

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
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 2017- 2018 #97 Petitioners: NEIL RAY v. Respondents: ANNE LEE FOSTER AND SUZANNE SPIEGEL and Title Board: SUZANNE STAIERT; JASON GELENDER; and GLENN ROPER	▲ COURT USE ONLY ▲
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RESPONDENTS' OPENING BRIEF	

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). It contains 6031 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

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 (R.___, p.___), 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.

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By: s/Martha M. Tierney

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Anne Lee Foster and Suzanne Spiegel (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause (jointly, the “Title”) that the Title Board set for Proposed Initiative 2017-2018 #97 (“Initiative #97”).

STATEMENT OF ISSUES PRESENTED FOR REVIEW¹

1. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, §1(8) of the Colorado Constitution and C.R.S. §1-40-105(4).
2. Whether the measure’s abstract fails to comply with the requirements of C.R.S. §1-40-105.5(3), and is otherwise misleading and prejudicial.
3. Whether the Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements.
4. Whether the Legislative Council’s failure to post on its website data that was submitted by the proponents, as required by C.R.S. §1-40-

¹ These issues are drawn, as best Respondents are able, from Petitioner’s “Issues Presented for Review” in his Petition for Review and from the positions asserted by Petitioner in his Motion for Rehearing.

105.5(6), divested the Title Board of jurisdiction to consider the measure.

5. Whether the Title Board erroneously relied on proponent testimony in considering the abstract when that testimony related to economic data submitted by proponents to Legislative Council but was not posted on Legislative Council's website, as required by C.R.S. §1-40-105.5(6), nor available to the Title Board or the Petitioner at the hearing.
6. Whether the title is misleading in a number of respects.

STATEMENT OF THE CASE

This is an appeal from the Title Board's setting of the Title for Initiative #97. On December 21, 2017, Proponents filed Initiative #97 with the directors of the Legislative Council and the Office of Legislative Legal Services. Pursuant to C.R.S. 1-40-105(2), the Offices of Legislative Council and Legislative Legal Services conducted a review and comment hearing required by C.R.S. 1-40-105(1) on January 2, 2018.

Proponents filed Initiative #97 with the Secretary of State's office on January 5, 2018. At the Title Board hearing on January 17, 2018, the Title Board found that Initiative #97 contained a single subject, as required pursuant to article

V, section 1(5.5) of the Colorado Constitution, and Section 1-40-106.5, C.R.S.

(2017). The Title Board set the Title for Initiative #97.

On January 24, 2018, Petitioner Neil Ray filed a Motion for Rehearing. On February 7, 2018, the Title Board revised the Title and the fiscal abstract to their current form. Petitioner Neil Ray filed an appeal, pursuant to Section 1-40-107(2), C.R.S. (2017), on February 14, 2018.

STATEMENT OF FACTS

Initiative #97 amends the Colorado Revised Statutes to create a statewide setback requirement for new oil and gas development of at least 2,500 feet from the nearest occupied structure or vulnerable area, defines terms used in the measure, allows local governments to increase the setback distance, and sets forth implementation details concerning enactment and enforcement.

The Title set by the Title Board correctly and fairly expresses the true intent and meaning of Initiative #97 and will not mislead the public. The Title follows Initiative #97's structure, using similar, and often identical, language.

The Title, as amended at the rehearing on February 7, 2018, reads:

A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,500 feet from any structure intended for human occupancy and any other area designated by the measure, the state, or a local government and

authorizing the state or a local government to increase the minimum distance requirement.

The abstract is also clear and meets the requirements of the law. The fiscal abstract, as amended by the Title Board on February 7, 2018 reads:

State and Local Government Revenue and Expenditures. The measure is highly likely to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.

Economic Impacts. This measure constrains well location throughout the state except on federal lands and is likely to reduce future oil and gas development in the state. The current 500 foot setback prohibits oil and gas development on about 18 acres surrounding a given point. The measure increases the setback to a minimum of 2,500 feet or about 450 surrounding acres. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.

SUMMARY OF ARGUMENT

The Title Board properly exercised its broad discretion in drafting the title and modifying the fiscal abstract for Initiative #97. Initiative #97 contains a single subject by creating a statewide setback requirement for new oil and gas development of at least 2,500 feet from the nearest occupied structure or

vulnerable area. The remaining provisions, including the definition of terms used in the measure, and an allowance for the state or a local government to increase the setback distance and designate vulnerable areas, all flow from the measure's single subject.

