

APR 09 2014

SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk
DATE FILED: APR 9, 2014

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2013-2014 #94 ("Duties of the Independent
Ethics Commission")

Petitioner: STACY CARPENTER

v.

**Respondents: CHRIS FORSYTH
AND LAURIE FORSYTH**

and

**Title Board: SUZANNE STAIERT;
DANIEL DOMENICO; and JASON
GELENDER**

▲ COURT USE ONLY ▲

Attorneys for Petitioner:

Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1000
Denver, CO 80202
Phone: 303-573-1900
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Case No. 14SA102

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-
2014 #94 ("DUTIES OF THE INDEPENDENT ETHICS
COMMISSION")**

Stacy Carpenter (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #94 (“Duties of the Independent Ethics Commission”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #94

Chris Forsyth and Laurie Forsyth (hereafter “Proponents”) proposed Initiative 2013-2014 #94 (the “Proposed Initiative”). 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 the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on March 19, 2014 to establish the Proposed Initiative’s single subject and set a title. On March 26, 2014 Petitioner filed a Motion for Rehearing, alleging that the title was misleading, did not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion. The rehearing was held on April 2, 2014, at which time the Title Board granted in part the Motion for Rehearing to cure certain deficiencies in the title it

had set but denied the Motion in other respects, some of which are at issue in this appeal.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. Consequently, this matter is properly before this Court.

GROUND FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is misleading, does not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioner's brief:

ADVISORY STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The measure violates the single subject requirement of the Colorado Constitution by seeking to address separate subjects that will be undertaken by a new regulatory regime, the Independent Ethics Commission: (a) the means for adjudicating disciplinary violations by judges; and (b) the retirement of judges made necessary due to disabilities, considerations entirely unrelated to ethical violations or fitness concerns.
2. The title is incomplete and thus misleading because it does not reflect the fact that the Independent Ethics Commission, under the terms of the initiative, is not bound by the findings of, and owes no deference to, the appellate courts.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative is neither fair nor accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 9th day of April, 2014.



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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweges hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #94 (“DUTIES OF THE INDEPENDENT ETHICS COMMISSION”)** was sent this day, April 9th, 2014, via first class U.S. mail, postage pre-paid to the proponents and to counsel for the Title Board at:

Chris and Laurie Forsyth
3155 Ingalls St.
Wheat Ridge, CO 80214

Maurice Knaizer
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Erin Holweges



STATE OF COLORADO

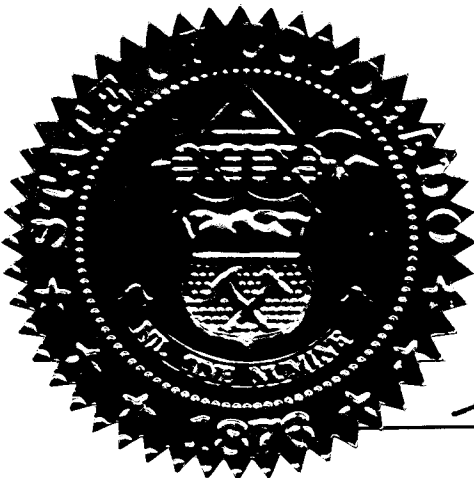
DEPARTMENT OF
STATE

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 #94 'Duties of the Independent Ethics Commission'"

..... **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 4th day of April, 2014.



Handwritten signature of Scott Gessler in cursive script.

SECRETARY OF STATE

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MAR 07 2014

J. WARD
11:03 A.M.

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

Colorado Secretary of State

SECTION 1. In the constitution of the state of Colorado, section 5 of article XXIX, amend (3)(a) as follows:

(3)(a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months. PURSUANT TO SECTION 23 OF ARTICLE VI OF THE COLORADO CONSTITUTION, ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A JUSTICE OR JUDGE HAS FAILED TO COMPLY WITH THE CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE SHOULD BE RETIRED FOR DISABILITY. THE TWELVE MONTH STATUTE OF LIMITATIONS DOES NOT APPLY TO COMPLAINTS AGAINST A JUSTICE OR JUDGE.

