 -- I mean, the Measure does have that language in whatever  
5 that is, subsection (4) there. Now, you could just say  
6 there is not private right of action for failure to  
7 conform to the labeling requirements.

8 So it doesn't say that, and I guess I'm  
9 trying to figure out who might also have some obligations,  
10 and I'm not really seeing it. And Mr. Rogers has conveyed  
11 that that is basically the entire universe of people who  
12 would have an obligation.

13 And (q) is the only requirement that the  
14 Measure imposes on anybody. And so if it -- if the  
15 private right of action language applies to the entire  
16 universe of people covered by (q), then it seems to me  
17 that the Title is accurate. But I guess I have some small  
18 bit of doubt about that.

19 MS. STAIERT: And I guess, you know, speak  
20 of someone who was never wild about including the language  
21 at all, I think the problem is that it could be  
22 misleading.

23 If we can imagine the scenario, which I  
24 agree it's not our job to figure out what the legal  
25 consequences are, but I think that if somebody signs a

1 sworn statement and that turns out to be false, then  
2 certainly that retailer may bring an action against the  
3 person who signed the sworn statement and that would be a  
4 private action.

5 I don't know that -- I mean, tangentially  
6 this creates that action, not directly, but you could  
7 imagine it happening, so -- go ahead.

8 MR. ROGERS: I just want to point out that  
9 the sworn statement under (3)(b) would be obtained from  
10 the party that sold to such person. They're going to  
11 either be a manufacturer or a distributor. So I just  
12 don't see, despite Mr. Grueskin's creative efforts, to  
13 identify a new party against whom there could be a private  
14 right of action. They just don't exist.

15 MS. STAIERT: Do you have anything?

16 MR. GELENDER: I think that we don't need  
17 the specificity of the manufacturer, seller, distributor,  
18 whatever -- manufacturer, distributor, retailer language,  
19 the sale or advertising suggestion. You know, on the  
20 other hand that's -- you know -- I don't know, being a  
21 little more direct maybe in saying, you know, for failure  
22 to conform with the labeling requirements even I don't  
23 feel strongly about but it probably doesn't hurt anything.

24 MS. STAIERT: Go ahead.

25 MR. ROGERS: I'm glad, Mr. Gelender, you

1 raised what is Item 11 in the motion. I would submit that  
2 that contention is just simply wrong. The Measure does  
3 not extend immunity against private rights of action to  
4 advertising as well as sale in labeling of the food as  
5 suggested.

6 If you look at the language of the Measure,  
7 advertising and sale are terms that simply identify the  
8 people against whom there is no private right of action.  
9 It doesn't in any way, shape or form address whether there  
10 is or is not a private right of action concerning  
11 activities like advertising a sale.

12 The language is there is no private right  
13 of action against a distributor, manufacturer or retailer  
14 that sells or advertises food. That's just identifying  
15 who we're dealing with here. For what is there no private  
16 right of action? For failure to conform to the labeling  
17 requirements under Paragraph (q).

18 So it's simply not the case that we're  
19 either prohibiting or creating a private right of action  
20 for concerning the advertisement or sale of these goods.  
21 It's only labeling.

22 MR. GELENDER: Right. But I think -- I  
23 mean, I think you're making the Objectors' point for them  
24 in which is that you're limiting the universe of people  
25 who are subject to the private right of action, and right

1 now what they're arguing, I believe, is that the Title  
2 doesn't really do that or at least not as much as it  
3 should.

4 MR. ROGERS: Well, the way I read 11,  
5 Section 11, is there's an objection to the fact that the  
6 Title does not notify the voter, that the Measure extends  
7 immunity against private rights of action to advertising  
8 as well as sale. That is just not the case.

9 How you advertise GMOs is not regulated in  
10 any way, shape or form by this measure. All the Measure  
11 is saying is that if you are a retailer, distributor or  
12 manufacturer who sells or advertises, there's no private  
13 right of action for you arising out of the labeling  
14 requirements of this measure.

15 MR. GELENDER: Right.

16 MR. ROGERS: Oh.

17 MR. GELENDER: Yeah. I agree with that  
18 statement.

19 MR. ROGERS: Okay.

20 MR. GELENDER: I'm just not sure that our  
21 language in the existing title covers -- says that.

22 MR. ROGERS: I mean, it's a little broader,  
23 right? It talks about -- it doesn't add that additional  
24 qualifier. It says no private right of action against  
25 distributors, manufacturers and retailers. That's

1 adequate. And why further identify which advertisers --  
2 or which distributors, manufacturers and retailers we're  
3 talking about other than to add more words.

4 MR. DOMENICO: So the way this -- as I  
5 understand it, the way this works is -- so this fits in  
6 with a statutory scheme in which it is prohibited --  
7 prohibited selling, manufacturing, delivering or holding  
8 or offering for sale anything that is -- any food that is  
9 misbranded is prohibited.

10 So I think then (q) creates a special type  
11 of misbranding that would then be prohibited, right? And  
12 the question is just for -- so imagine, I guess, a  
13 transportation company, a rail company or a trucking  
14 company or something that, for whatever reason, sprays the  
15 corn or something that they're transporting with some  
16 genetic -- something that would then qualify everything  
17 they're delivering as genetically modified. They might be  
18 subject to the prohibition -- they might have then  
19 distributed, if not sold, genetically modified food that  
20 is, I believe, misbranded under this provision.

21 The question then is, would they be subject  
22 to a private right of action for failure to comply with  
23 this new subsection (q). They would, I think, clearly be  
24 subject to punishment under 25-5-403, but that's not a  
25 private right of action. And so that's what I'm -- that's

1 a slight variation, I guess, on the grain silo where  
2 they're just holding it. But if they somehow violated  
3 this by then putting into the stream of commerce  
4 mislabeled food.

5 MR. ROGERS: Well, Mr. Domenico, in your  
6 hypothetical -- well, first of all, the definition of  
7 "distributor" includes a person who transports food, so  
8 there's no private right of action against someone who  
9 transports. And if they sprayed something on the food,  
10 they would certainly fall within the definition of  
11 manufacturer, which includes a production or processing.  
12 So if you spray something on it you further process the  
13 food.

14 So I mean, despite everyone's best efforts  
15 here to find someone who's not a retailer, distributor or  
16 manufacturer, they just don't exist, at least not -- at  
17 least they are not regulated by this measure.

18 MR. DOMENICO: That's sort of the  
19 conclusion I came to too, which is anybody that might do  
20 something that would run afoul of (q) could get in trouble  
21 under the already existing provisions of 25-5-403.

22 But the point of (4) here is that there  
23 wouldn't also be a private right of action, at least not  
24 one specifically caused by (q). There might be whatever  
25 other torte or contractual claim, I suppose, you might be

1 able to bring against them. But it wouldn't be for  
2 violating (q).

3 So, again, I'm not sure much is added by  
4 the additional language we're considering, if anything.

5 MS. STAIERT: You're writing.

6 MR. GELENDER: Yeah.

7 MS. STAIERT: Do you have a proposal?

8 MR. GELENDER: Not quite yet, but I'm  
9 getting there.

10 I mean, if we have -- do think that this  
11 private right of action thing is a central feature of the  
12 Measure, and I think that someone voting on this might  
13 want to know if they could sue to have it enforced or file  
14 a lawsuit against someone who, you know, they end up  
15 eating some food they wish they hadn't eaten, does it make  
16 more sense to phase in that term and say something like,  
17 you know, and specifying that an individual cannot sue a  
18 person obliged to conform to the labeling requirements for  
19 failure to do so or something like that?

20 MR. DOMENICO: Well, I had one similar  
21 thought but kind of less of a change, which was just  
22 specifying that no private right of action is created for  
23 failure to conform to the labeling requirements.

24 MR. GELENDER: That's fine by me.

25 MR. DOMENICO: Which doesn't quite --

1 MS. STAIERT: I mean, it seems that we  
2 could also maybe wrap up Mr. Grueskin's arguments about  
3 what can happen by instead of using the private right of  
4 action maybe we could just say enforcement is limited to  
5 Department of Health and criminal prosecution or something  
6 like that, and then people would understand that they  
7 can't sue and that enforcement is about, you know -- I  
8 don't know.

9 MR. GELENDER: I think I'd generally like  
10 that.

11 MS. STAIERT: Yeah. I mean, instead of --  
12 I don't know if people really understand what a private  
13 right of action is. That was always sort of my issue with  
14 the language.

15 MR. DOMENICO: I don't know, that's -- I'm  
16 not sure I'm comfortable. I just wonder if that's  
17 assuming more than I'm comfortable I know about how it  
18 would work in practice. It seems to be interpreting it  
19 fairly. I mean, it seems right to me. I'm just not  
20 totally comfortable in how it works with everything else  
21 in the law to say that.

22 MS. STAIERT: Mr. Rogers, do you think  
23 enforcement is limited to Department of Health? I mean,  
24 do you think that that's an accurate statement?

25 MR. ROGERS: Well, I think violation of the

1 misbranding section is also a misdemeanor in certain  
2 circumstances, and that would be enforced by criminal  
3 enforcement authorities.

4 MS. STAIERT: Criminal enforcement. We  
5 could say criminal enforcement or --

6 MR. DOMENICO: Government.

7 MS. STAIERT: -- government.

8 MR. ROGERS: I think we're probably pretty  
9 deep in the weeds here on this.

10 MR. DOMENICO: Yeah, I think -- because I  
11 think there is consumer protection authority to enforce  
12 this sort of thing, I'm informed.

13 I mean, maybe I'm coming around to Madame  
14 Chairman's view that as important as this might be for  
15 lawyers, for voters, what it doesn't do, maybe not all  
16 that material, that it doesn't authorize them to bring a  
17 private lawsuit. I mean, I obviously understand why it's  
18 in the Measure, but I'm not completely sure it's material  
19 in the sort of Title Board sense of material.

20 MR. GELENDER: That is a good point that we  
21 don't typically include in the Title what we -- what's not  
22 happening.

23 MR. DOMENICO: Yeah. And I guess --

24 MR. GELENDER: And this is sort of a  
25 limitation on what is happening, I guess.

1 MR. DOMENICO: Right. I guess if you  
2 didn't have that Section 4, there might be -- I mean,  
3 there might -- it might be more than just confusion. I  
4 mean, this might be actually doing something as in  
5 creating an exemption from sort of existing doctrine about  
6 private rights of action. The consumer protection laws,  
7 for example, allow private enforcement sometimes. And  
8 actually, I'm not sure how that would work with this sort  
9 of provision.

10 But I think my bottom line position, now  
11 that I've thought out loud about it long enough, is that  
12 if the Proponents are comfortable leaving some of this out  
13 at the risk of Mr. Grueskin convincing the Supreme Court  
14 that the Title doesn't have material language, if we're  
15 basically comfortable with it, I would suggest changing  
16 "in connection with" to basically "for failure to conform"  
17 and allow the Proponents to run that risk because I think  
18 that is accurate and covers all the material aspects of  
19 it, even recognizing that Mr. Grueskin's arguments aren't  
20 completely without any merit.

21 MR. GELENDER: For what it's worth, I agree  
22 with that. I'm fine going along with that, and I guess  
23 I'll move it.

24 MS. STAIERT: A failure to conform --

25 MR. DOMENICO: To is -- conform to is

1 probably proper. That's the actual language in the  
2 Measure. So with that language moved, I'll second it.

3 MS. STAIERT: All right. All those in  
4 favor?

5 AUDIENCE SPEAKER: Aye.

6 MR. GELENDER: Moving through the motion,  
7 it seems to me like we dealt with (3) when we agreed to  
8 stick with our original single subject.

9 Same with (4). Those are things to be  
10 considered in the trailer, I suppose.

11 I just remember us talking quite a bit  
12 about the restaurant food last time. I don't really have  
13 much to say to start with on that, I don't think. So if  
14 anyone else does --

15 MR. DOMENICO: Well, as I understand the  
16 motion, it basically is pointing out that in our current  
17 version the certain that comes before that modifies food  
18 online for is a little bit wishy-washy here. It doesn't  
19 convey enough information.

20 We did talk about it quite a bit, but I'm  
21 still confused about what qualifies as restaurant food. I  
22 don't think the motion is quite right that all -- that all  
23 restaurant food necessarily is exempted because the  
24 restaurant food language is a subsection of (q)(V), so  
25 it's got to be food that's not packaged for retail sale

1 and is restaurant food basically. But it may seem -- in  
2 general, it may be worthwhile putting back in something  
3 about -- specific about restaurants.

4 MS. STAIERT: Go ahead.

5 MR. ROGERS: So Madame Chair, we've --  
6 first, the Measure doesn't exclude all restaurant food, as  
7 Mr. Domenico has, I think, pointed out. It includes foods  
8 not packaged for retail sale that then meet the  
9 requirements of (a) or (b).

