DATE FILED: May 15, 2014

COLORADO SUPREME COURT 2 East 14th Ave Denver, Colorado 80203	FILED IN THE SUPREME COURT MAY 15 2014 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk
ORIGINAL PROCEEDING (C.R.S. 1-40-107(2) Appeal from Ballot Title Setting Board Ballot Initiative 2012-2014-129; Definition of "Fee"	
In Re: Title and Ballot Initiative 2012-2014-129; Definition of "Fee" ANTHONY MILO, Petitioner, v. PETER COULTER and LISA BRUMFIEL , Proponents and Respondents, and Title Board: SUZANNE STAIERT, DANIEL DOMENICO, and JASON GELLENDER.	COURT USE ONLY
Representatives for Proponents/Respondents: Peter Coulter, pro se 151 Summer Street, #465 Morrison, Colorado 80465 303 720-1811 Audionly@gmail.com and Lisa Brumfiel, pro se 1499 South Jasper Aurora, Colorado 80203 729 275-9730	CASE NO. #14SA135
PROPONENTS OPENING BRIEF	

Peter Coulter and Lisa Brumfiel, Proponents and Respondents (hereinafter "Proponents") of Ballot Initiative 2012-2014 #129, Definition of "fee"; respectfully submit their opening brief as follows:

I. BACKGROUND.

Proponents submitted their original Initiative (See attached Original, Amended and Final Initiative submitted) to the Legislative Counsel in a timely fashion for review and suggestions. The original definition submitted was the definition for fee stated in findings by the United States Supreme Court. The Legislative Counsel suggested that we further define "ancillary and extraneous" used in the definition so there would be no confusion. We followed that advice, and referenced the definition of those words as prescribed by Black's Law Dictionary. They also asked if the intent and definition of the Initiative was contrary to the findings in the 2007 Colorado Supreme Court findings in Barber v. Ritter and our response was/is absolutely and if passed, we believe that the Initiative would effectively overturn the findings in that case.

II. PROCEEDINGS

Following all the advice of the Legislative Counsel, the Proponents timely filed the Initiative with the Secretary of State for a Title Setting and determination of single

subject. The Board unanimously concurred that the Initiative was a single subject and since we were/are "rookies" with the process; we allowed the Board exclusively to set the Title and accepted it exactly as they proposed. We did propose an initial single subject Title of "Official Definition of "Fee" which they changed to "Definition of Fee".

Mr. Milo timely filed an Objection and Motion for rehearing in front of the Title Board. All of his arguments concerning single subject, broadness and failure to set a Title that was indicative of the actual Initiative were unanimously declined by the Title Board Members. ***See attached transcript.***

Mr. Milo followed that rehearing with this Appeal to the Colorado Supreme Court.

III. ARGUMENT.

"When reviewing a challenge to the Title Board's setting of an initiative's title and ballot title and submission clause, we employ all legitimate presumptions in favor of the propriety of the Board's actions." ***In re Title, Ballot Title and Submission Clause*** for 2009-2010 #91, 235 P.3d 1071, 1076 (Colo. 2010). "We will only overturn the Title Board's finding that an initiative contains a single subject in a clear case." ***In re Title, Ballot Title and Submission Clause*** for 2011-2012 #3, 2012 Colo. LEXIS 284, at **6 (Colo. April l6, 2012) the court said: We do not determine

the initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal." ***Id***. "[W]e 'will not rewrite the titles or submission clause for the Board, and we will reverse the Board's action in preparing them only if they contain a material and significant omission, misstatement, or misrepresentation."' ***Id***. At 58, quoting ***In re Title, Ballot Title and Submission Clause***for 1997-1998 #62, 961 P.2d 1077, 1082 (Colo. 1998). "[T]he Title Board has considerable discretion in setting the titles for a ballot measure."***In re Title, Ballot Title and Submission Clause*** for 2011-2012 #3, *supra,* at **3. "In reviewing actions of the board we will give great deference to the board's broad discretion in the exercise of its drafting authority." ***In re Proposed Initiative oncerning "State Personnel System"***, 691 P.2d 1121, 1125 (Colo. 1984).