SECTION 2. In the constitution of the state of Colorado, section 23 of article VI, amend (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (f), (3) (g) and (3) (h) as follows:

~~(3)(a) There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.~~ THE INDEPENDENT ETHICS COMMISSION IS RESPONSIBLE FOR PROSECUTING JUDICIAL MISCONDUCT AND RECOMMENDING JUDICIAL DISCIPLINE.

~~(b) Each member shall be appointed to a four year term; except that one half of the initial membership in each category shall be appointed to two year terms, for the purpose of staggering terms. Whenever a commission membership prematurely terminates or a member no longer possesses the specific qualifications for the category from which he was selected, his position shall be deemed vacant, and his successor shall be appointed in the same manner as the original appointment for the remainder of his term. A member shall be deemed to have resigned if that member is absent from three consecutive commission meetings without the commission having entered an approval for additional absences upon its minutes. If any member of the commission is disqualified to act in any matter pending before the commission, the commission may appoint a special member to sit on the commission solely for the purpose of deciding that matter.~~ THE INDEPENDENT ETHICS COMMISSION SHALL PROMULGATE PROCEDURAL RULES REGARDING JUDICIAL DISCIPLINE.

(c) No member of the INDEPENDENT ETHICS commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties REGARDING THE PROSECUTION OF JUDICIAL MISCONDUCT AND THE RECOMMENDATION OF

JUDICIAL DISCIPLINE, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for ~~willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or~~ violation of any canon OR RULE of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character. AS SET FORTH IN THIS SECTION, THE INDEPENDENT ETHICS COMMISSION HAS SOLE JURISDICTION OVER WHETHER A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF THE COLORADO CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE MAY BE RETIRED FOR DISABILITY. A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT THAT MAY BE OTHERWISE SUBJECT TO APPELLATE REVIEW BECAUSE THE PURPOSES OF DISCIPLINE ARE SEPARATE AND DISTINCT FROM THE PURPOSES OF AN APPEAL. THE PURPOSES OF DISCIPLINE ARE THE PREVENTION OF FUTURE MISCONDUCT AND THE PROTECTION OF THE PUBLIC. A JUSTICE OR JUDGE MUST POSSESS THE CONFIDENCE OF THE COMMUNITY AND THEREFORE BE INDEPENDENT AND HONEST. JUSTICE MUST NOT ONLY BE DONE, IT MUST BE SEEN TO BE DONE. THERE MUST BE THE APPEARANCE OF JUSTICE AS WELL AS THE FACT OF JUSTICE, OR RESPECT FOR THE JUDICIARY WILL VANISH. THEREFORE, IF THE CODE OF JUDICIAL CONDUCT IS VIOLATED IN AN ORDER OR BY ACTIONS THAT ARE OTHERWISE SUBJECT TO APPELLATE REVIEW, A JUSTICE OR JUDGE MAY BE DISCIPLINED. IN REACHING ITS RECOMMENDATION, THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY THE FINDINGS OF AN APPELLATE COURT REGARDING SUCH CONDUCT AND OWES NO DEFERENCE TO THE FINDINGS OF AN APPELLATE COURT. FURTHERMORE, A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT OR ACTIONS THAT WERE NOT APPEALED OR FOR CONDUCT OR ACTIONS THAT WERE NOT OTHERWISE SUBJECT TO APPELLATE REVIEW.