10 So for instance, I could go into a deli and  
11 buy a Diet Pepsi. That's packaged for retail sale. If  
12 the Diet Pepsi contains genetically modified food, there  
13 needs to be a label on that packaging. So simply saying  
14 excludes all restaurant food would not be accurate.

15 You know, I want to point out that this is  
16 the first of five objections concerning the exclusions.  
17 And as we looked at this, it did occur to us that it may  
18 be appropriate to note something along the lines of this.  
19 You know, the Measure exempts some foods, including among  
20 others, and then continue with the language in the  
21 Measure.

22 The thinking there is that we've hit the  
23 high points. We've hit the exemptions that are going to  
24 be informative to the voters. We have not identified  
25 further exemptions that are really quite technical and

1 would not be meaningful to the voters. But we do have a  
2 certain concern, I suppose, that the current language may  
3 appear to be inclusive, and that is not entirely accurate.

4 MR. DOMENICO: I have a suggestion along  
5 those lines that might allow us to adjust the Title to  
6 reflect some of those concerns and some of the -- those  
7 made in the rehearing, which was essentially to rearrange  
8 things slightly, and one suggestion, and this may not end  
9 up working, but would be to basically move the language  
10 "beginning with certain food through retail sale "to  
11 "after medically prescribed food."

12 And then -- so then I guess it would have  
13 to say -- you would have to move the "and" from before  
14 "medically" to before "certain."

15 And then it would be something like -- then  
16 you would describe the certain -- the "not packaged food"  
17 in a little bit more detail. So it would say something,  
18 like, "including restaurant food," including -- it might  
19 need some tweaking but it seems to at least be a slightly  
20 better format for trying to address some of these issues.

21 MS. STAIERT: Go ahead.

22 MR. ROGERS: Thank you, Madame Chair.

23 You know, as we looked again at (V) in (a)  
24 and (b), we racked our brains to try to determine what  
25 would be a food not packaged for retail sale that doesn't

1 satisfy either (a) or (b). Frankly, we couldn't come up  
2 with anything.

3 (a) and (b) are really kind of belt and  
4 suspender's provisions. There may be an exception or a  
5 food that falls within those categories. Frankly, we just  
6 haven't been able to think -- to come up with what it is.

7 And so for that reason I think identifying  
8 that the exemption is foods not packaged for retail sale  
9 really is sufficient.

10 I would also note that getting down into  
11 (a) and (b), we're really getting down into the level of  
12 detail that is not necessary to communicate accurately,  
13 you know, the key provisions of the Measure to the voter.

14 MS. STAIERT: I think I'm fine with what  
15 Mr. Domenico has suggested in terms of including the  
16 restaurant food, but -- and I also don't really like the  
17 word "certain," but I think we have to have something in  
18 there that essentially tells people you're going to have  
19 to go look at the Measure if you really want the answer.  
20 I mean, there's no way we can put everything in there. It  
21 will be -- it will just add to confusion.

22 MR. GELENDER: I think I kind of like the  
23 concept talked about a little bit before, which you'd just  
24 say something like, "exempting some foods," you know, and  
25 then something like, "included but not limited to" or

1 "including some foods among others." I think -- well,  
2 let's say "exempting some foods including but not limited  
3 to," and then do the "alcohol" and "while medically  
4 prescribed." I don't know if "most" is too strong.  
5 Insert it under "most food that is not packaged for retail  
6 sale." And I think we decided last time it probably  
7 doesn't hurt to list the gum in there just because it's on  
8 the list with other, and I don't know if there's a  
9 distinct reason to exclude it.

10 MR. DOMENICO: Does this give me a chance  
11 to make my joke about the gum lobby?

12 MS. STAIERT: Yeah.

13 MR. DOMENICO: All right. So that's it.  
14 That's my joke, the powerful gum lobby.

15 I mean, the gum one is sort of not -- so we  
16 have to draw a line somewhere, right, about what's  
17 material. The gum one seems immaterial to me because I  
18 can't imagine any voter changing their vote on a measure  
19 like this over whether -- like, literally not even a  
20 single voter. And so if no voter would change their vote  
21 over gum, then it can't be material.

22 So the sort of more complicated exemption  
23 for food derived from an animal, you know, that's not  
24 itself been genetically engineered, that one makes me a  
25 little more nervous that we kind of ignored that one

1 mostly because it was sort of intimidating less than it  
2 was immaterial that we just didn't understand it well  
3 enough and skipped it. That one makes me a little bit  
4 confused, which is I think No. (VI) in the list of  
5 complaints.

6 I mean, are you all comfortable? Do you  
7 understand what that -- like, what falls into that  
8 category, because I don't think I am?

9 MS. STAIERT: No.

10 MR. DOMENICO: Maybe Mr. Rogers can help us  
11 understand 6.

12 MR. ROGERS: Thank you, Madame Chair.

13 First of all, the addition of the  
14 "including but not limited to" language really, I think,  
15 addresses the problem. Now, if you decide this is a major  
16 issue, not a detail, you could include it. We think it's  
17 a detail.

18 So what we're after here, what the  
19 initiative is after, is the regulation of genetically  
20 modified foods. What we're not after, as this exemption  
21 states, is, you know, if you've got a cow that's been fed  
22 genetically modified grain, then the cow itself is not  
23 genetically modified, and thus labeling of the beef or the  
24 milk from that cow is not required.

25 So I think this is something that a voter

1 would certainly not anticipate being labeled. The voter  
2 is going to see that the purpose here is to label foods  
3 that have themselves been genetically modified.

4 MR. DOMENICO: All right. But that only  
5 applies to animals. So if you fertilize your plants or  
6 somehow treat them genetically modified such and such,  
7 that still is not exempt, right?

8 MR. ROGERS: Well, that's addressed in 12.5  
9 (c)(I).

10 MR. DOMENICO: Right. So as long as your  
11 genetically engineered fertilizer is manure, right, you're  
12 okay. Otherwise, if it's some other kind of fertilizer  
13 it's -- I mean, that's the way I read it, and I don't know  
14 enough about fertilizer to know how -- despite spending so  
15 much time in government, I don't know enough about  
16 fertilizer to really know how big a category it is of what  
17 kind of plants are treated with other types of fertilizer  
18 that might be itself genetically modified.

19 MR. ROGERS: Well, so the exception only  
20 applies to animals.

21 MR. DOMENICO: Right.

22 MR. ROGERS: So we're dealing with it as an  
23 exception. I think my explanation covers it.

24 MR. DOMENICO: No, I agree with you --

25 MR. ROGERS: Okay.

1 MR. DOMENICO: -- that it only covers  
2 animals. And then there's another exception for certain  
3 types of fertilizer -- manure.

4 MR. ROGERS: Well, that's back in the  
5 definition.

6 MR. DOMENICO: Or plants, right. So then  
7 it's not genetically engineered. But if you put some  
8 other thing on your corn that is itself genetically  
9 modified, your corn becomes genetically engineered. But  
10 if you feed it to a cow or something, that cow is exempt  
11 under the provision we're talking about here. (VI),  
12 right?

13 MR. ROGERS: Correct.

14 MR. DOMENICO: Okay.

15 MR. GRUESKIN: This is Mark Grueskin.

16 I do think it's important, I mean, not  
17 withstanding my vegetarian friends. I do think that  
18 people who eat meat or cheese or have those sorts of  
19 products deserve to know that if you give a -- if you put  
20 a substance on a plant, it is genetically modified. If  
21 you put that same substance in the mouth of an animal, it  
22 is not genetically modified. And maybe you're not going  
23 to say both but you sure ought to say the latter, that  
24 meat, cheese and dairy products are not going to be  
25 affected by this labeling requirement.

1 MS. STAIERT: Well, they could be affected  
2 if -- I mean, if the growth hormones are -- I mean, milk  
3 is already labeled that way. So it's labeled in the  
4 reverse. It's never labeled this has GMOs, but it's  
5 labeled this does not. So there has to be --

6 MR. DOMENICO: The market.

7 MS. STAIERT: Yeah, but there has to be --  
8 I guess I'm saying there has to be some effect. I mean,  
9 milk is obviously -- it must be capable of being  
10 genetically engineered, right? I mean, I don't know.  
11 Mr. Rogers, I mean, you certainly see it on the dairy  
12 products everywhere, so how does that -- I mean, what are  
13 they talking about when they say grown hormone?

14 MR. ROGERS: I went to law school, not  
15 biology school, so I --

16 MS. STAIERT: I didn't either.

17 MR. ROGERS: Well, I think --

18 MS. STAIERT: I just know my daughter makes  
19 me buy that, so there must be some reason for it.

20 MR. ROGERS: I think there's a difference  
21 between milk produced from a cow that has been given  
22 hormones --

23 MS. STAIERT: Right.

24 MR. ROGERS: -- and milk from a genetically  
25 modified cow.

1 MS. STAIERT: Okay. Can you genetically  
2 modify a cow?

DATE FILED: February 6, 2014 5:16 PM

3 MR. ROGERS: Sure you can.

4 MS. STAIERT: You can. Okay.

5 MR. DOMENICO: Well, if you cross cows with  
6 different breeds or something?

7 MR. ROGERS: No, that would not be -- I  
8 mean, that's clearly exempted.

9 MS. STAIERT: Oh, okay. I'm good.

10 MR. ROGERS: I mean, I could read you  
11 the --

12 MR. DOMENICO: Well, it requires direct  
13 injection, right, of nucleic acid?

14 MR. ROGERS: No. My understanding is that  
15 in vitro and in vivo nucleic acid techniques, including  
16 recombinant deoxyribonucleic acid techniques and the  
17 direct injection of nucleic acid into cells or organelles  
18 is not equivalent to giving a cow a hormone. My  
19 understanding. So I think we're talking about apples and  
20 oranges when we get into hormones given to an animal.

21 MR. DOMENICO: No, that's the way I read it  
22 too. My understanding.

23 MR. GRUESKIN: Paragraph (q) (VI) exempts  
24 animals that are fed or injected with any food produced  
25 with genetic engineering or any drug, so it's if they've

1 been injected with any drug that's been produced through  
2 means of genetic engineering.

3 I would think that the voters might want to  
4 know that cows or sheep or other animals that are so  
5 treated are not subject to this measure. That's all I'm  
6 saying.

7 MS. STAIERT: Jason, do you want to --

8 MR. GELENDER: I really don't know what to  
9 do with this. I'm not entirely sure that this Roman  
10 numeral VI, you know, with this exemption is even  
11 consistent with 12.5 (c)(I) because it seems like (VI)  
12 says, okay, if the animal hasn't been genetically  
13 engineered, even if it's been injected with something  
14 that's been genetically engineered, it's not subject to  
15 the requirement. But then (c)(I) says the food is  
16 otherwise considered genetically engineered if the  
17 organism has been treated with a genetically engineered  
18 material.

19 So I don't -- I mean, I guess maybe you  
20 say, you know, the specific in (VI) outweighs the general  
21 or something, but I'm concerned that this particular  
22 provision is maybe not sort of subject to being understood  
23 by us, which I think the discussion is sort of shelling.  
24 And then maybe it's best left to the Blue Book and covered  
25 for purposes of the Title with the including but not

1 limited to.

2 MR. DOMENICO: Yeah, frankly -- or to me,  
3 the exemption in (VI) is necessary. But the surprising  
4 part to me, I think, is the breadth of the definition in  
5 (c)(I), that it's not so much that it's surprising to me  
6 that -- you know, I would think, all right, so genetically  
7 modified beef, a mutant cow beef would have to be labeled,  
8 but not necessarily regular cows that are fed with mutant  
9 corn, which is -- so the exemption sets it up the way I  
10 would kind of think of it.

11 But now, the fact if I have kind of -- some  
12 kind of corn that's not itself genetically modified but I  
13 fertilize it with some something that is, that's what's a  
14 little bit the breadth of -- (c)(I) is the surprising part  
15 to me. It's not the exemption in (VI) that I find sort  
16 of --

17 MR. GELENDER: If I can jump in. I mean,  
18 to me, what it's saying in reading (VI) with (c)(I), I'm  
19 not entirely sure that (VI) actually applies to anything  
20 in the real world.

21 MR. DOMENICO: That (VI) doesn't?

22 MR. GELENDER: Yeah.

23 MR. DOMENICO: Well, I would think it does  
24 because (c)(I) would say if you feed or if you treat your  
25 animal with something that's been genetically engineered,

1 a hormone or something else, then it would be genetically  
2 engineered under (c)(I). But (VI) says it's not covered.  
3 But if it's not animal food under (VI), it would be  
4 covered.