Initiative #97 does not present either of the dangers attending omnibus measures - the proponents did not combine an array of disconnected subjects into the measure for the purpose of garnering support from various factions; and voters will not be surprised by, or fraudulently led to vote for, any surreptitious provisions coiled up in the folds of a complex initiative. Petitioners' concerns about the effects that Initiative #97 could have on other laws, or its application if enacted are not appropriate for review at this stage.

The fiscal abstract complies with Colorado law and is neither prejudicial nor misleading. The Title Board did not seek to, nor was it authorized to return the abstract to Legislative Council. The Title Board had jurisdiction to set a title for Initiative #97, and its jurisdiction was not impacted by the Legislative Council's decision to forgo posting on its website material from Proponents that did not constitute a fiscal impact estimate. The Title Board properly relied on testimony and evidence presented at the rehearing when it partially amended the fiscal

abstract, and deferred to Legislative Council's judgment in the absence of a compelling reason that the abstract was inaccurate.

The Title satisfies Colorado law because it fairly and accurately sets forth the major features of Initiative #97 and is not misleading. The title does not need to include a reference to a landowners' ability to waive a setback requirement, because the measure contains no such provision. The Title appropriately uses the term "new oil and gas development," which is contained in and defined by the measure. Finally, the title makes clear that the measure authorizes state and local governments to create setback requirements in excess of 2,500 feet for new oil and gas development from structures intended for human occupancy and any other area designated by the measure, the state, or a local government.

The Title Board is only obligated to fairly summarize the central points of a proposed measure, and, need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

Accordingly, there is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

ARGUMENT

I. The Initiative Complies with the Single Subject Requirement.

A. Standard of Review.

Article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5(1)(a), C.R.S. (2017), provide that a proposed initiative must be limited to “a single subject which shall be clearly expressed in its title.” “A proposed initiative violates this rule if its text relates to more than one subject, and has at least two distinct and separate purposes not dependent upon or connected with each other.” *In re Initiative for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012). When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *Cordero v. Leahy (In re Initiative for 2013-2014 #90)*, 328 P.3d 155, 158 (Colo. 2014). The Court will “only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *Id.*

B. Initiative 2017-2018 #97 Contains a Single Subject.

Initiative #97 contains a single subject: establishing a statewide minimum distance requirement for new oil and gas development from occupied structures and vulnerable areas. The remainder of the measure contains a legislative declaration, definitions of terms used in the measure, and a provision allowing the

state or a local government to increase the minimum distance requirement and designate vulnerable areas to which the distance requirement applies - all congruous and related to the single subject of the measure. The text of Initiative #97 is short, and its provisions are directly tied to the measure's central focus.

The single-subject requirement functions to prevent two dangers: (1) "logrolling," or the practice of "combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—[in order to] lead to the enactment of measures that would fail on their own merits"; and (2) voter surprise and fraud caused by the "passage of a surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Initiative for 2011-2012 #3*, 274 P.3d at 566; *see also* § 1-40-106.5(1)(e), C.R.S. Accordingly, the subject matter of a proposed initiative "must be necessarily and properly connected rather than disconnected or incongruous." *In re Initiative for 2013-2014 #90*, 328 P.3d at 159 (quoting *In re Initiative for 2011-2012 #3*, 274 P.3d at 565). But where a proposed initiative "tends to effect or to carry out one general objective or purpose," it presents only one subject. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 253 (Colo. 2000); *accord In re Initiative for 2013-2014 #90*, 328 P.3d at 159.

Additionally, an initiative does not violate the single-subject requirement simply because it contains provisions necessary to effectuate its purpose. *See In re Initiative for 2013-2014 #90*, 328 P.3d at 159. Rather, so long as they are interrelated, such provisions "are properly included within [the initiative's] text." *Id.*; *see also Earnest v. Gorman (In re Title, Ballot Title and Submission Clause for 2009-2010 # 45)*, 234 P.3d 642, 646 (Colo. 2010) ("An initiative may contain several purposes, but they must be interrelated Implementing provisions that are directly tied to the initiative's central focus are not separate subjects." (Citation omitted)). In reviewing the Title Board's actions, this Court construes the single-subject requirement liberally to avoid unduly restricting the initiative process. *In re Initiative for 2013-2014 #90*, 328 P.3d at 160.