(e) ~~The commission may, after such investigation as it deems necessary, order informal remedial action; order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission.~~ WHENEVER THE INDEPENDENT ETHICS COMMISSION RECEIVES A COMPLAINT AGAINST A JUSTICE OR JUDGE, OR OTHERWISE HAS REASON TO BELIEVE THAT A JUSTICE OR JUDGE SHOULD BE ADMONISHED, REPRIMANDED, CENSURED, SUSPENDED, REMOVED, OR RETIRED, THE COMMISSION SHALL FIRST INVESTIGATE THE COMPLAINT OR BELIEF AND THEN CONDUCT INITIAL PROCEEDINGS FOR THE PURPOSE OF DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR CONDUCTING A PUBLIC HEARING OR HEARINGS TO DEAL WITH THE COMPLAINT OR BELIEF. WHENEVER THE COMMISSION CONCLUDES, BASED ON

AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL CONDUCT A PUBLIC HEARING OR HEARINGS. After a ~~formal~~ SUCH hearing OR HEARINGS ~~or after considering the record and report of the masters~~, if the commission ~~finds good cause therefor~~ FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, it may take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension, censure, reprimand, or discipline, as the case may be, of the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) Following receipt of a recommendation from the INDEPENDENT ETHICS commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or wholly reject the recommendation. IF THE RECOMMENDATION OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE SUPREME COURT SHALL ACCEPT THE RECOMMENDATION OF THE COMMISSION. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) ~~Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3); shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.~~ WHENEVER THE COMMISSION CONCLUDES, BASED ON AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL MAKE PUBLIC ALL THOSE RECORDS OF ITS INVESTIGATION THAT PROVIDE THE BASIS FOR ITS ACTION. SUBSEQUENT ACTIONS BY THE COMMISSION OR SUBSEQUENT HEARINGS IN THE DISCIPLINARY PROCESS SHALL BE PUBLIC.

(h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings.~~ A justice or judge who is a member of the INDEPENDENT ETHICS commission or supreme court shall not participate in any proceedings involving his own removal or retirement.

SECTION 3. In the constitution of the state of Colorado, section 23 of article VI, **add** (4) as follows:

(4) TO PROMOTE AN EQUAL AMOUNT OF PUBLIC CONFIDENCE IN THE JUDICIAL BRANCH AS CURRENTLY EXISTS IN OTHER BRANCHES OF GOVERNMENT, THE JURISDICTION OVER JUDICIAL DISCIPLINE BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE SHALL CEASE ON DECEMBER 31, 2014, AND BE ASSUMED BY THE INDEPENDENT ETHICS COMMISSION ON JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION SHALL TAKE OVER ANY ONGOING INVESTIGATION AND ALL COMPLAINTS REGARDING JUDICIAL DISCIPLINE AS OF JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION HAS JURISDICTION OVER CONDUCT THAT OCCURRED PRIOR TO JANUARY 1, 2015, AS WELL AS CONDUCT THAT OCCURS AFTER JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY ANY PRIOR DISMISSALS OF COMPLAINTS ISSUED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE. THE INDEPENDENT ETHICS COMMISSION MAY INVESTIGATE AND PURSUE DISCIPLINE BASED ON COMPLAINTS THAT WERE PREVIOUSLY DISMISSED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE.

SECTION 4. Effective date - applicability. These voter-enacted provisions shall take effect on January 1, 2015.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #94¹

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

An amendment to the Colorado constitution concerning judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline, specifying the scope of such jurisdiction, and establishing standards and procedures for judicial discipline and disability proceedings.

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

Shall there be an amendment to the Colorado constitution concerning judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline, specifying the scope of such jurisdiction, and establishing standards and procedures for judicial discipline and disability proceedings?

*Hearing March 19, 2014:
Single subject approved; staff draft amended, titles set.
Hearing adjourned 11:21 a.m.*

¹ Unofficially captioned “**Duties of the Independent Ethics Commission**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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MAR 26 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State
S.WARD 4:00P.M.

STACY CARPENTER, Objector

vs.

CHRIS FORSYTH and LAURIE FORSYTH, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #94

Stacy Carpenter, through her legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #94 ("Duties of the Independent Ethics Commission").

On March 19, 2014, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution concerning judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline, specifying the scope of such jurisdiction, and establishing standards and procedures for judicial discipline and disability proceedings?