5 MR. GELENDER: Right. But see what I'm  
6 saying is I think (c)(I) says that if it's had that feed,  
7 then it's been genetically engineered. So under (VI), it  
8 falls under an -- it's not an animal if it's not itself  
9 been genetically engineered.

10 See, I guess where I'm going with it is if  
11 because of inconsistency, intentional or not, in the  
12 Measure (VI) doesn't actually cover anything. Then we  
13 don't need to talk about it in the Title.

14 MS. STAIERT: Well, my concern is that if  
15 we put anything down, I think there's a decent chance it's  
16 going to be misleading because we don't know what that  
17 means. And I don't want to put something in the Measure  
18 that we try to hash out amongst, you know, eight lawyers  
19 who don't know anything about genetic engineering.

20 So, I mean, Mr. Rogers, if you want to -- I  
21 mean, I'm just trying to balance between putting things in  
22 the Measure that are relevant to the voters versus putting  
23 something in that's going to be misleading.

24 MR. ROGERS: I couldn't agree more. I  
25 mean, the addition of some foods included but not limited

1 to, I think, really is a cue to the voter, that if they  
2 happen to have a degree in biology, they need to go read  
3 the measure and get that into the weeds.

4 But for the average voter, we have -- I  
5 think you have adequately identified the exclusion and you  
6 signal to the voter that there is more technical  
7 information about exclusions to be found.

8 MR. DOMENICO: Well, I think I understand  
9 how it's supposed to work. Basically, I don't understand  
10 obviously how often something would fall within (c)(I) and  
11 then, you know, a plant or some sort of food that would  
12 fall under (c)(I). That I don't understand.

13 But the fact that, as Mr. Grueskin points  
14 out, food that's been injected or fed with modified --  
15 genetically modified food that are not themselves covered  
16 seems clear enough from the Measure.

17 I mean, I think I understand Mr. Gelender's  
18 point, but I find it highly unlikely it would be  
19 interpreted that way.

20 So to me, it's not so much I don't  
21 understand, it's whether it's material that there's that  
22 exemption in (VI) that we should describe.

23 MS. STAIERT: Then I guess I would lean  
24 back towards not putting things in that are not part of --  
25 I mean, again, it's back to no private right of action,

1 what it doesn't do as opposed to what it does do.

2 MR. DOMENICO: Well, right. But I guess  
3 the contrary argument is there's probably -- and I don't  
4 know, maybe I need to go back home to Boulder for a little  
5 while and meet with my people to figure this out. But it  
6 seems to me there's probably a larger universe of people  
7 who would be concerned about the food that cows and  
8 chickens and things that have been fed or injected with  
9 genetically modified treatments than there is about people  
10 that are all that concerned about genetically modified  
11 bourbon or beer, to be honest with you.

12 So we've got alcoholic beverages, animal  
13 food, medically prescribed food, but not, you know,  
14 whether your beef is injected. That, to me, seems maybe  
15 not to match up with what voters might actually be  
16 concerned about.

17 MS. STAIERT: And in Mr. Grueskin's -- how  
18 did he word it? Is that the meat, cheese and dairy  
19 products that were derived from animals given feed  
20 injections or drugs? Would that -- that would be the  
21 language?

22 MR. GRUESKIN: You've got it.

23 MS. STAIERT: Okay. Mr. Rogers, do you  
24 think there's anything misleading or inaccurate about that  
25 statement in Mr. Grueskin's proposal, because that's

1 really my primary concern. Sure.

2 MR. ROGERS: As you've heard, our  
3 preference will be not to go down this road. If we're  
4 going to go down this road, it seems that we are just  
5 making stuff up when we talk about meat, cheese, dairy  
6 products, et cetera. We should probably default to the  
7 language of the initiative, which would be, you know, some  
8 selection of words from (VI), "an animal, not itself  
9 genetically engineered that are injected with a food  
10 produced with genetic engineering, or a drug that's been  
11 produced through means of genetic engineering."

12 MS. STAIERT: So that would be something  
13 like an animal that is not itself genetically engineered  
14 but is given feed injections or drugs produced with  
15 genetic engineering? I mean, would that kind of be the  
16 hybrid? It's sort of what it seems to me it would be.

17 MR. GRUESKIN: I differ with Mr. Rogers.  
18 I'd be careful about getting trapped into the lingo that  
19 he's built into Paragraph (VI). To go back up to -- you  
20 know, it's food consisting of. So the truth is, if you're  
21 not comfortable with -- and I can't imagine a food other  
22 than meat, cheese and a dairy product that would be  
23 involved, but it would be any food that was derived from  
24 animals given feed injections or drugs produced with  
25 genetic engineering.

1 MS. STAIERT: I mean, you could just say  
2 meat and dairy products. Isn't cheese a dairy product? I  
3 thought it was.

4 MR. GRUESKIN: Yeah, probably is. Probably  
5 is.

6 MS. STAIERT: I need to watch Food, Inc., I  
7 guess.

8 MR. DOMENICO: Some people consider meat to  
9 be a narrower category, I think. I would say food.

10 MS. STAIERT: Food. Well, I think you have  
11 to say the animal. I mean --

12 MR. DOMENICO: Right. Food derived from  
13 animals.

14 MS. STAIERT: From an animal that is not  
15 itself genetically engineered?

16 So Steven, that would be foods derived from  
17 animals -- "from an animal that is not itself genetically  
18 engineered but what has been given feed injection or drugs  
19 produced with genetic engineering;" is that where we're --  
20 or you've got something else?

21 MR. GELENDER: Yeah, I think so.

22 MS. STAIERT: Okay. You go from there or  
23 however you want to do -- have it read.

24 MR. GELENDER: I would just say -- except  
25 foods, I'd just say "food." I don't even know if you need

1 a "derived," I'd just say "from."

2 MS. STAIERT: No from, right.

3 MR. GELENDER: And actually it should say  
4 "food from animals that are not genetically engineered" --  
5 plural in general -- "but have been fed or treated with  
6 genetically engineered food or drugs."

7 MS. STAIERT: Okay.

8 MR. GELENDER: And I think -- on the last  
9 one. I'm sorry.

10 MS. STAIERT: Go ahead. Mr. Grueskin, you  
11 can go ahead. No?

12 MR. GRUESKIN: I'll hold.

13 MR. GELENDER: On the last clause with the  
14 retail sale, I don't know that the average voter cares  
15 about retail sale. I think I'd say just "most unpackaged  
16 processed and restaurant food."

17 MS. STAIERT: What's unpack it? Oh. If  
18 you get it out of the salad bar, is that sufficient enough  
19 for people to understand it's not packaged, because I  
20 think last time we heard if you get it out of the -- you  
21 make it yourself, basically it's a whole food salad bar,  
22 it's not packaged.

23 MR. GELENDER: And I have "the most" in  
24 there to sort of -- because I think most covers -- I think  
25 it does cover "most."

1 MS. STAIERT: Oh, okay. Do you have a  
2 comment? Oh, okay. Go ahead.

3 AUDIENCE SPEAKER: I'm Dan Volkosh, I work  
4 here.

5 MS. STAIERT: And have you seen Food, Inc.?  
6 Are you going to help us out?

7 AUDIENCE SPEAKER: No, I was in Future  
8 Farmers of America.

9 Just for the sake of being succinct, you  
10 could just say "a non-engineered animal" because I'm just  
11 worried that voters could get lost in what we just added.

12 MS. STAIERT: A non-engineered. Well,  
13 we've got to use genetically engineered, I think, to be  
14 consistent.

15 AUDIENCE SPEAKER: Yeah, true. But just --  
16 that was just my concern, that's all.

17 MR. GRUESKIN: The only thing I would say  
18 is that line 6 where it says "that have been fed or  
19 treated with genetically fed." What the Measure actually  
20 says "is fed or injected with any food or drugs." So I  
21 think the treatment refers back to that general definition  
22 someplace in the Measure, but that's what (VI) actually  
23 talks about.

24 MS. STAIERT: Okay. All right.

25 MR. DOMENICO: So if you rub your cow with

1 genetically engineered, your co-baby -- when you're  
2 massaging your co-baby, if your massage is genetically  
3 engineered, you would be -- you would not be exempt; is  
4 that right? I'm okay with that.

5 MS. STAIERT: All right. Did you want to  
6 make a motion?

7 MR. GELENDER: Sure. I guess I move that  
8 we adopt the language we've just changed in the last 20  
9 minutes or so.

10 Second anyone?

11 MS. STAIERT: I don't know. Let's wait a  
12 minute.

13 Mr. Rogers, you want to opine on this?

14 MR. ROGERS: Well, just on preference --  
15 the express preference for "treated" as opposed to "fed or  
16 injected." It's fewer words.

17 MS. STAIERT: Is feeding treating?

18 MR. ROGERS: Sure.

19 MR. DOMENICO: Given genetically engineered  
20 food or drugs.

21 MS. STAIERT: Okay.

22 MR. ROGERS: Yeah.

23 MS. STAIERT: Mr. Grueskin, do you have a  
24 counterpoint?

25 MR. GRUESKIN: Well, I'd suggest that given

1 -- I mean, to use Mr. Domenico's analysis of a cow  
2 masseuse, I mean, you know, you could make a gift to an  
3 animal. But the point of the Measure is that it's been  
4 ingested or it's been made part of the, and therefore,  
5 given genetically engineered food or drugs doesn't mean  
6 that those drugs or food have to end up in the organism.

7 MR. DOMENICO: You're saying that you can  
8 lead a horse to water but you can't make it drink?

9 MR. GRUESKIN: To certain water, but not  
10 others.

11 The other thing I'd say is that I think a  
12 really good point was made, although I think it was  
13 Mr. Domenico mentioned beer, bourbon might not -- beer or  
14 bourbon may not be an issue for a lot of voters, I think  
15 the phrase that you're working on right now takes  
16 precedence over alcoholic beverages, animal food and  
17 medically prescribed food.

18 That's -- we're now talking about a  
19 category of food that most voters will actually encounter  
20 and will encounter on a personal basis for themselves,  
21 assuming that they eat, and for their families and their  
22 loved ones, assuming that they buy food. And, therefore,  
23 it seems to me to lead with what are basically marginal  
24 exceptions, like animal food and booze, is not as relevant  
25 to the voter as things that they are actually going to

1 eat.

2 So I would suggest both a placement and  
3 wording revision from what's currently on the screen.

4 MS. STAIERT: I think we did that just as a  
5 way to be able to say "some foods" before without saying  
6 some foods and then having it be from animals that are --  
7 I mean, that one is not "some" -- not in the category of  
8 "some." But anyway, Mr. Rogers.

9 MR. ROGERS: I just want to point out that  
10 you have used genetically modified throughout with the  
11 exception of the required languages produced in genetic  
12 engineering. And so in this section shouldn't we change  
13 "engineered" to "modified" in this --

14 MS. STAIERT: Yeah, I think we should be  
15 consistent.

16 Well, go ahead.

17 MR. GELENDER: The engineering tracks  
18 language of the Measure. They're an inner defined term.

19 MR. ROGERS: They're defined to mean the  
20 same in the Measure but, you know, for the sake of  
21 consistency.

22 MS. STAIERT: We could use "engineered"  
23 everywhere if you want to do that.

24 MR. GRUESKIN: Well, the drafters have  
25 crafted the Measure, things are either genetically

1 modified or produced with genetically -- from genetic  
2 engineering. And this is a provision that talks about  
3 food that was produced with genetic engineering.

4 So I'm all for consistency and clarity but  
5 I'm not -- you know, presumably the phrase "produced from  
6 genetically -- from genetic engineering" had a purpose,  
7 otherwise, why didn't they just use genetically modified  
8 throughout?

9 And frankly, I think this comes back to  
10 some of the comments that I've made. This may be one of  
11 those issues that you resolve at the end of the ballot  
12 title setting process rather than figuring out in the  
13 middle.

14 If you indicate that there are definitions,  
15 if you strike that reference, as we've suggested to the  
16 word "labeling," I think this becomes a lot easier.

17 MR. DOMENICO: That does raise one issue  
18 that I was not sure when to discuss, but the label -- I'm  
19 not sure whether to take out the language of the label  
20 itself. But that little phrase there doesn't really say  
21 what that label has to appear on, it just says "requiring  
22 that the words appear on the label" but doesn't say on  
23 what.

24 And Mr. Grueskin's point is correct, that  
25 other than this exception that we've been dealing with

1 right now, the Measure applies not just to genetically  
2 modified food but food produced with genetically modified  
3 or engineered food. That's what (c)(I) does. And --  
4 well, (c)(I) and (II).

5 So it might make sense to say requiring  
6 that the words -- that might be a place to insert that  
7 notion, requiring that the words "produced with genetic  
8 engineering" appear, et cetera, on the label of any food  
9 that is genetically engineered or that's produced or has  
10 been treated with a genetically engineered material.