The text of the proposed initiative is sufficiently clear to have permitted the Title Board to set a title fairly expressing its true intent and meaning.

Petitioner's first argument is that the text of the proposed initiative is so vague and indefinite that the Title Board should have deemed itself unable to set any title at all.

THE PROPOSED MEASURE CONTAINS A SINGLE SUBJECT.

Colo. Const. art. V, §1(5.5) and §1-40-106.5, C.R.S. (2011), require initiated measures to contain only a single subject. "A proposed initiative violates this rule if its text 'relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other."' In reTitle, Ballot Title and Submission Clause for 2011-2012 #3, *supra,* at **8, quoting People ex rel. Elder v. Sours, 74P. 167, 177 (1903). "We have previously explained that the single subject rule prevents two 'dangers' associated with omnibus initiatives.... First, combining subjects with no necessary orproper connection for the purpose of garnering support for the initiative from various factions that may have different or even conflicting interests –could lead to the enactment of measures that would fail on their own merits.... Second, the single subject rule helps avoid 'voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative."' Id. At **9-10 (citations omitted), quoting In re Title, Ballot Title and Submission Clause for 2001-2002 # 43, 46 P.3d 438,442 (Colo. 2002).

The proposed initiative at issue here, by its clear language, meets the single subject requirement. There is no "log rolling," and nothing has been surreptitiously "coiled up in the folds" of this measure. And the subject of the measure has been well stated in the title-"changing the existing evidentiary

requirements for foreclosure of real property" by "requiring evidence be filed to sufficiently establish a party's right to enforce a valid recorded security interest prior to the foreclosure of any real property." The board found unanimously that the Initiative contains a single subject, the definition of fee.

IV. CONCLUSION

For the reasons set forth above, the Respondent Proponents respectfully request the Court to affirm the actions of the Title Board.

Respectfully submitted this 15th day of May, 2014,

Lisa Brumfiel,

Peter Coulter.

CERTIFICATE OF SERVICE

I certify that on May 15, 2014 a copy of the above document was served on each of the following:

Name of Person to Whom You are Sending this Document	Party	Address	Manner of Service*
Chip Schoneberger	Atty. For Mr. Milo	360 South Garfield, 6th floor, Denver, 80209	Hand
Colorado Atty. General	Advisory Copy	2 East 14th Ave. Denver 80203	Hand
Secretary of State Title Board	Respondents		Hand

***Insert one of the following: Hand Delivery, First-Class Mail, Certified Mail, E-Served or Faxed.**

/Peter Coulter/

Ballot Title Setting Board

ADDENDUM 1.TITLE SET BY BOARD

Proposed Initiative 2013-2014 #129

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

An amendment to the Colorado constitution establishing a definition of a "fee" as a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer, which fee should reasonably approximate the payer's fair share of the costs incurred by the government in providing the benefit.

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 establishing a definition of a "fee" as a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer, which fee should reasonably approximate the payer's fair share of the costs incurred by the government in providing the benefit?

Hearing April 17, 2014:

Single subject approved; staff draft amended; titles set. The Board made one technical correction to the final text of the measure.

Hearing adjourned 10:07 a.m.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Aspen Conference Room

Secretary of State's Office

1700 Broadway

Denver, Colorado

April 25, 2014

(In the Matter of the Title and Ballot Title and

Submission Clause for Initiative 2013-2014 No. 129

Rehearing regarding "Definition of Fee")

TITLE BOARD MEMBERS PRESENT:

Chairwoman Suzanne Staiert, Deputy Secretary of State

Solicitor General Daniel Domenico

Jason Gelender

APPEARANCES:

For the Objector Anthony Milo:

Chip G. Schoneberger, Esq.

Foster Graham Milstein & Calisher, LLP

Also present:

Proponents Peter Coulter and Lisa Brumfiel

CHAIRWOMAN STAIERT: That takes us to a

Motion for Rehearing. Are we doing 129 next? Is that

what you said? Okay. 129.

All right, Counsel, do you want to tell us about our potential jurisdictional problem and then let's talk about single-subject jurisdiction.

MR. SCHONEBERGER: Okay. Jurisdictional problem, other than single subject?