ADVISORY GROUNDS FOR RECONSIDERATION

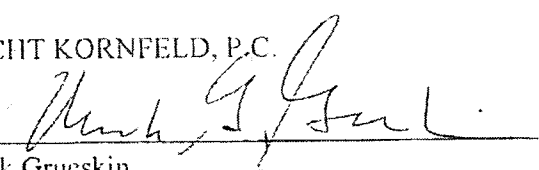
- A. This initiative violates the requirement for a single subject in a ballot initiative, Colo. Const. art. V, sec. 1(5.5), because:
1. "Judicial conduct" is an overly broad subject that does not reasonably meet the requirements of the single subject requirement.
 2. Ongoing oversight over judicial disciplinary violations is not inherently or necessarily related to the potential removal from judicial office due to disability. *Compare* Colo. Rule on Judicial Discipline 5 (judicial discipline warranted for willful misconduct, willful or persistent failure to perform judicial duties, or intemperance) and Rule 33(5)(b)(1) (judicial disability is a physical or mental condition, adversely affecting performance of judicial functions).

B. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and is reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred for the following reasons:

- (1) "Specifying the scope of such jurisdiction" is a meaningless and non-descriptive phrase and fails to address significant changes in the measure.
- (2) The title fails to state that the Independent Ethics Commission ("Commission") is unaffected by judicial precedent.
- (3) The title fails to state that Commission's decisions are not reviewable by the Supreme Court for any error in the Commission's construction or application of the law.
- (4) The title fails to state that grounds for judicial discipline no longer include willful misconduct in office, willful or persistent failure to perform his or her duties, or intemperance.
- (5) The title fails to state that commission is not affected by passage of statute of limitations as to complaints before it.
- (6) The title fails to state that commission is not affected by dismissals of prior of complaints and thus authorizes resolved matters to be refiled.
- (7) The title fails to state that measure eliminates privilege as to any filings with the Commission pertaining to judges.
- (8) The title fails to state that measure eliminates confidentiality as to proceedings if a probable cause finding is made.

RESPECTFULLY SUBMITTED this 26th day of March, 2014.

RECHT KORNFELD, P.C.


Mark Grueskin

1600 Stout Street, Suite 1000

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rechtkornfeld.com

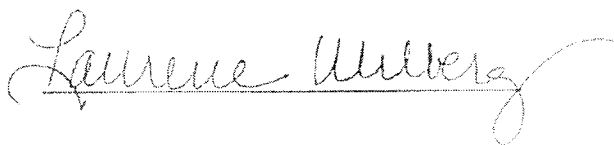
Objector's Address:

Stacy Carpenter
118 Krameria St.
Denver, CO 80220

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #79** of Stacy Carpenter was sent this day, March 26, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

Chris and Laurie Forsyth
3155 Ingalls St.
Wheat Ridge, CO 80214

A handwritten signature in cursive script that reads "Laurene Ulberg". The signature is written in black ink and is positioned above a horizontal line.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #94¹

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

An amendment to the Colorado constitution concerning regulation of judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline and specifying that such jurisdiction includes review of claims of violations of the Colorado code of judicial conduct and claims of disability, as well as complaints that were previously dismissed by the commission on judicial discipline.

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

Shall there be an amendment to the Colorado constitution concerning regulation of judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline and specifying that such jurisdiction includes review of claims of violations of the Colorado code of judicial conduct and claims of disability, as well as complaints that were previously dismissed by the commission on judicial discipline?

*Hearing March 19, 2014:
Single subject approved; staff draft amended, titles set.
Hearing adjourned 11:21 a.m.*

*Hearing April 2, 2014:
Motion for Rehearing granted to the extent that the Board made changes to the title; denied in all other respects.
Hearing adjourned 10:41 a.m.*

¹ Unofficially captioned “**Duties of the Independent Ethics Commission**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.