11 MR. GELENDER: Well, if you're going to go  
12 in that direction, then I think that would go. And I  
13 believe Mr. Grueskin had this in his proposed title. I  
14 think I'll keep it simpler and just say, you know,  
15 "genetically engineered as defined in the Measure," which  
16 then incorporates the -- gives people notice to go look at  
17 the text if they really want to know what it is.

18 MS. STAIERT: And I think that could go  
19 back to Mr. Grueskin's point, and maybe that gets swept in  
20 at the end when we get to the provision about whether  
21 we're going to say, as defined in the Measure, "adding  
22 definitions."

23 MR. DOMENICO: Well, that still doesn't  
24 quite resolve the issue because -- I mean, the point that  
25 I made earlier is that (c), to me, is kind of what makes

1 (VI) necessary and creates a little bit of the confusion,  
2 which is that it's not just if your food is itself  
3 genetically engineered as defined in the Measure.

4 If it's treated or contains a component  
5 that is itself genetically engineered -- so your fruit  
6 somehow has got a preservative on it or whatever, the wax  
7 that they put on apples that you're supposed to wash off,  
8 that itself is genetically engineered, would, under my  
9 reading of this, require a label on the apple.

10 MR. GELENDER: Right. But keep in mind  
11 that that (c)(I) is incorporated into the definition of  
12 genetically engineered under 12.5. It's part of that  
13 definition.

14 MR. DOMENICO: Right. But, I mean, that's  
15 lawyer talk. That's not -- I mean, the point is here to  
16 explain to a voter what they're voting on, which I liked  
17 Mr. Grueskin's idea -- I think it was, or maybe it was --  
18 no, it was Mr. Rogers' -- that we should actually just put  
19 the entire measure on the ballot -- and we could all go  
20 home is actually my proposal for the whole title process  
21 would be improved.

22 But to me, I think if we're going to try to  
23 just give a summary, it's important that you can have a  
24 nice, unengineered product. But if it's been fertilized  
25 with something or treated with something, that itself fits

1 the definition, then you're applying it to that except for  
2 animal -- the animal exception.

3 MR. GELENDER: To me -- I mean, I'll just  
4 have a difference of opinion on that, I think. I mean,  
5 maybe you can come up with language that's, you know, in  
6 fact that's reasonably brief and gets that across.

7 To me, I think giving the voters notice  
8 that, you know, the definition in the Measure that -- that  
9 there's a definition of genetically engineered in the  
10 Measure that they should look at. And when they get a  
11 Blue Book, the Blue Book is going to describe what you're  
12 talking about, and they have a lot more space to do it,  
13 and it's not a single sentence that, you know, is already  
14 getting a little bit on the long side, so it's just the  
15 principle of --

16 MR. DOMENICO: Well, I'd be willing to do  
17 that but then I don't understand why wouldn't we then say,  
18 all right, so requiring labeling of genetically modified  
19 food as defined in the Measure with a bunch of exceptions  
20 that are listed in the Measure and some administrative  
21 provisions that are listed in the Measure.

22 I mean, I would probably actually would be  
23 okay with that. But, you know, the definition is at least  
24 as important to me as what's carved out as the definition.  
25 And if we're just going to refer people to the Measure,

1 then fine. But by doing that with one thing and not  
2 others, you're, to me, telling them the definition is kind  
3 of not really -- unless you're really concerned about it,  
4 but here are some things we think really are important,  
5 like that it doesn't cover alcohol.

6 MR. GELENDER: Let me make a -- throw out a  
7 suggestion at least. Part of my difficulties I haven't  
8 seen sort of how you would do it. But if we said  
9 something like in the single subject "concerning labeling  
10 of genetically modified food including," and then however  
11 you want to phrase, if you would -- you know, the not  
12 itself genetically engineered but it's, you know, the  
13 (c)(I) language. If we can find a succinct and  
14 non-misleading way to do that, I think that's one approach  
15 that could work.

16 MS. STAIERT: I mean, I think we could also  
17 just take out -- I mean, our first part could start  
18 with -- rather than the part about the label, I think we  
19 need to bring up the genetic engineering, but maybe it  
20 should be in the context of requiring labels for  
21 genetically engineered food defined as X.

22 MR. DOMENICO: Well, I don't -- I mean, the  
23 definition though -- the complicated part of definition is  
24 not -- of the definition isn't really (c), it's (a) and  
25 (b).

1           (c) just kind of extends that definition to  
2 sort of the input stage, and I think all you'd have to say  
3 -- I wouldn't want to put it in the statement of the  
4 single subject, I don't think.

5           I'm not sure I have a strong feeling about  
6 leaving in or taking out the actual language of the label.  
7 But either way you could say requiring that -- I mean, if  
8 you're going to take it out you could say requiring that  
9 genetically modified foods or foods that have been treated  
10 or contained a component that is genetically engineered  
11 can be labeled as genetic, or however you want to say it.  
12 That's all you would have to add, in my opinion, to talk  
13 about that extra step.

14           And then, yeah, if you want to find out  
15 about what sort of DNA techniques are covered and which  
16 aren't, you've got to look at the Measure.

17           But the important thing to me is that even  
18 if you know that, this takes it one step beyond what kind  
19 of just saying genetically modified food would trigger, in  
20 my mind at least.

21           MR. ROGERS: So two points: First, in  
22 common parlance, genetically modified in the proponents'  
23 experience is a much more commonly used term than  
24 genetically engineered. We have made those equivalent  
25 terms in the Measure to avoid creating a loophole,

1 something that is genetically modified, not genetically  
2 engineered but certainly the appropriate language to  
3 communicate accurately to the voters what we're doing is  
4 genetically modified throughout.

5 The second point is, when you leave the  
6 definition the way to kind of sum it up is if you might  
7 put something genetically modified in your mouth, it's  
8 defined as genetically modified food. So that includes  
9 food that's actually been genetically modified, it  
10 includes food treated with genetically modified treatment,  
11 it includes foods that contain an ingredient component or  
12 other article that's genetically engineered.

13 So I don't think it's terribly difficult to  
14 understand what we're getting out there. If you might put  
15 something that's genetically modified in your mouth,  
16 that's included in the definition.

17 I think that's pretty clearly communicated  
18 to the voters when you say this is a measure about the  
19 labeling of genetically modified food. I don't think you  
20 have to go much farther than that.

21 MS. STAIERT: So if that's the common use  
22 then why do you have the label say genetic engineering?

23 MR. ROGERS: Because this is a clearer way  
24 to state that on the label. If we were to use genetically  
25 modified then we would have to say is or includes or has

1 been treated with genetically modified food. Produced  
2 with genetic engineering is a way to boil that label down  
3 to four words. Frankly, we couldn't come up with a way to  
4 do that by using the term "genetically modified."

5 MS. STAIERT: Do you have a suggestion or  
6 do you want to take a break?

7 MR. DOMENICO: There's sort of one big  
8 exception that I see is -- or that the kind of category  
9 that shows where the type of concern I have about just  
10 kind of leading it is fertilizer or that sort of thing,  
11 say out of an orchard or something that really would sort  
12 of be very indirect how the genetically modified  
13 non-manure fertilizer might get into your mouth.

14 So that's kind of why I would suggest  
15 including the treated language that's especially in  
16 (c)(I). (c)(II) is a little bit more straightforward  
17 obviously, an ingredient or component.

18 So maybe we need to first deal with whether  
19 to have the label in the Title because I think it would --  
20 it affects how you would write the language. But, you  
21 know, I would probably leave it, but I'm willing to  
22 consider taking it out.

23 MS. STAIERT: Well, I think if the motion  
24 asks that it be taken out unless the Proponent wants it  
25 in, the easier thing is just take it out and then write

1 something.

2 Does the Proponent have any feelings about  
3 that particular labeling requirement being in the Measure?

4 MR. ROGERS: Well, frankly, we thought it  
5 was the simplest way to convey the requirements of the  
6 Measure. Give me one second. I'm sorry.

7 MS. STAIERT: That's all right.

8 MR. DOMENICO: I have to say I don't quite  
9 understand what you would do otherwise.

10 MR. ROGERS: Right.

11 MR. GELENDER: And I'll weigh in and also  
12 say that I think from the notice with respect to the  
13 public, from the voter voting on this, and when I have the  
14 exact words, I'm like, okay, if I vote for this when I go  
15 to the store, I will see these words on something if it's  
16 been genetically modified. I think it's very useful from  
17 a voter perspective.

18 MR. DOMENICO: Right. So my suggestion  
19 would be to leave it. And then to deal with my concern,  
20 if you left it, all you'd have to do is -- after on the  
21 label on line 3, it would just simply have to say  
22 something like: On the label of food that has been  
23 genetically modified or treated with genetically modified  
24 or engineered material.

25 MS. STAIERT: Yeah, I like that.

1 MR. GRUESKIN: A break might not be a bad  
2 idea.

3 Let me just say this: The fact that  
4 Proponents needed to come up with a forward label is  
5 interesting. I don't really get why. But they have used  
6 a phrase that basically skews the entire title because we  
7 are including it.

8 You've seen the subject statement says,  
9 "Labeling of genetically modified food." If you were  
10 right when you decided to leave it at that language then  
11 no one is going to wonder whether or not genetically  
12 modified food will have the label on it that indicates  
13 that. And if you do think that's a problem then maybe  
14 that's not the best phrase to use.

15 I would just remind you that the phrase  
16 that's been added doesn't include the fact that you have,  
17 you know, feed and injections, and I don't know if the  
18 treatment is broad enough necessarily. But the Title has  
19 been made longer by a couple dozen words because of the  
20 need to describe and then qualify and then define the  
21 words on the label.

22 If people are being told by the Title that  
23 they will have notice, why use basically two-plus lines to  
24 tell them what that notice is. And if you're not  
25 otherwise communicating that they're going to have notice,

1 then maybe we ought to just toy with the single subject  
2 statement and cut the Title by two lines. [DATE FILED: February 6, 2014 5:16 PM](#)

3 MR. GELENDER: Can I shorten it with --  
4 while conveying the same information or make a proposal to  
5 do so?

6 MS. STAIERT: Sure.

7 MR. GELENDER: Okay. Have the trailer be  
8 requiring food that has been genetically modified or  
9 treated with genetically modified material to be labeled  
10 as, quote, produces genetic engineering. And I guess you  
11 could say labeled or identified if you want to get into  
12 the bins and the raw foods. But I don't know that that's  
13 necessary.

14 MR. DOMENICO: I'm not sure about with but  
15 the rest of that makes sense.

16 MR. GELENDER: Yeah.

17 MS. STAIERT: That may not -- do you all  
18 mind taking a 5-minute break? Okay. Let's take a  
19 5-minute break and you can stare at it.

20 (A break was taken from 11:37 a.m. to 11:49  
21 a.m.)

22 MS. STAIERT: All right. We're back on the  
23 record. And I think Jason has had an epiphany. No.  
24 Putting all the pressure on you.

25 All right. So just to kind of bring us

1 back up to speed, what we had just done was change the  
2 sort of language right after "in connection therewith."  
3 And so it now reads, "A change to the Colorado Revised  
4 Statutes concerning labeling of genetically modified food  
5 and in connection therewith requiring a food that has been  
6 genetically modified or treated with genetically modified  
7 material to be labeled produced with genetic engineering."

8 How's everybody on that wording?

9 MR. DOMENICO: Well, since I suggested it,  
10 I think it's just absolutely flawless.

11 MS. STAIERT: It's brilliant. Yeah.

12 MR. GELENDER: Second that motion.

13 MS. STAIERT: All right. Then you want to  
14 move to the next point in the motion?

15 MR. DOMENICO: Sure. Well, we've sort of  
16 been -- well, where are we?

17 MS. STAIERT: Oh, go ahead.

18 MR. ROGERS: Before we move on, there are a  
19 couple of lingering items from the first discussion.

20 First, the use of the different terms,  
21 "genetically engineered" and "genetically modified." So I  
22 would just renew Proponents' request that we replace on  
23 lines -- I guess they're both on line 7 now --  
24 "genetically engineered" to "modified."

25 And then second, the language on lines 7

1 and 8 changing from "package for retail sale" to "most  
2 unpackaged process in restaurant foods" is giving us some  
3 heartburn.

4           You know, we've now moved away from the  
5 language of the initiative, which is "food not packaged  
6 for retail sale" to some words that I think creates  
7 confusion and some ambiguity in the Title. And I bring  
8 that up now because I don't think we really ever had a  
9 discussion. I think that language kind of got thrown up  
10 there and then we didn't really get into it.