CHAIRWOMAN STAIERT: Oh, okay. And just for the record, Mr. Gelender will be hearing this one. Ms. Eubanks heard it last time and Mr. Blake heard it last time. But to accommodate the proponents' schedules, we're trying to get this out of here this morning.

MR. SCHONEBERGER: Okay. Good morning, Members of the Board. My name is Chip Schoneberger and I represent the objector. I'll try to keep this brief. It might have been the comment about the boiling frog, but I'm going to try to get to the point here.

I have two arguments. One is a jurisdictional argument, single subject, and the other is the language of the Measure itself.

This relates to the definition of fee and as that's presented in kind of that succinct manner, it seems fairly innocuous, but I think if you look into the actual language of the Proposed Initiative, it's

far broader than that.

First of all, it purports to amend Article 10, Section 20, which is TABOR, and the word "fee" only appears in that section one time in relation to attorney fees.

But if you go down a little bit further, it also relates to, not just to the Constitution, but also to every conceivable legal concept, basically, under the sun. It relates to all of statutes, all codes, directives, and the catch-all phrase "all public Colorado legal documents".

And although the collective wisdom of the Board is certainly greater than mine, I cannot even conceive of the breadth of that statement.

Who's to say really what falls under that broad umbrella? It's just simply off the charts in terms of broadness in my perspective.

And to the extent it also relates to superceding the Supreme Court's decision in Barber.

Well that decision drew a distinction between fees -- the meaning of fees at the point that they are imposed and what happens and how those fees are characterized

after the fact once they're in the hands of a government agency.

So, at a minimum we have multiple subjects that fall under the broad umbrella of all legal Colorado public documents, or something to that effect.

And the distinction between the various temporal characterization of fees, depending on whether it's at the point of intake or subsequently.

If the Board has any questions on that, I'm happy to answer them, otherwise I'll move on to the language characterization, unless you'd like to take those separately.

CHAIRWOMAN STAIERT: I think I do want to take it separately because we have a separate jurisdictional issue. How do you reconcile that with like Fort Collins v. Bloom and other cases that have said what a fee is? I mean, aren't they essentially just saying what's already in TABOR?

MR. SCHONEGERGER: Well, again, like I said, TABOR only mentions attorneys' fees which certainly doesn't fall under my reading of this description. But I think the problem is really all Colorado legal

documents. I really don't even know what that means. Are we talking about penalty fees? Are we talking about land transactions?

In all honesty, it seems incredibly broad to me to the point of being almost incomprehensible in terms of its scope.

CHAIRWOMAN STAIERT: But I mean, doesn't the prior case law say that a fee has to be reasonably related to the -- I mean, even before TABOR?

MR. SCHONEGERGER: Certainly it does, but my issue is what are we talking about in terms of fee? I mean the word "fee" appears everywhere. This isn't even necessarily limited to certain types of fees. I mean, we're talking about the universe of fees. That is simply incredibly broad.

UNIDENTIFIED MALE: If I may, I mean, broad doesn't mean that much. This is being put in the Colorado Constitution. Even without that language, doesn't this supercede any other, maybe not other constitutional provisions, but certainly anything statutory, the courts, and anything else that's in conflict just because it's in the Constitution?

MR. SCHONEGERGER: Doesn't it supercede? Is that the question?

UNIDENTIFIED MALE: Yeah, it does, does it not?

MR. SCHONEGERGER: Well, certainly, and that's the way it's written. But I think -- we're talking about a definition. And you're also getting to the point of application.

The definition of fee is going to attach to wherever that word appears, but the application of how we interpret that becomes confusing because of the way that the definition is written.

If you're talking about some other kind of a fee, then it clearly doesn't apply. But that's an application and interpretation question.

And I'd also point out that simply on Barber alone, the fact that this purports to supercede Barber, Barber does distinguish between the fee at the point of intake and what happens after it.

The meaning of fee can change under Barber after it's been received. But under this language, it eliminates that distinction, so you're addressing an

established meaning of fee at two different points and you're merging them into one. And to me that's a multiple-subject issue.