Here, Petitioner contends that Initiative #97 violates the single subject requirement but does not specify these violations in his Petition. In his Motion for Rehearing, Petitioner argued that Initiative #97 violated the single subject requirement because in addition to establishing a 2,500 setback requirement for new oil and gas development from occupied structures and vulnerable areas, the measure also (1) gives local governments the power to designate additional vulnerable areas and establish setbacks of larger distances than the 2,500 feet; (2) changes the home rule provision of the Colorado Constitution by granting counties

the authority to establish a larger setback than required by a home rule municipality; and (3) overturns recent decisions by this Court holding that because fracking and oil and gas development is a matter of mixed state and local concern. local governments are subject to preemption by state law.

Petitioner overstates the breadth of Initiatives 97. It does not broadly change constitutional home rule provisions or the preemption doctrine; rather, the initiative affects those constitutional provisions and doctrines only inasmuch as they directly relate to the subject matter of the initiative—establishing a minimum distance requirement of 2,500 feet for new oil and gas development from occupied structures and vulnerable areas. As this Court has repeatedly held, "[t]he effects this measure could have on Colorado . . . law if adopted by voters are irrelevant to [a] review of whether [the proposed initiative] and its Titles contain a single subject." *In re Initiative for 2013-2014 #90*, 328 P.3d at 160 (*quoting In re Initiative for 2011-2012 #3*, 274 P.3d at 568 n.2).

Specifically, this Court has previously made clear that any effect a proposed initiative would have on Colorado's constitutional home rule provisions does not constitute a separate subject. "The alteration of the existing power and authority of home rule and statutory cities to enact certain regulations pertaining to the central purpose of the initiative does not violate the single subject requirement." *In re*

Initiative for 2013-2014 #90, 328 P.3d at 161; *In re Initiative for 1999-00 #256*, 12 P.3d at 254 (holding that the curtailment of home rule powers over development is a necessary result of the measure's central purpose to manage development, and thus is not a separate subject).

This Court also looked at the issue of whether a change in preemption law creates a separate subject in the context of a similar measure in 2014, and found that it did not. In that case, this Court held,

any effect the [initiatives] would have on Colorado's preemption doctrine does not constitute a separate subject. Indeed, the central purpose of the initiatives is to grant local governments the authority to enact more restrictive regulations on oil and gas development within their respective jurisdictions. Thus, that the [initiatives] declare that more restrictive regulations enacted under the initiatives would govern over conflicting state laws is necessarily and properly connected to the initiatives' central purpose.

In re Initiative for 2013-2014 #90, 328 P.3d at 161. Like the 2014 measure, Initiative #97 alters the existing power and authority of state and local governments to enact certain regulations pertaining to the central purpose of the initiative – the regulation of oil and gas development – and this does not violate the single subject requirement. *See Id.*

“In determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted.” *In re Initiative for 1999-2000 #255*, 4 P.3d 485, 495 (Colo. 2000).

Rather, the Court applies the general rules of statutory construction and accords the language of the measure its plain meaning. *See In re Initiative for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006).

Initiative #97 does not present either of the dangers the single-subject requirement seeks to prevent. There is no threat of logrolling here because the proponents did not combine an array of unconnected subjects into the measure for the purpose of garnering support from groups with different, or even conflicting interests. *In re Initiative for 2013-2014 #89*, 328 P.3d 172, 177 (Colo. 2014).

Rather, each subsection of Initiative #97 is tied to the central purpose of the measure: creation of a statewide minimum distance requirement of at least 2500 feet from occupied structures and vulnerable areas. Initiative #97 will pass or fail on its merits and does not run the risk of garnering support from factions with different or conflicting goals. *See id.* at 178.

Initiative #97 also fails to trigger the second danger of omnibus measures because voters will not be surprised by, or fraudulently led to vote for, any provisions “coiled up in the folds” of Initiative 97. *In re Initiative 2001-2002 #43*, 46 P.3d 438, 442-43 (Colo. 2002). No such surprise would occur should voters approve Initiative #97, because the plain language of the measure unambiguously proposes creating a statewide minimum distance requirement of 2,500 feet from

occupied structures and vulnerable areas, defines terms included in the measure, and allows local governments to increase the size of the setback and designate vulnerable areas. Initiative #97 is not overly lengthy or complex, and its plain language is not confusing. *See In re Initiative for 2011-2012 #3*, 274 P.3d at 567.

Finally, Petitioner contends that Initiative #97 contains a separate subject because it “effectively bans new oil and gas development, *Motion for Rehearing*, p. 1, ¶1.1, The crux of Petitioner’s argument is really that Initiative #97 is a bad idea. However, in determining whether a proposed initiative comports with the single subject requirement, this Court “does not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate.” *In re Title, Ballot Title & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). Whether a proposed initiative is a bad idea is not the test of whether it meets the single subject requirement.