11           MR. DOMENICO: Yeah, I think that's a good  
12 point actually on the latter, but I wasn't quite sure it  
13 was worth the potential confusion to mess around with the  
14 not packaged for retail sale. And I've been trying to  
15 picture -- you know, there are foods that are packaged for  
16 wholesale distribution and other things like, and I just  
17 think that we may be overstepping the Measure. And while  
18 it's not very elegant, you know, it's just got going to be  
19 very elegant whatever we do. So I would probably have  
20 gone back on that.

21           The modified engineered I'm fine with  
22 either way.

23           MS. STAIERT: So you would change what?

24           MR. DOMENICO: I think what we're talking  
25 about would be to -- now I'm not sure exactly where it

1 went -- where most unpackaged processed restaurant food to  
2 be back to --

3 MR. GELENDER: Food that is not packaged  
4 for retail sale.

5 MS. STAIERT: Food that is not packaged for  
6 retail sale?

7 MR. DOMENICO: Yeah.

8 MS. STAIERT: Okay. And leave out  
9 restaurant or put in restaurant?

10 MR. DOMENICO: Well, I'm trying to remember  
11 exactly what it said before, but I think it said -- so and  
12 move "and certain food that's not packaged for retail  
13 sale, including restaurant food."

14 Mr. Grueskin also had one other suggestion  
15 while we're down there, but you can decide whether that --  
16 whether we should go back to that first. I think that's  
17 better.

18 MS. STAIERT: Jason?

19 MR. GELENDER: No, I'm fine with it. I  
20 don't know if the restaurant food part is necessary but  
21 I'm not going to object to it.

22 MS. STAIERT: I'd just as soon leave it in,  
23 I think.

24 MR. DOMENICO: I would leave it in.

25 MS. STAIERT: Okay. All right. So what

1 was the other?

2 MR. DOMENICO: Well, the other suggestion  
3 was the clause before that, that food from animals  
4 language, the suggestion was that that should sort of be  
5 the first exemption listed, come before alcoholic  
6 beverages, I guess. Although that starts -- it's funny  
7 that you've been giving your animals alcoholic beverages,  
8 which gets us back to -- so I'm not sure that that quite  
9 works. Maybe we should just move it back in the order as  
10 can be useful, but I don't think it's kind of a -- I'm not  
11 sure it fixes it or not.

12 MS. STAIERT: Yeah.

13 MR. GRUESKIN: Let me suggest what maybe  
14 needs to be fixed, which is just to take "alcoholic  
15 beverages, animal food and medically prescribed food" and  
16 put them at the end because that way you've got food from  
17 animals, you've got the not packaged for retail sale food  
18 and then you've got the other three, "alcoholic beverages,  
19 animal food and medically prescribed food."

20 MS. STAIERT: Put that up first, you mean?

21 MR. GRUESKIN: Yeah, put that up after 2 on  
22 line 6. And then you'd take out the "and" after "drugs"  
23 on line 7 -- there you go before "certain" -- and  
24 reinstate "and" before "medically prescribed food."

25 MS. STAIERT: I'm fine with that.

1 MR. GELENDER: Works for me.

2 MR. DOMENICO: I think it works for me,  
3 although my only concern I wanted to just suggest is, does  
4 it read as if the phrase "certain food that's not packaged  
5 for retail sale includes alcoholic beverages, animal food  
6 and medically prescribed food," in which case I'm  
7 wondering if this is one where we might be required to do,  
8 you know, (a, (b, (c), or (I), you know, little  
9 parentheticals. So it would say "exempting (I)" -- or  
10 "exempting some foods, including but not limited to (1),  
11 food; (2), certain food that's not packaged for retail  
12 sale; (3), alcoholic beverages; (4), animal food; (5),  
13 medically prescribed food." I'm not sure it's necessary,  
14 but it did strike me that there was possibly some --

15 MR. GELENDER: Instead of doing that, can't  
16 we just do "certain food, including restaurant food that  
17 is not packaged for retail sale," then do the commas for  
18 the last three?

19 MR. DOMENICO: Isn't that what we just had?

20 MR. GELENDER: Well, we have the sale. I  
21 mean, I --

22 MR. DOMENICO: Oh, I see what you're  
23 saying.

24 MR. ROGERS: If I could, I think (V) is  
25 broader than restaurant food, so you're really making it

1 narrower than it is, that exception.

2 As an alternative, you could make  
3 restaurant food -- instead of saying including restaurant  
4 food you could just make that another item on the list,  
5 which I think would clarify the language and albeit the  
6 numbers.

7 MR. DOMENICO: I mean, I do not like the  
8 numbers, but --

9 MR. GELENDER: I mean, if we just -- I  
10 don't think we need the numbers if we just move that  
11 restaurant food to including the restaurant for like I  
12 have it because then alcoholic beverages comes after sale.  
13 I don't think it's as confusing, or confusing at all,  
14 because I don't think we should list restaurant food as a  
15 separate item because what could be wrong. And I don't  
16 know if -- like, I'm thinking of like a take-and-bake  
17 pizza place that might be considered a restaurant but it  
18 packages up. I guess maybe those aren't for media  
19 consumption, but I'm just not sure that every single  
20 restaurant food is exempted.

21 MR. ROGERS: No, I think it's actually  
22 broader than that, so -- there are two parts of (V).  
23 (V) is any food not packaged for retail sale and that  
24 either is a processed food prepared and intended for  
25 immediate human consumption, or in the shorthand,

1 restaurant food.

2                   So what you're leaving out with that  
3 language would be the potato salad that you get at Whole  
4 Foods or the cookie that you buy at Mrs. Fields, both  
5 clearly not restaurants but both of those foods are  
6 clearly exempted.

7                   MR. GELENDER: Right. But we're not  
8 limited to certain food, we're just specifying one of the  
9 things that's part of it, because for whatever reason we  
10 think that's some sort of a major category.

11                   MR. DOMENICO: What if instead of all that  
12 it just said -- what I think both parts of (V)(a) and (b)  
13 have in common is that they're food that's intended for  
14 immediate human consumption. And so if it said "certain  
15 food that is intended for immediate human consumption."  
16 And then you could -- "and is not packaged for retail  
17 sale." Then you don't have the restaurant language, but  
18 that pretty clearly includes restaurants. That's why you  
19 go to a restaurant.

20                   MR. ROGERS: I think if you take "intended  
21 for immediate human consumption" out of the context of not  
22 packaged for retail sale, it really kind of loses its  
23 meaning.

24                   So for instance, when I go to the 7-Eleven  
25 and buy a Hostess Fruit Pie, that's pretty clearly

1 intended for immediate consumption.

2 MR. DOMENICO: Yeah, you probably need to  
3 keep the "not packaged" language in there, and maybe it  
4 would be better if that part came first. "Certain food  
5 that is not packaged for retail sale and is intended for  
6 immediate human consumption."

7 MR. ROGERS: Yeah.

8 MS. STAIERT: Go ahead.

9 MR. GRUESKIN: The good news is I'm not  
10 going to weigh in on anything of substance. I would note  
11 though that this phrase, "continues to use genetically  
12 engineered," when I thought we defaulted to "genetically  
13 modified," it's just -- I know the Measure is written in  
14 this way, but it's confusing, I think.

15 MR. GELENDER: And since the definitions  
16 are synonymous for the terms of the Measure, I think  
17 changing it to genetically modified in both those places  
18 makes a lot of sense.

19 MS. STAIERT: Yeah, I do too.

20 MR. DOMENICO: I think that's pretty good,  
21 and actually it solves a lot of -- or resolves a number of  
22 the items in the motion. So if we can get an agreement on  
23 this we maybe can move pretty quickly through the last  
24 few.

25 MR. GRUESKIN: Could I just quickly raise

1 because I know that the Board ruled on it, the use of  
2 "given" rather than the Initiatives use of "fed or  
3 injected"?

4 MR. GELENDER: Where is it?

5 MS. STAIERT: Yeah, it's like the sixth  
6 line down, "not genetically modified but have been given."  
7 I don't have a problem with "fed or injected."

8 MR. DOMENICO: I think it's slightly better  
9 with the "fed or injected" or "possibly treated," but --

10 MS. STAIERT: Right.

11 MR. DOMENICO: "Fed or injected" is the  
12 closest match to the Measure, I think.

13 MS. STAIERT: Yeah. And then we get away  
14 from your message example.

15 MR. DOMENICO: Thank goodness.

16 MS. STAIERT: Yeah. All right. You want  
17 to move on?

18 MR. GELENDER: Sure.

19 MS. STAIERT: Okay. So we kind of ended up  
20 in jumbling a lot of these issues that are in the motion,  
21 but I think we took care of (V), which was the restaurant  
22 food.

23 We just took care of (VI), which had to do  
24 with the injections.

25 We took care of (VII), which was the animal

1 food, livestock.

2 MR. DOMENICO: I don't think we actually  
3 did take care of (VII), but I'm not -- (VII), as I  
4 understand it, relates to the line on -- that phrase on  
5 line 8 just about animal food.

6 MS. STAIERT: Right.

7 MR. DOMENICO: I'm not -- I guess I'm  
8 comfortable with leaving it as is.

9 MS. STAIERT: I am too. I don't know  
10 that -- I mean, what we did was the universe, which  
11 encompass livestock and domestics, so ...

12 MR. DOMENICO: Right. I mean, I do think  
13 we might consider changing it to "food or drink for  
14 animals," which is what the Measure actually talks about,  
15 just to avoid any potential -- if you can think of animal  
16 food as -- food from animals or food that animals eat,  
17 might both be considered animal food, I guess, depending  
18 on the context.

19 MS. STAIERT: Oh, okay.

20 MR. DOMENICO: It might just say "food for  
21 animals." We've been treating drink as food, which is how  
22 it's defined, I believe, in the generic -- the statute  
23 that's not being modified.

24 MS. STAIERT: I think we kind of tried to  
25 take care of (VIII).

1 MR. GELENDER: Yes.

2 MS. STAIERT: Then (IX) we've -- we haven't  
3 addressed.

4 MR. DOMENICO: Right. The ones I see left  
5 that we haven't really addressed are (IX, (XII), (XIII),  
6 and (XIV). Well, maybe (XV), I guess, although I don't --  
7 (XV) seems incorrect to me, but the rest of them I think  
8 we've dealt with, including (b).

9 MS. STAIERT: I mean, I don't see (IX) as  
10 material, but it would be important to the lawyers, but I  
11 don't know that it's important to the voters.

12 MR. DOMENICO: That was, I think, the  
13 assumption we were going on before, and I think I agree  
14 with you, that, you know, it's a fairly complicated  
15 process and there might be people out there who get caught  
16 in it without their knowledge, but --

17 MS. STAIERT: Do you have any other opinion  
18 on No. (IX)?

19 MR. GELENDER: Well, I just think (IX) goes  
20 to sort of the bigger question, which I think we resolved  
21 -- comparatively resolved, at least last time we were  
22 here, which is, you know, whether the discussion of  
23 misbranding is material or not, and that's, I think, the  
24 remaining elephant in the room, sort of speak.

25 MR. DOMENICO: Yeah. I mean, as I

1 understand it, you know, what this Part (3) does is  
2 requires you as a buyer to get this certification from  
3 everybody you buy from. If you're not planning to label  
4 your food you have to have this signed statement, this  
5 sworn statement when you buy it, and if you're uncertain  
6 or they won't sign it, you have to label your food, even  
7 if you don't think it is. That's a little funky, to me,  
8 but again, I'm still not sure it's material.

9 As to the definition of "misbranding," I  
10 don't know if anybody knows what misbranding is honestly.

11 MS. STAIERT: Yeah, I don't -- I mean, I  
12 supposed we could have said it differently, but I think we  
13 say it by essentially informing the consumer that they'll  
14 be required to put on this label. And I think it follows  
15 that if they don't, they have misbranded.

16 MR. DOMENICO: Yeah. You would change the  
17 line on (2) and (3) that's -- you could say treating as  
18 misbranded food that has blah, blah, blah unless it has  
19 been labeled blank. That would be the way to pull in the  
20 idea of misbranding. I just don't know why that would  
21 help anybody honestly.

22 MS. STAIERT: I don't think it would.  
23 Do you feel differently?

24 MR. GELENDER: No, I think I would say at  
25 this point I'm actually fine with the Title as is but

1 certainly willing to hear from the Objectors if they want  
2 to remake or, you know, continue to make an argument on  
3 the misbranding issue, or I supposed any other issue. But  
4 that's the main one.

5 MS. STAIERT: You mean of (IX), (XII,  
6 (XIII, (XIV) and (XV)?

7 MR. GELENDER: Yeah, sort of how important  
8 this issue of is what kind of existing penalties come into  
9 play, although I don't think we're going to be able to  
10 list those anyway.