CHAIRWOMAN STAIERT: I mean, I don't see what it really does to -- I don't see, I guess, rolling back Barber as a -- I mean, the fee is still upfront, must be collected for the -- it's still going to be reasonably related to the pairs' fair share of the costs, right?

And this is basically saying, and once that's incurred, you're not going to be able to transfer it. You have to use it for that purpose for which you collected it.

MR. SCHONEGERGER: Although under Barber, if the purpose of the fee is to fund the general expenses, what could be a fee at intake can become a tax after the fact. And this says that a fee is a fee is a fee, is always a fee and that's not necessarily the case under Barber.

CHAIRWOMAN STAIERT: That's not what Barber said. Barber said it didn't become a tax when you transferred it. It said it depends on why you collect

it.

I mean, when they moved all that money in Barber, the court didn't convert it to a tax. The court just said you could make that move as long as you, basically, in good faith collected your fee for this purpose.

I mean, I don't remember if Barber had to do with -- it was a bunch of funds that were overfunded in the state, right? And so then they decided they didn't need the money in the funds.

As long as you don't fraudulently go out and collect money pretending you're going to use it for one purpose and then move it, that's what makes it a tax.

I mean, Barber pretty much said, look at the purpose for which it was collected. If it was collected legitimately, you know, for that purpose and then you find out later you don't need it, you can move it and it doesn't lose its characterization as a fee.

It doesn't convert it into a tax.

MR. SCHONEGERGER: Well, that -- and that was the --

CHAIRWOMAN STAIERT: If you collected it

illegally upfront, then it was -- I mean, if it really wasn't a fee upfront, then it was a tax.

MR. SCHONEGERGER: And that was the outcome of Barber, but I guess the reverse scenario implies that if it is collected for a different purpose, even though it's a fee when it comes in, if it is dispersed in a different way after the fact, it could become a tax, or at least it could be viewed as a tax.

CHAIRWOMAN STAIERT: But that's true anyway.

MR. SCHONEGERGER: By attaching -- I'm sorry.

CHAIRWOMAN STAIERT: I'm sorry. But isn't that true anyway? I mean, if I say -- if I'm a government and I say I'm going to build a reservoir, knowing the whole time I'm not really going to build a reservoir, but I go and I collect tap fees for this reservoir and it comes out later that I never planned to build a reservoir.

And then I move all the money into the general fund, then the court is going to tell me that that money is subject to TABOR and it was a tax and you're going to have to refund it, subject to TABOR, or ask the taxpayers to keep it or do something, right?

MR. SCHONEGERGER: Mm-hmm.

CHAIRWOMAN STAIERT: But if I really was going to build a reservoir and then I find out later that I can't because the EPA won't approve it, or whatever -- I mean, to me, that's kind of where Barber was, was saying, you know, we can't just tell people if they over collected on one end for a legit purpose that the money is just going to sit there forever.

MR. SCHONEGERGER: Sure.

CHAIRWOMAN STAIERT: You have to be able to do something with it.

MR. SCHONEGERGER: Sure. And as I read the language, this sets the definition of fee. It takes away the ability to interpret it in a different way. And the section right after that, beginning at line 21, I think maybe clears that up a little bit.

And it says that the ancillary or extraneous benefits that may come are immaterial to the definition of fee. You don't have to take that into consideration, which is not what the language, albeit not the ultimate result of Barber, but the court's sentiment in Barber runs contrary to that.

CHAIRWOMAN STAIERT: All right. The secondary jurisdiction question, Steven, could you just, for the record, regarding the timing of all this, so in case the --

STEVEN WARD: So yesterday evening I received a forwarded e-mail from Mark Grueskin with Chip's address indicating that he had sent us the Motion for Rehearing Wednesday prior to close of business. And that e-mail has yet to show up in my inbox, so I have requested help from our information technology department to find out where the e-mail went. But we did receive a copy of the Motion for Rehearing and we did receive an indication that it was timely filed.

CHAIRWOMAN STAIERT: Okay. All right. I just wanted to put that on the record.

MR. SCHONEBERGER: Okay. And I'll add to the record if you'll indulge me for just a second on that because I do have -- I know Mr. Ward said he got a copy of the motion. I have an extra copy, if you'd like me to submit it.