Initiative #97 complies with the single subject rule.

II. The Initiative’s Abstract Is a Correct Estimate, Is Not Misleading or Prejudicial, and Meets the Requirments of Colorado Law.

A. Standard of Review.

This Court recently determined that it has the authority to review an abstract prepared and submitted to the Title Board pursuant to C.R.S. §1-40-105.5. *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 395

P.2d 318 (Colo. 2017). The Court determined that it “should use the same standard to review an abstract as is it does to review a title.” *Id.* at 323. The Court employs "all legitimate presumptions in favor of the propriety" of the Title Board's decisions and only overturns the Board's decision "in a clear case." *Id.*, *citations omitted*. The Court applies the same deferential standard in reviewing challenges to abstracts as it does in reviewing challenges to other Title Board decisions. *Id.*

B. The Abstract Satisfies the Statutory Requirements.

Amongst his four arguments related to the abstract, Petitioner first contends that the abstract fails to comply with the requirements of C.R.S. §1-40-105.5(3), and is otherwise misleading and prejudicial.

At the Rehearing on February 7, 2018, Petitioner argued that, because the abstract does not include any hard numbers or other quantitative data, it was misleading and failed to satisfy the requirements for abstracts set forth in section 1-40-105.5(3).² Petitioner sought inclusion in the abstract of data from a 2016 University of Colorado (“CU”) study and a Colorado Oil and Gas Conservation Commission (“COGCC”) study that discussed impacts on oil and gas development from a 2016 ballot measure that contained a 2500 foot setback but covered the

² A certified transcript from the Title Board rehearing on 2017-2018 Initiative #97 on February 7, 2018 is submitted herewith as Exhibit A.

entire state. Initiative #97, in contrast, exempts federal lands from its application, which make up approximately 30% of the land in Colorado.

At the Rehearing, the representative for the Legislative Council, Natalie Mullis, testified that it is simply not possible to provide quantitative estimates for the effects of Initiative #97. *Transcript*, p. 43, l. 12 – p. 45, l. 15. Ms. Mullis explained that Legislative Council did read the 2016 CU and COGCC studies and take them into consideration when drafting the fiscal impact statement and abstract for Initiative #97. *Transcript*, p. 40, ll. 12-17. But, Ms. Mullis clarified that Legislative Council did not include specific data from the 2016 CU and COGCC studies, because they were based on assumptions about the percentage reduction in developable land arising from a 2,500 foot setback that applied to the entire state. *Transcript*, p. 43, l. 12 – p. 45, l. 15. Ms. Mullis stated that Legislative Council could not make that assumption in regard to the fiscal impact statement and abstract for Initiative #97. *Id.*

Ms. Mullis further clarified that there is no way to make unbiased and accurate assumptions for how the measure might change oil and gas production and if such changes would impact the economy, or how reducing oil and gas development would have other positive impacts on the economy. *Id.* Therefore, she testified, that there is no way to give precise estimates of fiscal or other

impacts. *Id.* In such situations, including with prior legislative bills containing setback measures for oil and gas development, Ms. Mullis stated that it is standard practice for the Legislative Council to provide indeterminate qualitative impact statements. *Transcript*, p. 40, l. 8 – p. 41, l. 13; p. 45, ll. 1-15.

The Title Board, after hearing from Ms. Mullis, counsel for both the Proponents and the Petitioner, along Proponent Suzanne Spiegel, and witness for Petitioner Chris Brown, amended part of the fiscal abstract. It also determined that the modified abstract was not misleading or inherently prejudicial, and that it should rely on Legislative Council’s judgment and approve the fiscal abstract. *Transcript*, pp. 106, l. 7 – 107, l. 23.

C. The Title Board Properly Set a Title and Was Not Authorized to Return the Abstract to Legislative Council.

Second, Petitioner contends that the Title Board should have returned the Fiscal Abstract to the Legislative Council instead of setting a title because it failed to meet legal requirements. *Petition*, p.2, ¶II.C. Nothing in C.R.S. §1-40-105.5 or in §1-40-107, however, authorizes the Title Board to return the abstract to the Legislative Council to modify the abstract. Instead, the statute allows the Title Board itself to “modify the abstract based on information presented at the rehearing.” *See* §1-40-107(1)(b), C.R.S.