11 MS. STAIERT: Right.

12 MR. GELENDER: And it seems like the  
13 misbranding thing becomes notice only to people who  
14 already understand sort of the Consumer Protection Act and  
15 the laws and penalties for misbranding. And I don't think  
16 that's the general public.

17 MS. STAIERT: Right. And then I had just a  
18 list of -- and I think we really covered whether we were  
19 going to add a definition by when we had that discussion  
20 in (2) and (3).

21 The only other thing from the text that we  
22 really didn't talk about because it wasn't in the motion  
23 was this idea of criminal prosecution. What do you think  
24 of that section or that objection? I tend to think it's  
25 relevant, and I probably just didn't pick it up the first

1 time because it's really just referring to another  
2 statute, but I don't know.

3 Mr. Rogers, do you want to --

4 MR. ROGERS: That's really just a legal  
5 effect. It would also -- if you put it in you'd also be  
6 describing something not that the initiative does but  
7 something that is part of the larger context and a  
8 consequence.

9 MS. STAIERT: Right. Yeah.

10 Mr. Grueskin, do you want to address maybe  
11 my point and Mr. Gelender's point about --

12 MR. GRUESKIN: Right. I think the  
13 possibility that people could go to jail for not putting  
14 the appropriate label on a food or on a bin or on a shelf  
15 is relevant, even to an otherwise uninformed voter who  
16 doesn't specifically -- isn't specifically invested in  
17 this.

18 Also, I didn't want to waive the  
19 misbranding issue. I think that really is important and I  
20 think it can be addressed, much as Mr. Domenico suggested,  
21 and, you know, as Mr. Rogers said, the redefinition of the  
22 (q) is the meat of the Measure. If it's the meat of the  
23 Measure, the voters ought to know that. If it's not the  
24 meat of the Measure, then you don't need to put it in.  
25 But I don't think there's any dispute that redefining

1 misbranding is what this measure is all about.

2 So I think those were the two issues,  
3 Madame Chair. Thanks.

4 MS. STAIERT: I'm fine the way it is. The  
5 only one I'm sort of hung up on is the criminal  
6 prosecution because I think that that could potentially  
7 change a voter's mind, but I also see Mr. Rogers' point  
8 that it's not something that's actually in the initiative,  
9 it's just a consequence of it. So I could probably be  
10 persuaded by either way on that one.

11 MR. GELENDER: I would propose, I think,  
12 the intermediate staff of at least mentioning the  
13 misbranding because at least that puts some people on  
14 notice that that may mean something already in law. You  
15 know, they can look at the Blue Book, which will, I think,  
16 talk about that some.

17 And I would just say after the quotes,  
18 "Produces genetic engineering," you know, or be requiring  
19 food to be produced -- sorry, labeled "Produced as genetic  
20 engineering or deemed misbranded starting on  
21 July 1, 2016." And then with that, I think I'm pretty  
22 ready to be done with this title.

23 MS. STAIERT: Do you have a comment, sir?  
24 And if you could identify yourself since you're not on  
25 the list.

1           AUDIENCE SPEAKER: Alan Lewis with Natural  
2 Grocers. And I do regulatory work and policy work, and as  
3 such, I liaison with customers all the time.

4           There is no understanding among consumers  
5 what misbranding is or a misbranded product. And unless  
6 the Title is going to explain what that is, it opens a can  
7 of worms that's just impossible to explain.

8           MS. STAIERT: Thank you.

9           MR. DOMENICO: Yeah. I mean, I think that  
10 the point that the motion makes is a good one, that people  
11 might be surprised that if you failed to do this, there's  
12 not just that someone will tell you you'd better start  
13 doing it but you potentially could go to jail is a little  
14 bit remarkable.

15           But maybe it's remarkable that current law  
16 says if you don't put the labels that we tell you to put  
17 on your food, you can go to jail. And so that's sort of  
18 the remarkable proposition is that the law already says  
19 that.

20           I don't know that kind of saying or we'll  
21 call you misbranded does anybody really any good in giving  
22 them that clue, honestly. I mean, maybe that would have  
23 somebody go look at it. Maybe people who should be  
24 concerned about going to jail, the Natural Grocers, would  
25 -- that would get their attention maybe. Maybe they know

1 enough about the concept of misbranding that it would give  
2 them a hand, which maybe is what Mr. Gelender was trying  
3 to do, that people who are concerned about misbranding  
4 would know that this is part of that regime that they're  
5 already subjected to.

6           So I could go either way, honestly. I'm  
7 not inclined to say, you know, subjecting persons  
8 violating these provisions to criminal prosecution. I  
9 think while that maybe sort of is technically true, it's  
10 kind of a -- getting there is -- takes a few steps. And  
11 so I'm not sure we should be going through those steps,  
12 which leaves me sort of unsure what to do, but maybe Mr.  
13 Rogers will tell me.

14           MR. ROGERS: My colleague, Ms. Kalman  
15 (phonetic), had just made an interesting observation. She  
16 said, you know, we were here a few months ago setting the  
17 title for 66, which would have called for a tax increase.

18           We certainly didn't insert in the language  
19 for 66 notice to folks that if they don't pay their taxes,  
20 they can be jailed. I mean, that just drives -- to me,  
21 drives home the point that that is a legal effect. It is  
22 not part of the Measure and need not be included.

23           MS. STAIERT: Yeah, I think people -- it  
24 just wouldn't be a surprise that you could go to jail for  
25 not paying your taxes or for not putting your label on

1 your food.

2 I'll let you have the last word.

3 AUDIENCE SPEAKER: Thank you. Alan Lewis  
4 again. Keep in mind that in this instance where you --  
5 where something is not labeled properly there's first a  
6 discussion with the regulator, then there's a request for  
7 information. Then if there was a violation there's a  
8 warning letter. There's time to cure. There's a  
9 remediation plan.

10 The only one that would be subject to  
11 criminal violation is someone who is willfully disobeying  
12 the clear letter of the law for a good, long time. That's  
13 the way we regulate in Colorado.

14 MS. STAIERT: Yeah, but that's really the  
15 practical effect. I mean, we have to take the words on  
16 the paper, and words on the paper are that technically you  
17 could go -- were our regulators not so reasonable, it is a  
18 possibility. There's no requirement that the letter go  
19 out and that you negotiate with them and that you do all  
20 these other things. They could skip right to the end.

21 AUDIENCE SPEAKER: But a remote  
22 possibility, yes.

23 MS. STAIERT: Yes. But that being said, I  
24 still am inclined to think that it's probably not  
25 something that needs to go in or maybe even something that

1 should be --

2 MR. GELENDER: And I think I'll be -- or  
3 Mr. Domenico is, which is just having heard more,  
4 especially the concern raised about confusion. You know,  
5 I'm kind of fifty-fifty on this. But when I'm fifty-fifty  
6 fewer words is better, so I'll withdraw that suggestion.

7 MR. DOMENICO: Yeah. Well, and I think  
8 this -- I'm back where I was. If the Proponents are  
9 willing to take the risk that they'll get this thrown out  
10 as leaving out a materially important provision and we're  
11 kind of fifty-fifty on it, that's the way I would lean  
12 too. And so I guess I would leave it as is.

13 MS. STAIERT: Okay. Well, Steven, why  
14 don't we collapse it and then I'll read it and we can see  
15 if we want to make a motion.

16 So as it reads now: It's a change to the  
17 Colorado Revised Statute concerning labeling of  
18 genetically modified food and in connection therewith  
19 requiring food that has been genetically modified or  
20 treated with genetically modified material to be labeled  
21 to produce with genetic engineering starting on  
22 July 1, 2016, exempting some foods including but not  
23 limited to food from animals that are not genetically  
24 modified but have been fed or injected with genetically  
25 modified food or drugs, certain food that is not packaged

1 for retail sale and is intended for immediate human  
2 consumption, alcoholic beverages, food for animals and  
3 medically prescribed food, requiring the Colorado  
4 Department of Health and Environment to regulate the  
5 labeling of genetically modified food and specifying that  
6 no private right of action is created for failure to  
7 conform to the labeling requirements.

8 Anyone want to make a motion?

9 MR. DOMENICO: Yeah, I will move that we  
10 grant the motion for rehearing to the extent that we have  
11 altered the Title as you just read it and as it appears on  
12 the board and otherwise deny it.

13 MR. GELENDER: Second.

14 MS. STAIERT: All right. And all those in  
15 favor?

16 MR. DOMENICO: Aye.

17 MS. STAIERT: Aye.

18 MR. GELENDER: Aye.

19 MS. STAIERT: All right. So the question  
20 will be adopted with the changes that we have made. And  
21 that is the only item on the agenda, so it concludes our  
22 hearing.

23 (Whereupon, the hearing was concluded at  
24 12:26 p.m. on Wednesday, December 18, 2013.)

25 \* \* \* \* \*

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

5 REPORTER'S CERTIFICATE

6 I, Melanie Gerullis, professional shorthand  
7 reporter, do hereby certify that the above and foregoing  
8 is a true and accurate transcription of my stenotype notes  
9 taken in my capacity as the official court reporter at the  
10 time and place aforesaid.

11 I further certify that I am not an  
12 attorney, nor counsel, nor in any way connected with any  
13 attorney or counsel for any of the parties of said action,  
14 nor otherwise interested in the outcome of this action.

15 Dated at Denver, Colorado, this 30th day of  
16 December, 2013.

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Melanie Gerullis,  
Professional Shorthand Reporter  
20  
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1 CITY AND COUNTY OF DENVER )  
 2 STATE OF COLORADO ) SS.  
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REPORTER'S CERTIFICATE

I, Melanie Gerullis, professional shorthand reporter, do hereby certify that the above and foregoing is a true and accurate transcription of my stenotype notes taken in my capacity as the official court reporter at the time and place aforesaid.

I further certify that I am not an attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties of said action, nor otherwise interested in the outcome of this action.

Dated at Denver, Colorado, this 30th day of December, 2013.



Melanie Gerullis,  
Professional Shorthand Reporter

DATE FILED: February 6, 2014 5:17 PM

# EXHIBIT C



# STATE OF COLORADO

## DEPARTMENT OF STATE CERTIFICATE

I, SCOTT GESSLER, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #48 'Labeling Genetically Modified Food'" .....

..... 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 5<sup>th</sup> day of January, 2012.



A handwritten signature in cursive script, reading "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #48**

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

A change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements.

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

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements?

*Hearing December 4, 2013:*

*Single subject approved; staff draft amended, titles set.*

*Hearing adjourned 1:40 p.m.*

*Rehearing December 18, 2013:*

*Motion for Rehearing granted to the extent that the Board made changes to the title; denied in all other respects.*

*Hearing adjourned 12:22 p.m.*

DATE FILED: February 6, 2014 5:17 PM

# EXHIBIT D

INITIATIVE TITLE SETTING REVIEW BOARD  
Secretary of State Aspen Conference Room  
1700 Broadway  
Denver, Colorado  
Wednesday, December 4, 2013

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Motion for hearing  
2013-2014 #48 - Labeling Genetically Modified Food

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APPEARANCE

Suzanne Staiert  
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Denver, Colorado 80203

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## P R O C E E D I N G S

1  
2 MS. STAIERT: Good afternoon. This is a  
3 meeting of the Title Setting Board pursuant to  
4 Article 40 of Title I CRF. The time is 1:00. The  
5 date is December 4th. And we are meeting in the  
6 Secretary of State's Aspen Room, 1700 Broadway,  
7 Denver, Colorado.

8 The Title Setting Board today consists of  
9 myself, Suzanne Staiert, Deputy Secretary of State  
10 on behalf of Scott Gessler. Jason Gelender, senior  
11 attorney, designee of the Director of Office of  
12 Legislative Legal Services Dan Cartin, seated to my  
13 left. And Dan Domenico, solicitor general designee  
14 of Attorney General John Suthers seated to my  
15 right.

16 Today we are meeting to consider title  
17 setting for one hearing. There are two titles for  
18 each measure. One is the statement, and the other  
19 is a statement in the form of a question. Change  
20 has been adopted by the title board of the first  
21 title, and the staff draft will be considered  
22 adopted for the other title.

23 If anyone wishes to testify, there's a  
24 signup sheet on the back table. This hearing is  
25 being broadcast over the Internet from the

1 Secretary of State's Web site. All the restrooms  
2 are located on this floor. When the title board  
3 considers a proposed initiative for the first time,  
4 the board will follow these steps:

5 First, board members may wish to ask the  
6 proponent questions. This is to ensure that the  
7 board understands the proposal. Second, the board  
8 will determine if it has jurisdiction to set a  
9 title.

10 In particular, the board must determine if  
11 the measure complies with the simple subject we'll  
12 prescribe in Article V Section 1, (5.5), the  
13 Colorado Constitution, and Section 1-40-1 of 6.5  
14 Colorado Revised Statutes. This is because the  
15 board is prohibited from setting a title per  
16 measure that contains more than one subject.