But otherwise, I also have a copy of --

several copies, actually, of the e-mail itself, as well as the -- I interpret this as a delivery confirmation. It's at least a confirmation that it was delivered to the server. There was no bounce back that it was actually accepted by the server, but it was certainly delivered. So I can put these in the record, if I can approach her or hand these to Mr. Ward.

CHAIRWOMAN STAIERT: I'm sure we have, but yeah, why don't you put yours in the record?

MR. SCHONEBERGER: Okay.

STEVEN WARD: So, I believe that our information security department can probably elaborate on that. But from a technical standpoint in spam prevention it's common practice not to have your server acknowledge if it bounces or it fails to deliver an email because you don't want the other side to know that the e-mail address is an actual live e-mail address.

And what this notification says is, delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server. Indicating, potentially, from my limited

technical knowledge that our server failed to acknowledge that the e-mail was received.

What you told me earlier today was that you did request a red receipt on that e-mail?

MR. SCHONEBERGER: Correct.

STEVEN WARD: So, when I open those routinely, Outlook will ask me if I want to send the red receipt, I always click yes. There are other attorneys in this room that have probably received red receipts from me previously on their e-mails.

So, like I said, we appeared to have had some technical issue. I have everything filed and I have no reason to disbelieve that the e-mail was actually sent. It's just not arrived.

MR. SCHONEBERGER: Okay. Thank you.

CHAIRWOMAN STAIERT: Okay. Do you want to come up and --

MR. COULTER: Madam Chair, Board, Peter Coulter along with Lisa Brumfiel, proponents.

A couple things, the definition that we put into this initiative was straight from the U.S. Supreme Court. It didn't change anything. It was in a

decision and findings from the Supreme Court.
Everything else after that was at the advice
of the Legislative Council over at the Capital. And so
we added those things about Barber, which I think the
fee definition by itself takes care of Barber without
having to mention it, but they asked us to.
And it's the definition, we just have a
definition for the entire state. And so Barber v.
Ritter they skewed -- there was not a definition and so
they skewed the meaning of the word "fee" where they
said it doesn't make any difference what happens at the
back end of it where it goes, it only makes it a fee
how it comes in at the front end.
And so with that, they were able to -- I mean,
the best example is raise car registration fees from
$10 to $60 or 70 bucks and include enterprises --
Bridge Enterprises as part of the registration fee.
So this just puts everything back the way it
should be with no illusions as there are now.
MALE BOARD MEMBER: I just have one brief
question. With the language, it's a little interesting
how you talked about -- it says it supercedes as a

findings of fact in Barber v. Ritter.

If it does that, then presumably what it's saying is that Barber v. Ritter that money really was a tax, not a fee.

If it's a tax under TABOR, money illegally kept, it needs to be refunded with interest, do you believe that this Measure would require a refund of all the money that was kept and allowed to be kept under the Barber decision?

MR. COULTER: No, but as the point of time if it's enacted, okay, from that point forward, we're not going to be able to use that perverse language that they used in the Supreme Court in Barber v. Ritter. If it's anything other than a fee, it can't go into the general fund and it has to be used exclusively for what the purpose was or is.

MR. COULTER: Thank you.

CHAIRWOMAN STAIERT: Any other questions?

MALE BOARD MEMBER: Now, I guess -- I don't know if this is really going to have a question mark or a period at the end, but the focus on Barber to me seems maybe to be a little bit leading us astray.

The example of the car registration fee as the Bridge Enterprise seems like a much better example. But that's a different scenario than -- I think, quite different than Barber.

The Courts basic point in Barber was hey, even applying a definition somewhat similar to what you have here, at the outset in Barber this was kind of meant to reasonably approximate the costs and then it turned out that there was extra money in there.

Whereas, I think, what you're really trying to get at is the more common scenario like the Bridge Enterprise Funding where there's sort of this generic benefit and the tie between the fee, what's now called a fee, and the benefit is really pretty lose, right? I mean, your car fee is connected to the weight of your car, et cetera, but I assume what you're saying is that would fail under this. But that, to me, is a different question than what happened in Barber. And I just want to make sure I'm understanding kind of what this really is after.