At the rehearing, the Title Board met in executive session with its counsel from the Colorado Attorney General's Office, and, concluded that it did not have the authority or jurisdiction to send the fiscal impact statement or abstract back to Legislative Council. *Transcript*, p. 65, ll. 12-21. The Title Board determined that its only authority under the statute is to modify the abstract based on information presented at the rehearing. *Id.* The Title Board then made some modifications to the abstract at the rehearing. *Transcript*, p. 108, ll. 5-11.

Importantly, the Title Board did not conclude that the abstract failed to meet legal requirements. Rather, the Title Board made some amendments to the abstract, determined that the abstract was “not inherently prejudicial or misleading,” and that it should “defer to Legislative Council having reviewed the information on that that was provided and this is their best attempt to state what the economic benefits are.” *Transcript*, pp. 106, l. 7 – 107, l. 23.

D. The Title Board Had Jurisdiction to Set a Title.

Third, Petitioner contends that because Legislative Council did not post on its website the data that Proponents submitted to inform the fiscal statement and abstract, that the Title Board lacked jurisdiction to consider Initiative #97.

Petition, p. 3, II.D. This argument must fail.

The statute allows proponents of a measure or any other interested persons to submit a fiscal impact estimate to the Legislative Council. §1-40-105.5(2)(b), C.R.S. The Legislative Council is required to “consider these estimates and the bases thereon when preparing the initial fiscal impact statement.” *Id.* The plain language of the statute also requires the director of the Legislative Council to “post on the website all fiscal impact estimates received in accordance with paragraph (b) of subsection (2) of this section.” §1-40-105.5(6), C.R.S.

At the rehearing, Legislative Council staff Natalie Mullis testified that they did receive material from the Proponents and they took it into consideration when writing the economic impact statement. *Transcript*, p. 105, *ll.* 7-10. Ms. Mullis also testified that they “did not post it online because it did not resemble in any way a fiscal impact statement.” *Id.* Nothing in the statute requires the Legislative Council to post everything it considered when writing its fiscal impact statement and abstract.

Indeed Ms. Mullis testified that she looked at other fiscal notes that Legislative Council had drafted on other setback measures in previous years. *Transcript*, p. 40, *l.* 24 - p. 41, *l.* 6. The statute is clear that Legislative Council’s obligation to post on its website applies only to fiscal impact estimates that it receives. *See*, §1-40-105.5(6). Because Proponents did not submit a fiscal impact

estimate, Legislative Council had no obligation to post the information that Proponents submitted on its website.

Moreover, nothing in the statute indicates that Legislative Council's failure to post all fiscal impact estimates received would deprive the Title Board of jurisdiction to set a title, thereby depriving the Proponents of the right of initiative based on something that they had no control over. The right of initiative in Colorado is fundamental in character and self-executing. *See Colo. Const. art. V, 1(10); Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994). Legislation governing the initiative power must be liberally construed in favor of the right of the people to exercise that power. *See Fabec v. Beck*, 922 P.2d 330, 341 (Colo. 1996); *Committee for Better Health Care for All Colo. Citizens v. Meyer*, 830 P.2d 884, 893 (Colo. 1992). Section 1-40-105.5(6) should not be interpreted to deprive the Title Board of jurisdiction if the Legislative Council does not post all fiscal impact estimates it receives on its website.

E. The Title Board Properly Considered Testimony and Evidence on the Fiscal Abstract.

Petitioner makes a final argument about the fiscal abstract, contending that the Title Board erroneously relied on Proponent's testimony in considering the abstract. This argument conflicts with this Court's recent decision wherein it found that the Title Board is in a better position to weigh the merits of evidence

regarding the accuracy of an abstract, because “[t]he Title Board, unlike this court, holds public rehearings at which it may hear testimony, take evidence, and inquire into information presented by various sources.” *Smith v. Hayes*, 395 P.3d at 324. At the rehearing for Initiative #97, that is exactly what happened. The Title Board did hear testimony and evidence from Proponent Suzanne Spiegel. *Transcript* p. 77 l. 6 – p. 85, l. 16. The Title Board also heard arguments from counsel, heard testimony from Petitioner’s witness Chris Brown, and from Legislative Council staff Natalie Mullis. Petitioner’s argument that no new evidence may be presented at the rehearing is unsupported by the statute and by this Court’s recent pronouncements.