17 Third, if the board determines it has  
18 jurisdiction to set a title, then the board will  
19 use the staff's prepared draft for discussion  
20 purposes. A copy of the staff draft is on the  
21 table.

22 Generally, we'll take all testimony first,  
23 then the board will discuss and vote after all  
24 testimony is completed. A decision is reached by  
25 two of the three members of the board.

1           Please take note that we are not concerned  
2 with the merits of any proposal here. We are only  
3 concerned with the setting of title. Furthermore,  
4 we are not concerned with any legal or constitutional  
5 objections to the measures except to the extent  
6 that such objections relate to the jurisdiction of  
7 the board to set title or the correctness of the  
8 titles and the summaries themselves.

9           Anyone who is dissatisfied with the  
10 decision of the Title Board may file a motion for  
11 rehearing with the Secretary of State within seven  
12 calendar days.

13           The item that we have on the agenda today  
14 is 2013-2014 #48, Labeling of Genetically Modified  
15 Food. And are the proponents here? If you can  
16 just come up and introduce yourselves and maybe  
17 explain a little bit about your proposal.

18           MR. ROGERS: Madam Chair, Trey Rogers here  
19 for the proponents. They are here, Larry Cooper  
20 and Cheryl Gray are in the front row. They have  
21 signed their affidavits and a very brief summary of  
22 the initiative.

23           It would require the labeling of  
24 genetically modified foods sold in the State.  
25 There are certain exceptions. There's also a

1 delayed implementation date when we wouldn't be  
2 required till July 1, 2016. Beyond that, we're  
3 into the -- we're into the details. So I'll -- we  
4 have brought with us a proposed redline, a few  
5 changes to the staff draft.

6 Generally, the staff draft is very good,  
7 but we have, as you might expect, just a few  
8 suggestions. We're happy to take those when you're  
9 ready.

10 MS. STAIERT: All right. Thank you. Does  
11 anyone have any questions for the proponent? No?

12 Mr. Rogers is the only person who has  
13 signed up. Is there anyone else present who wishes  
14 to testify on this issue? No? Okay.

15 That takes us to the single subject issue.

16 MR. GELENDER: I don't see anything that  
17 would be an effective subject -- but unless someone  
18 else does, I'll just make a motion that we find as  
19 measure as a single subject.

20 MR. DOMENICO: I second that motion.

21 MS. STAIERT: Any discussion?

22 All right.

23 All those in favor?

24 AUDIENCE SPEAKERS: Aye.

25 MS. STAIERT: That passes unanimously,

1 which then takes us to the question, the title  
2 itself. Any comments?

3 Thank you, Mr. Rogers, for submitting your  
4 changes in writing. I see you don't like the word  
5 "amendment."

6 MR. ROGERS: Well, our understanding is  
7 typically amendment is used when the initiative  
8 would amend the constitution, and to create clarity  
9 with the statutory change, the word change is  
10 typically used. We thought that was probably just  
11 an oversight. We would prefer the word change to  
12 avoid any confusion.

13 MS. STAIERT: Any questions about that?

14 MR. GELENDER: Just a comment that that's  
15 actually a statutory requirement, but we should  
16 definitely do it. And I would also propose that we  
17 start by considering what the proponent suggested  
18 draft, rather than the staff draft.

19 MS. STAIERT: Okay. That's fine.

20 MR. ROGERS: And we provided Mr. Ward, I  
21 think he's got it electronically.

22 MS. STAIERT: There it is.

23 MR. ROGERS: If it will be helpful, I could  
24 walk through the changes proposed.

25 MS. STAIERT: Sure. Go ahead.

1 MR. ROGERS: So we've already discussed the  
2 change from the amendment to change. I know the  
3 language that the board often uses is concerning,  
4 and then the topic of the initiative.

5 When we read this with the word  
6 "concerning," it occurred to us that it could  
7 appear that the State already requires labeling,  
8 and that all we're doing through the initial is  
9 creating exceptions.

10 And so we would propose to strike the word  
11 "concerning," and replace it with requiring. We  
12 think it's important that there is a delayed  
13 implementation of the labeling requirements, thus,  
14 on line 2, we would insert: Starting on July 1,  
15 2016.

16 Then we get to the list of exemptions. I  
17 appreciate the staff's effort to kind of use  
18 perhaps more common usage words here. But we  
19 thought it was important in addition to restaurant  
20 foods to point out that there's exemption for foods  
21 not packaged for retail sale.

22 So for instance, that could be a brownie  
23 you purchased at a bakery. That's not restaurant  
24 food, but it certainly is excepted from the labor  
25 requirement.

1           Then on line 4, again I think the staff  
2 draft was -- used the term "pet" to have kind of a  
3 more common usage. We don't generally talk about  
4 animal food, but animal food is the language we  
5 used at the initiative. Frankly, it is broader  
6 than pet.

7           Animal would encompass livestock feed  
8 purposes, and so we thought pet was too narrow,  
9 animal was more appropriate. Those are the  
10 proposals.

11           MS. STAIERT: Go ahead. I agree on the  
12 beginning language. Okay.

13           MR. GELENDER: So I guess -- start -- make  
14 a motion whereas the starting point to adopt the  
15 recommended language. I do have a few minor  
16 suggestions.

17           MS. STAIERT: Go ahead.

18           MR. GELENDER: Sounds like -- first thing  
19 is we have sort of foods pluralized in some places  
20 and singular or at least without an S in others. I  
21 would just have it without an S everywhere if no  
22 one objects.

23           MS. STAIERT: Fine. I don't know if foods  
24 is a word.

25           MR. GELENDER: And the only other thing I

1 would say on line 4, granting authority to -- it  
2 seems to be easier to say authorizing. That's all  
3 I have.

4 MR. DOMENICO: All of these changes are  
5 improvements, I think. I do have, I guess, a  
6 couple of questions. I don't know if these are  
7 questions about the title or the text and the  
8 measure itself.

9 One is about reading this exemption  
10 language that's in Q5B -- as I read that, the  
11 exemption for food not packaged for retail sale.  
12 The way we have it in the text is kind of a list of  
13 all these separate exemptions in the title.

14 But the text actually, I think, says these  
15 are subsets of one exemption. Certain processed  
16 foods, restaurant foods. I guess those are the  
17 ones that we have listed there, medically  
18 prescribed food are subsets of the not packaged for  
19 retail sale exemption.

20 I'm not sure -- but the only place where I  
21 can think of where I was curious if it would make a  
22 difference is in Q5B about restaurant food. So  
23 obviously, if you go to a typical restaurant,  
24 that's covered.

25 But what about like at Whole Foods where

1 you can get some prepared food, but that's not an  
2 establishment that's primarily engaged in the sale  
3 of prepared and intended food? I don't think -- I  
4 think it's typically a grocery store for the most  
5 part.

6 So I'm just trying to figure out how the  
7 labeling requirement would apply to that sort of  
8 little deli at Whole Foods or King Soopers or  
9 whatever where that's a small part of their  
10 business. But it's basically a little miniature  
11 restaurant, deli inside of another store.

12 So that's one question, and then that might  
13 suggest a little bit different language described  
14 in the exemptions.

15 And then I wonder if we need to be a little  
16 more detailed in describing the -- what is being  
17 required. You got quite a bit of detail on the  
18 exemptions, but just sort of very generic statement  
19 of what's being required, but it's fairly  
20 complicated, actually.

21 And you know the usual concerning language  
22 is okay with it, that generic statement of the  
23 single subject, but when it's also being used as it  
24 would be in this form when it's also being used to  
25 lay out the main requirement of the measure, then I

1 wonder if we need to be a little bit more detailed.

2 And that leads me to something that I guess  
3 is actually a question for the proponents, which is  
4 about C-1. In particular, I'm curious -- I can't  
5 remember where it was. There's an exemption for  
6 fertilizer, manure fertilizer, right, but applying  
7 fertilizer of that type is not genetic modification  
8 if I'm reading this right.

9 So my question is -- so C-1 seems to say,  
10 if you use fertilizer, that itself was genetically  
11 engineered, but it's just a typical seed, an  
12 unmodified seed, that the use of that kind of  
13 fertilizer would turn the resulting plants, and  
14 therefore any food made from it, into genetically  
15 modified food. Am I reading that right?

16 MR. ROGERS: I think you got it backwards.  
17 The use of genetically modified fertilizer, for  
18 lack of a better term, would be an exception to the  
19 requirement that genetically engineered food was  
20 covered.

21 MR. DOMENICO: I guess I'm obviously not  
22 enough of an expert on fertilizer to know. I see  
23 the exemption for manure as a fertilizer.

24 MR. ROGERS: The reason for that is that an  
25 argument could be made that if a plant is planted

1 or if fertilizer is used -- the plant has been  
2 treated with fertilizer. That's not the intent,  
3 the exception to clarify that.

4 MR. DOMENICO: Okay. So -- okay. All  
5 right. Well, then I guess my question -- that's  
6 the answer to my question, I think, so thank you.

7 The question for us then is, is this good  
8 enough, just stating that it requires the labeling  
9 of genetically modified foods without any sort of  
10 discussion of what labeling means, what genetically  
11 modified foods means. Is that good enough?

12 I think it is. I mean, it certainly would  
13 be good enough as a statement of a single subject,  
14 I think. Then it would go back to concerning the  
15 labeling of genetically modified foods, et cetera,  
16 and in connection therewith, requiring that's the  
17 sort of way these often are done.

18 I understand this is sort of a streamlined  
19 version of that, but is simply saying, requiring  
20 the labeling of genetically modified foods,  
21 imparting all the material components of the  
22 measure to the voter. Maybe it is.

23 I mean, it's not -- despite my inability to  
24 grasp some of the details, it's not that  
25 complicated a surprising a measure, I don't think.

1 MR. GELENDER: I think my only question on  
2 that would be whether just saying labeling, sort of  
3 says enough or it means actually the single subject  
4 with the concern -- requiring and mention what the  
5 specific label actually says, which was produced  
6 with genetic engineering. I don't know if that's  
7 certainly important enough to have to be in there  
8 or not.

9 MS. STAIERT: I mean, I like it better just  
10 because it says what the label is going to -- you  
11 know, it puts people on notice, what it's going to  
12 look like and what we're actually requiring. Do  
13 you have -- are we requiring it being a list how  
14 it's genetically modified, to what degree are the  
15 requirements that are being proposed.

16 I think that's something important to  
17 people voting yes or no. What's the burden, you  
18 know, on a person who's putting on the label. And  
19 so if the label is simply, genetically modified, I  
20 think that that could be something that is  
21 important to somebody. And then we keep the  
22 concerning, the labeling, and in connection  
23 therewith, requiring the label -- blank exempting  
24 these other things -- except for --

25 MR. DOMENICO: Well, that's the format

1 that's kind of been used typically in the past  
2 where you have just sort of a generic statement of  
3 the subject, and then the, in connection therewith,  
4 has all the material actions.

5 And I do think if we're needing any more  
6 detail than what we have now, it would be better to  
7 go that way.

8 MS. STAIERT: Do you want to propose it?  
9 Okay.

10 MR. GELENDER: Steven, please go -- take  
11 the concerning there and take "the" out before  
12 labeling. Concerning labeling of genetically  
13 modified foods -- and food I'm sorry.

14 I think then in connection therewith,  
15 requiring the label, Produced With Genetic  
16 Engineering, to appear starting on July 1, 2016. I  
17 think actually in the text all those words in the  
18 label are capitalized.

19 MR. ROGERS: I think you're looking for  
20 initial caps on those words.

21 MS. STAIERT: So Mr. Rogers, what is the  
22 answer to the Whole Food's question, because  
23 there's a difference between getting your piece of  
24 pizza at Whole Foods and eating it there and  
25 getting your, you know, quinoa salad in prepared

1 packaging area.

2 MR. ROGERS: So if the quinoa salad at  
3 Whole Foods would not be packaged for retail sale,  
4 and it would be processed and prepared for eating  
5 and consumption. So I think under 5(a), there  
6 would not be a requirement to label quinoa.

7 MR. GELENDER: So that's covered under A.

8 MR. ROGERS: As processed food, right.

9 MR. GELENDER: Not B, the restaurant.

10 MR. ROGERS: We're sticking with that  
11 answer.

12 MS. STAIERT: So I mean, maybe I should  
13 take the Whole Foods example out. But the King  
14 Soopers mass-produced potato salad that's in the  
15 deli section, that's going to be exempted under the  
16 same -- your clients are nodding.

17 MR. ROGERS: Well, let me just clarify that  
18 a little bit. If it's produced in a commercial  
19 kitchen by a third party up in Brighton and you  
20 ship down to King Soopers that's been packed for  
21 retail sale, that's going to need to carry the  
22 label.