I mean, is this after just the Barber scenario where a little extra money -- it turns out the

government says, well, we think it's going to cost about this much per applicant to run this program. It turns out it costs a little bit less than that.

Or is this meant to be the other scenario where, you know, you call this new revenue source a fee, but it's only kind of not as directly tied to the benefit of an individual payer as this definition I think is meant to do?

MR. COULTER: Well, after TABOR -- I mean, it's pretty well known that the government was looking for a way to fund things. And then they came up with -- actually, in the two lower courts, it failed. And then the Supreme Court, of course -- there wasn't a -- they didn't even have a real definition of fee. They made their definition of fee as to intake and how it goes after that and it can go into the general fund like a tax.

So, we're saying that it cannot go into -- a fee is like as it always has been before then, that it cannot go under the general fund. It has to be used specifically for the purpose that it was intended.

The part about the reference to Ritter was at

the suggestion of the Legislative Council.

MALE BOARD MEMBER: Right. And I guess my point is that, to me, is a different or a related, but somewhat different question where you have -- I mean, the point in that case was these were basically what, I think, at the outset, if you set them up right, would qualify under your definition as fees.

The problem was they were too large. The fee was too high to pay for the benefit, the problem from your perspective, right?

MR. COULTER: Correct.

MALE BOARD MEMBER: And so there was leftover money that the government then took and put in the general fund and used for other purposes.

That, to me, is a somewhat different question than what I think a lot of people think is the problem with the definition of "fee" versus "tax", which is that really you can call a tax a fee, because as long as there's some kind of incidental benefit or you benefit from this program in some generic way, that that qualifies.

And I thought that this was intended to kind

of tighten up that aspect, which was not really the problem in Barber, I don't think. I think it was a different issue in Barber.

Now you may be solving both of those issues here, but I don't know that -- kind of the focus on Barber is confusing me about what we're really after. Are we really after kind of if the fee is too big, what you do with the excess? Or are we really after kind of things that should be not fees at all, being considered fees? And that, to me, is slightly different. And I thought that was kind of the bigger issue that this was trying to deal with.

MR. COULTER: Well, I respond that it's probably both. I mean, this thing got obscured when the Supreme Court did Barber v. Ritter.

Before, I mean, the definition by the Supreme Court is exactly what the fee is supposed to be. I mean, if it costs you $5 to provide a service to the public and that's all you can charge voluntarily -- okay, voluntary.

You can't go on and then add on ancillary things, okay, just so you can get bridges built or

whatever you want so you can raise income. Then it becomes a tax. That's when it becomes a tax.

And so this, if you're going to call it a fee -- if you want to call it a fee, this is going to define those actions of the government.

MALE BOARD MEMBER: Okay. And let me just make sure I'm clear because Mr. Schoneberger brought up a couple of other points about, not the definition itself of fee, but what it applies to.

And so what's on 11 through 13, I think it's pretty clear reading the Measure as a whole. What you're talking about is the distinction between taxes and fees, a government charge.

The problem that I think would be solved by reasonable interpretation is that there are other kinds of fees that are discussed in the Constitution and statutes, codes, and other public legal documents, attorneys' fees, things like that is just one example. This doesn't -- it would be impossible it seems to me to apply this language to something like a requirement that someone pay attorneys' fees in a losing lawsuit or that sort of thing.

MR. COULTER: Correct, but where do I start?

I mean, I start accepting each item? I mean, I can't

do that. I mean, I have to start somewhere.

MALE BOARD MEMBER: Right. I just want to

make sure your intent is on the record --

MR. COULTER: Oh, sure.

MALE BOARD MEMBER: -- and that what you're

talking about is the distinction between taxes and fees

and trying to sort of recalibrate the balance between

those two things, not effect things that are sort of

what other people might charge each other. You know,

there's limits on what private people can charge.

MR. COULTER: Whatever private -- if it's

private, it's not affected by here, so this republic is

in the definition.

MALE BOARD MEMBER: Thanks.

CHAIRWOMAN STAIERT: Thank you.