III. The Initiative’s Title Correctly and Fairly Expresses the True Intent and Meaning of the Measure.

A. Standard of Review.

The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the central features of the proposed measure." *In re Initiative on "Trespass-Streams with Flowing Water,"* 910 P.2d 21, 24 (Colo. 1996). Titles and submission clauses should “enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.” *In re Initiative for 2009-2010 # 24*, 218 P.3d 350, 356 (Colo. 2009) (*quoting In re Initiative on*

Parental Notification of Abortions for Minors, 794 P.2d 238, 242 (Colo. 1990)).

The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

B. The Title and Submission Clauses Are Not Misleading.

The Title for Initiative #97 is clear and does not mislead the voters. The title for Initiative #97 captures the measure's text in a clear and straightforward manner. "While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative." *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted).

The title of Initiative # 97 succinctly captures the key features of the measure, is not likely to mislead voters as to the initiative's purpose or effect, nor does the title conceal some hidden intent. The text of Initiative #97 creates a statewide minimum distance requirement for new oil and gas development of at least 2,500 feet from occupied structures and vulnerable areas. The remainder of the measure contains definitions of terms used in the measure, and sets forth implementing details including a provision allowing local governments to increase the setback distance and designate vulnerable areas. The Title for Initiative #97 captures the measure's text in a clear and straightforward manner.

The Petitioner argues that the title set by the Title Board for Initiative #97 is misleading and confusing. First, he claims that the title fails to reflect that the measure eliminates a landowner's ability to waive a setback. *Petition, p. 9, ¶III.b.* The measure, however, does not address a landowner's ability to waive a setback in any manner. The Title Board is "only obligated to fairly summarize the central points of a proposed measure, and need not refer to every effect that the measure may have on the current statutory scheme." *In re Initiative for 2013-2014 #90, 328 P.2d at 164.* (citations omitted). "The titles and summary are intended to alert the electorate to the salient characteristics of the proposed measure." *In re Initiative for 1999-2000 #255, 4 P.3d at 497.*

Second "Titles are not required to include definitions of terms unless the terms "adopt a new or controversial legal standard which would be of significance to all concerned" with the Initiative. *Id.* (Colorado Supreme Court found no error when Title Board did not include a definition of "gun show" in title of measure concerning background checks at gun shows). The Title Board was within its discretion when it did not include definitions of "occupied structure," or "new oil and gas development" in the title for Initiative #97.

Third, Petitioners contend that the title for Initiative #97 "fails to provide notice of the property types included within the term 'vulnerable areas,' and

instead states that the setbacks are in relation to any ‘structure intended for human occupancy and any other area designated by the measure, the state, or a local government.’ Initiative #97 creates a statewide minimum distance requirement for new oil and gas development of at least 2,500 feet from occupied structures and vulnerable areas. “Vulnerable areas” is defined in the measure to mean “playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks, and any additional vulnerable areas designated by the state or a local government.”

To satisfy the requirement of brevity, and to avoid any confusion with a partial definition, the Title Board used the term “any other area designated by the measure, the state, or a local government” in the titles, which is not clearly misleading and was within the Title Board’s discretion in setting the title. *See In re Initiative for 1999-2000 #255*, 4 P.3d at 497. The Court is not to “consider whether the Title Board set the best possible title; rather, [its] duty is to ensure that the title “fairly reflect[s] the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board.” *In re Initiative for 2007-2008 #62*, 184 P.3d at 58.

Here, the Title of Initiative # 97 succinctly captures the key features of the measure, is not likely to mislead voters as to the initiative's purpose or effect, nor does the title conceal some hidden intent. Only in a clear case should a title prepared by the Title Board be held invalid. *In re Title, Ballot Title & Submission Clause Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo. 1982). This is not such a case.

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board with regard to Proposed Initiative 2017-2018 #97.

Respectfully submitted this 6th day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2018 a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

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SECRETARY OF STATE
TITLE SETTING BOARD HEARING
[DATE FILED: March 6, 2018 4:22 PM](#)

Aspen Room
1700 Broadway Street
Denver, Colorado

February 7, 2018
10:10 a.m.

Re: 2017-2018 #97 "Setback Requirement of Oil and
Gas Development"

APPEARANCES:

- Suzanne Staiert, Esq.
Deputy Secretary of State
- Glenn Roper, Esq.
Colorado Attorney General's Office
- Jason Gelender, Esq.
Office of Legislative Legal Services
- Matt Grove, Esq.
Staff Attorney, Attorney General's Office

1 Also present:

2

Attorney for the Proponents:

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Also Present:

15

Natalie Mullis

16

Suzanne Spiegel

17

Chris Brown

18

Anne Lee Foster

19

Steven Ward

20

21

22

23

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1 MS. STAIERT: Good morning. This is a
2 meeting of the Title Setting Board pursuant to
3 Article 40 of Title 1 C.R.S.