23 And if the guys at King Soopers make it in  
24 the kitchen back in the grocery store and put it  
25 out there in a big bin, and later --

1 MS. STAIERT: I don't think they do.

2 MR. ROGERS: -- scoop it out.

3 MS. STAIERT: Well, it's going to depend  
4 on -- I mean, I think even Whole Foods has a bakery  
5 that's a centralized factory and then they ship it  
6 down to the stores. So it's going to be determined  
7 based on what's made there.

8 MR. ROGERS: It's going to be determined on  
9 the package. Whether it's packaged and labeled for  
10 retail sale or whether it's produced in -- offered  
11 in a bulk format, would need to be kind of scooped  
12 out and slapped in a container with the price label  
13 on it, I would say no.

14 MS. STAIERT: Okay. It's kind of odd  
15 because it's the same food. I mean, you go get it  
16 in the salad bar. Whole Foods -- it's the same  
17 food they brought down as the packaged one over on  
18 the side that you don't want to bother to scoop it  
19 out yourself.

20 MR. ROGERS: Well, I think with different  
21 labeling requirements, right? So believe me I know  
22 a lot more about packaging food than I did a couple  
23 months ago --

24 MS. STAIERT: And I don't --

25 MR. ROGERS: -- but it's still kind of a

1    keen area.  But as I understand it, if it's  
2    prepackaged there are certain nutritional labeling  
3    requirements, et cetera, that appear on the  
4    package.

5            On the other end, it's offered in bulk at  
6    the retail outfit.  And the only function of the  
7    package there is to give you something to carry the  
8    product home in.  But I believe the labeling  
9    requirements are different.

10           MS. STAIERT:  Okay.  I wonder if we should  
11   say packaged and labeled for retail sale.

12           MR. ROGERS:  Well, the initiative does not.  
13   The language in the initiative is packaged for  
14   retail sale.

15           MS. STAIERT:  Okay.

16           MR. DOMENICO:  So then my question for us  
17   really is, we got three things in there,  
18   exemptions.  Foods not packaged for retail sale,  
19   certain processed foods, and restaurant foods,  
20   which actually are all Q5 A and B, which is really  
21   only two exemptions because it's an and.

22           So it's not any food which is not packaged  
23   for retail sale, which is what the title says.  
24   It's those foods which are not packaged for retail  
25   sale and are processed foods or restaurant foods.

1 MS. STAIERT: So can we just say --

2 MR. DOMENICO: And processed foods has its  
3 own special definition and definition section,  
4 so --

5 MS. STAIERT: So should we just say  
6 processed food, not packaged food --

7 MR. DOMENICO: Yes. I mean, it starts to  
8 get a little complicated and might require us to  
9 have our first semicolon versus comma discussion of  
10 the season, but you know, it's not all processed  
11 foods, which is what the title says. And it's not  
12 all processed foods not packaged for retail sale.

13 MS. STAIERT: I think if you just exempt  
14 certain processed foods -- I mean --

15 MR. GELENDER: And that's what I would do  
16 is insert -- I think -- I mean, I don't know how  
17 much value we add to the voter to get into heavy  
18 detail.

19 MR. DOMENICO: Well, I don't know either,  
20 but I know we don't add value by saying something  
21 that's not true.

22 MR. GELENDER: Right, but I'm saying the  
23 qualifier certainly eliminates that inaccuracy, I  
24 think, without us going through the --

25 MR. DOMENICO: Well, I guess the question

1 is would you then get rid of the or --

2 MR. GELENDER: Well, and that's  
3 interesting. That's what the staff draft had I  
4 think was the whole certain processed foods and  
5 went toward the retail sale.

6 MR. DOMENICO: Right. Exactly.

7 MR. GELENDER: Well, then I guess we can  
8 just cover -- say, exempting process foods that are  
9 prepared and intended for immediate human  
10 consumption or served in an establishment fad  
11 primarily, you know, sell foods for immediate human  
12 consumption, you know, just seems like a lot.

13 MS. STAIERT: Yes.

14 MR. DOMENICO: What if -- yes, I don't  
15 think that's a good idea. Exempting certain  
16 processed and restaurant food that is not packaged  
17 for retail sale comma, and then go on.

18 MS. STAIERT: Then certain modifies  
19 restaurant, too.

20 MR. DOMENICO: Which I think is accurate,  
21 not all restaurants, I don't think.

22 MR. ROGERS: Can I make a suggestion?

23 MS. STAIERT: Sure.

24 MR. ROGERS: Okay. I see the issue that  
25 you're struggling with, I think, you're probably

1 right. Really there are two subcategories. Maybe  
2 the simpler solution is to eliminate restaurant and  
3 eliminate certain processed foods, instead replace  
4 those with the higher level verbiage which would be  
5 certain foods which is not packaged for retail  
6 sale.

7 MR. DOMENICO: It would probably work when  
8 you figure out what kind.

9 MS. STAIERT: I think that's fine. You can  
10 say that is.

11 MR. DOMENICO: You're not going to tell  
12 people about gum?

13 MR. ROGERS: That's why you get the big  
14 bucks.

15 MR. GELENDER: Is that the only one we have  
16 on the list?

17 MR. DOMENICO: No.

18 MS. STAIERT: There's more.

19 MR. GELENDER: There's the -- or the  
20 unengineered animals.

21 MR. DOMENICO: Yes. I don't really care  
22 about the alcoholic beverages, too. I think I'm  
23 okay with the exemption language. I wonder if --  
24 if the requirement language could be a little bit  
25 clearer. Something like, requiring the words -- I

1 mean closer to the measure, requiring the words  
2 produced for genetic engineering appear in a  
3 conspicuous manner on the label of food -- on food  
4 labels, some way of saying that, starting, et cetera.

5 MR. GELENDER: At the risk of expanding the  
6 conversation, should this be described in terms of  
7 defining food as misbranded -- that's what we're  
8 really doing. And this whole paragraph, too,  
9 following the intro about who shall be -- branded,  
10 inserted anywhere in the, you know, existing  
11 labeling requirements.

12 MS. STAIERT: I don't know if anybody is  
13 going to understand what -- I wouldn't want to use  
14 the word misbranded.

15 MR. GELENDER: Should it say something like  
16 requiring labeling of genetically modified food as  
17 produced with genetic engineering starting on July  
18 1, 2016?

19 MR. DOMENICO: That's fine. I would just  
20 use the language in the measure. It's just as  
21 easy, I think, which is just be requiring the  
22 words, produced with engineering appear in a clear  
23 and conspicuous manner on the label -- requiring to  
24 or after engineering --

25 MS. STAIERT: Why don't we just say on the

1 label. I'm fine with it.

2 I'll read it while we think. A change to  
3 the Colorado Revised Statutes concerning labeling  
4 of genetically modified food; and, in connection  
5 therewith, requiring that the words "Produced With  
6 Genetic Engineering" appear in a clear and  
7 conspicuous manner on the label starting on July 1,  
8 2016; exempting certain food that is not packaged  
9 for retail sale, alcoholic beverages, animal food,  
10 and medically prescribed food; authorizing the  
11 Colorado Department of Public Health and  
12 Environment to regulate the labeling of genetically  
13 modified food; and specifying that no private right  
14 of action is created against a distributor,  
15 manufacturer, or retailer in connection with the  
16 labeling requirements.

17 Can we just say authorized in the State of  
18 Colorado to regulate. I don't know if we need --

19 MR. DOMENICO: I'm okay with it. If you  
20 can get rid of the against a distributor,  
21 manufacturer, or retailer. It doesn't really  
22 bother me, just more words.

23 MR. GELENDER: Just asking the proponent:  
24 Is the intent simply that there's no private right  
25 of action against anybody?

1 MR. ROGERS: Yes.

2 MR. GELENDER: Then I would agree with that  
3 idea to remove that language.

4 MS. STAIERT: In and about private action  
5 and all or just that?

6 MR. DOMENICO: Just a distributor,  
7 manufacturer or retailer.

8 MS. STAIERT: Okay. Sounds good.

9 MR. GELENDER: Do you want to make a motion  
10 recommending those changes?

11 MS. STAIERT: Sure. That will be good.

12 MR. DOMENICO: I move then that we adopt  
13 the staff draft as amended.

14 MR. GELENDER: Seconded.

15 MS. STAIERT: Any further discussion?

16 Let me just read it in one more time since  
17 we changed that. So it will be: A change to the  
18 Colorado Revised Statutes concerning labeling of  
19 genetically modified food; and, in connection  
20 therewith, requiring the words, "Produced With  
21 Genetic Engineering" appear in a clear and  
22 conspicuous manner on the label starting on July 1,  
23 2016; exempting certain food that is not packaged  
24 for retail sale, alcoholic beverages, animal food,  
25 and medically prescribed food; authorizing the

1 Colorado department of public health and  
2 environment to regulate the labeling of genetically  
3 modified food; and specifying that no private right  
4 of action is created in connection with the  
5 labeling requirements.

6 MR. DOMENICO: I do think I have to bring  
7 up a comma versus semicolon point, as embarrassed  
8 as I am. I think after 2016 should be a semicolon.

9 All of our sort of clauses have their own  
10 semicolon, and there's a serial list in there  
11 that's comments that is out. The rest of it works.  
12 So with that semicolon, my motion should include  
13 the title with that semicolon change.

14 MR. GELENDER: Seconded.

15 MS. STAIERT: All right then, any other  
16 discussion? All those in favor?

17 AUDIENCE SPEAKERS: Aye.

18 MS. STAIERT: Passes unanimously. And that  
19 is the only item on our agenda. Again, anyone who  
20 is not satisfied with the title has seven days to  
21 request a rehearing, and with that we are  
22 adjourned.

23 WHEREUPON, the within proceedings were  
24 concluded at the approximate hour of 1:39 p.m. on  
25 the 4th day of December, 2013.

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, THERESA L. MENDEZ, Registered Professional Reporter and Notary Public within and for the State of Colorado, do hereby certify that this hearing was reduced to typewritten form from my stenograph notes and that the foregoing constitutes a true and correct transcript.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 13th day of December, 2013.

My commission expires September 21, 2017.

*Theresa L. Mendez*  
Theresa L. Mendez  
Registered Professional Reporter



DATE FILED: February 6, 2014 5:17 PM

# EXHIBIT E

IN THE SUPREME COURT OF THE STATE OF OREGON

TERRY WITT and SCOTT DAHLMAN,  
Petitioners,

v.

ELLEN F. ROSENBLUM, Attorney General, State of Oregon,  
Respondent.

S061697

**ORDER CERTIFYING BALLOT TITLE**

Upon consideration by the court.

Petitioner's request for oral argument is denied.

Petitioner's argument that the Attorney General's certified ballot title for Initiative Petition No. 27 (2014) does not comply substantially with ORS 250.035(2) to (6) is not well taken.

The court certifies to the Secretary of State the Attorney General's certified ballot title for the proposed ballot measure. A copy of the Attorney General's certified ballot title is appended to this order.



11/27/2013  
8:05:44 AM

THOMAS A. BALMER  
CHIEF JUSTICE, SUPREME COURT

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

No costs allowed

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Appellate Judgment Effective Date:

SUPREME COURT

c: John DiLorenzo, Jr  
Anna Marie Joyce  
Leigh A Salmon  
Scott Bates  
Teresa Flaherty

gar

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**ORDER CERTIFYING BALLOT TITLE**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

**BALLOT TITLE**

**Some genetically engineered food (defined) for retail sale  
must be so labeled, or is "misbranded"**

**Result of "Yes" Vote:** "Yes" vote expands definition of "misbranded" food to include some genetically engineered food (defined) when not so labeled for retail sale; allows citizen enforcement lawsuits.

**Result of "No" Vote:** "No" vote retains current definition of "misbranded" as used in law prohibiting the misbranding of food and the manufacture, sale, or delivery of misbranded food.

**Summary:** Current law prohibits misbranding food; prohibits manufacture, sale, delivery of misbranded food. Measure expands definition of "misbranded" to include food for retail sale that is entirely or partially produced with genetic engineering, unless conspicuously labeled "genetically engineered" (for raw agricultural commodities) or "produced with"/ "partially produced with" genetic engineering (for processed food). Exempts certain foods from expanded definition of "misbranded." Defines "genetically engineered" food as food produced from organisms whose genetic material was changed through in vitro nucleic acid techniques, certain cell fusing techniques. Any injured citizen may bring lawsuit against manufacturer/supplier for failure to label processed foods, packaged raw agricultural commodities, or against retailer for failure to label unpackaged raw agricultural commodities, under certain circumstances; prevailing citizen may get attorney fees. Other provisions.

**ORDER CERTIFYING BALLOT TITLE**

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563