MALE BOARD MEMBER: I assume ready for just a

motion on jurisdiction?

CHAIRWOMAN STAIERT: Sure.

MALE BOARD MEMBER: All right. I would move

that we deny the Motion for Rehearing to the extent we

find that Proposed Initiative 2013-14 No. 129 has a single subject and we have jurisdiction to set title.

MALE BOARD MEMBER: Second.

CHAIRWOMAN STAIERT: All those in favor? Aye.

MALE BOARD MEMBER: Aye.

MALE BOARD MEMBER: Aye.

Obviously we're acting as if we accept that the petition/motion was filed on time, which I think is correct, but I just know we haven't made an actual record on it other than a discussion.

CHAIRWOMAN STAIERT: Right.

MR. COULTER: Can I make a record on that real quick? I don't have any objection. I don't think anything happened and I just assume that it not be a part of the issue because I don't want to have to go through the Supreme Court and come back and go through these other things. So, I believe everything was copasetic here with the record.

CHAIRWOMAN STAIERT: Okay. All right. That takes us to the question. Do you have any comments on the language?

MALE BOARD MEMBER: I do. And I think

basically the theme of my comment is error by omission. The submission clause in the actual title really only mentions the Constitution.

It doesn't mention any of the other aspects of Section 1, which includes its application to all other legal documents, all statutes, codes, charters, as well as the treatment of Barber.

So, I would propose that it's misleading in that respect. The voters wouldn't really understand what they're signing up for with regard to the scope of its application and so I believe it's defective for failing to incorporate those concepts as well.

CHAIRWOMAN STAIERT: All right. Thank you.

Do you have anything else you want to add?

MR. COULTER: Just real quick, as far as Barber and those things, again, that's where the suggestions of the Legislative Council and we incorporated it in there.

CHAIRWOMAN STAIERT: Okay. All right. Thank you.

UNIDENTIFIED MALE: I guess I'll comment on the objections. First, as I think I said before, I

think the whole bit about what -- you know, all the different kinds of laws and things of this applies. So it's just sort of the case with any constitutional amendment, I don't think it's particularly material or a central feature for this initiative.

I also feel that in light of the proponent's statement on the record, which becomes legislative history for this, I think it makes sense that there is no effort here to try to force a refund of the money, you know, actually overturn Barber to that extent, that this is only prospective.

I think that that provision is essentially clarification more than anything else. I don't think we need to include that either.

UNIDENTIFIED MALE: Yeah, I would have been okay if the Board wanted to discuss that it includes all these -- that it applies, kind of, not just to the Constitution, but I also think I agree that that's -- generally a constitutional definition will control pretty broadly.

CHAIRWOMAN STAIERT: Any changes to the language either of you?

MALE BOARD MEMBER: No, I think as long as we're comfortable that not including the -- that it applies to statutes, et cetera. As long as we're okay with that, I'm okay with the rest of the language, I think.

CHAIRWOMAN STAIERT: Okay.

MALE BOARD MEMBER: The only thing I might do is just whether we just want to say defining a fee as opposed to establishing a definition of a fee.

CHAIRWOMAN STAIERT: Oh, that's fine, yeah.

All right. Do you want to make a motion?

MALE BOARD MEMBER: Sure. I move that we deny the motion -- I'm sorry -- that we deny the Motion for Rehearing except to the extent that we've amended the title and set the title as it appears on the screen for Proposed Initiative 2013-14 No. 129.

MALE BOARD MEMBER: Second.

CHAIRWOMAN STAIERT: All right. All those in favor? Aye.

MALE BOARD MEMBER: Aye.

MALE BOARD MEMBER: Aye.

(The hearing was concluded regarding No. 129.)

REPORTER'S CERTIFICATE

STATE OF COLORADO)

) ss.

COUNTY OF ADAMS)

I, Geneva T. Hansen, do hereby certify that I am a Professional Shorthand Reporter and Notary Public within the State of Colorado.

I further certify that the foregoing transcript constitutes a true and correct transcript to the best of my ability to hear and understand the audio recording.

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 _____ day of May, 2014.

My commission expires 11-18-15

_____

Geneva T. Hansen