4 The time is 9:10. The date is Wednesday,
5 February 7th, 2018. We are meeting in the Secretary
6 of State's Aspen Room, 1700 Broadway, Denver,
7 Colorado.

8 The Title Setting Board today consists of
9 myself, Suzanne Staiert, Deputy Secretary of State
10 on behalf of Secretary of State Wayne Williams,
11 Glenn Roper, Assistant Solicitor General, designee
12 of Attorney General Cynthia Coffman, Jason Gelender,
13 designee of Office of Legislative Legal Services.

14 And seated to my far right is Matt Grove,
15 our Staff Attorney from the Attorney General's
16 Office.

17 There are two titles for each measure. One
18 is a statement and the other is a statement in the
19 form of a question.

20 Changes adopted by the Title Board to the
21 first Title in the Staff draft will be considered
22 adopted for the other Title.

23 For anyone who wishes to testify there is a
24 sign-up sheet on the back table. This hearing is
25 broadcast over the internet from the Secretary of

1 State's website. The public restrooms are located
2 on this floor.

3 When the Title Board considers a proposed
4 initiative for the first time, the Board will follow
5 the following steps.

6 First, the Board Members may wish to ask
7 questions of the Proponents. This is to ensure that
8 the Board understands the proposal.

9 Second, the Board will determine if it has
10 jurisdiction to set a Title.

11 In particular, the Board must determine if
12 the measure complies with the single-subject rule
13 prescribed in Article 5, Section 1-5.5 of the
14 Colorado Constitution and Section 1-40-106.5, the
15 Colorado Revised Statutes.

16 That is because the Board is prohibited
17 from setting a Title for a measure that contains
18 more than one subject.

19 If the measure is a constitutional change,
20 the Board will consider under C.R.S. 1-40-106-3.5
21 whether the measure only repeals in whole or in part
22 a provision of the State Constitution.

23 Finally, if the Board determines it has
24 jurisdiction to set a Title, then the Board will use
25 a Staff-prepared draft for discussion purposes. A

1 copy of the Staff draft is on the table.

2 Generally, we take all testimony first.
3 The Title Board will discuss and vote after all
4 testimony is complete. And a decision is reached by
5 two of the three members of the Board.

6 Please take note that we are not concerned
7 with the merits of any proposal here. We are only
8 concerned with the setting of Titles.

9 Furthermore, we are not concerned with
10 legal or constitutional objections to the measures,
11 except to the extent that such objections relate to
12 the jurisdiction of the Board to set a Title or to
13 the correctness of the Titles and summaries
14 themselves.

15 Anyone who is dissatisfied with the
16 decision of the Title Board may file a motion for
17 rehearing with the Secretary within seven calendar
18 days.

19 In the interest of brevity, speakers may
20 incorporate remarks made on the record in prior
21 hearings or on similar measures.

22 (This concludes the opening remarks.)

23 (The following portion of the hearing was
24 requested to be transcribed and is #97 on the agenda
25 and is entitled "Setback Requirement for Oil and Gas

1 Development.")

2 (This portion of the audio starts at
3 1:18:11 on audio file No. 1.)

4 MS. STAIERT: All right. We are back on
5 the record. The next initiative is proposed
6 initiative 2017-2018, No. 97.

7 And, Ms. Tierney, if you could just have
8 your Proponents come up so that we can state they
9 are here for the record or tell us they're here.

10 ANNE LEE FOSTER: My name is Anne Lee
11 Foster.

12 SUZANNE SPIEGEL: And Suzanne Spiegel.

13 MS. TIERNEY: Hi, I'm Martha Tierney on
14 behalf of the Proponents.

15 MS. STAIERT: Thank you. All right, Mr.
16 Dunn, do you want to walk us through your motion for
17 rehearing?

18 MR. DUNN: Sure. Good morning. For the
19 record, Jason Dunn on behalf of Objector Neil Ray.

20 So as you see in the motion we have
21 essentially three areas of objection. We have
22 single-subject arguments.

23 We have objections to the fiscal impact
24 statement and the abstract that was provided with it
25 as well as concerns about the Title as drafted.

1 MS. STAIERT: Let's start with single
2 subject.

3 MR. DUNN: And I'll pause at the end of
4 that and we'll decide how to proceed from there, if
5 at all.

6 So, Initiative No. 97, as you know, is
7 primarily a measure that will, as the Proponents
8 said during the review and comment hearing, provide
9 a statewide minimum distance requirement for new oil
10 and gas production.

11 The measure provides a 2500-foot setback,
12 but in addition it has provisions that go well
13 beyond that.

14 First, the measure permits local
15 governments to require larger setbacks from occupied
16 structures and so-called vulnerable areas than the
17 2500-foot setback that would exist under state law.

18 Second, the measure allows local
19 governments to designate additional vulnerable
20 areas. And there's no requirement that those
21 actually be vulnerable areas. They can put any
22 definition on that term that a local government
23 likes and designate them as vulnerable areas.

24 According to the measure, in the event that
25 two or more local governments with jurisdiction over

1 the same geographic area establish different, what
2 they call buffer zone distances, the larger buffer
3 zone governs.

4 So this creates two separate subjects in
5 the measure that are extremely important. And I'll
6 preface that by saying, it affects the relationship
7 between the state and local governments that have
8 essentially been in place since statehood, a
9 fundamental premise of how our state operates at the
10 state and local level.

11 First, the measure allows any local
12 government -- by that I don't just mean a county or
13 a home rule municipality, but any statutory city or
14 even the smallest town in the state to increase a
15 setback and set its own setback higher than 2500
16 feet and, as I said, add any areas that it wants to
17 deem a vulnerable area.

18 So it essentially flips the current
19 paradigm in Colorado that has existed since
20 statehood on its head by allowing local governments
21 to dictate to the state how oil and gas will be
22 regulated in their jurisdictions. And it changes
23 that fundamental relationship.

24 And it also does that in a second way,
25 which I think is actually a second subject.

1 As you all know, the home rule concept in
2 Colorado is a fundamental premise again of how we
3 operate as a government. It gives home rule
4 municipalities and the two home rule counties the
5 ability to, in essence, control their own destiny
6 unless matters are preempted by state law, uh, as a
7 matter of statewide concern, allows those home rule
8 municipalities to dictate their own regulatory
9 scheme.

10 This measure, essentially what it does is
11 allows counties to dictate to home rule
12 municipalities how oil and gas will be regulated by
13 setting requirements that as the measure said, if it
14 sets a higher setback or creates a greater list of
15 vulnerable areas, will apply to a home rule
16 municipality within that county.

17 In essence, what a county could do is say,
18 well, we deem any incorporated municipality as a
19 vulnerable area and thereby eliminating oil and gas
20 development in those particular home rule
21 municipalities.

22 Now, I think the response to this from a
23 single-subject perspective is, well, it all relates
24 to oil and gas development.

25 I would respond to that by saying, the

1 ubiquitous case we all know, that's the same as
2 saying, well, it all relates to water.

3 That is not just about oil and gas
4 development. It is about the relationship between
5 governments in our state and how we operate.

6 And to my knowledge there is no instance in
7 which a matter, unless it's of purely local concern
8 that a local government can dictate to the state or
9 a county can dictate to a home rule municipality how
10 it will regulate any type of business or regulated
11 entity.

12 I think in general with the measure --
13 while the Proponents say the measure is about
14 limiting drilling in Colorado through a setback
15 requirement, I think what the measure is equally
16 about is about, is about giving local governments
17 the authority to ban fracking.

18 And I think when we talk about the case law
19 around single subject where we say, well, we have to
20 guard against surreptitious measures being hidden in
21 the -- coiled up in the folds of a measure, that's
22 essentially what we have here.

23 You can envision voters who will say, well,
24 I might like the idea of a 2500-foot setback and I
25 want to vote for that. Although I have no idea that

1 it will allow the county they live in to dictate to
2 the municipality a greater setback or that it will
3 allow the town, the little town on the Eastern
4 Plains they live in to trump what state law might
5 be.

6 And I think voters wouldn't understand
7 those fundamental changes to state governance that
8 are folded up in the measure.

9 So those are our two, slash, three
10 single-subject arguments. I'll pause there and let
11 you guys or let Ms. Tierney address that before
12 moving on to the abstract.

13 MS. STAIERT: Any questions?

14 MR. ROPER: Can I ask how you read the
15 measure? And I may have asked the Proponents this
16 as well.

17 Is a local government's ability to impose a
18 larger setback limited to the boundary of that
19 jurisdiction or could you have, for example, the
20 City of Boulder say, we're going to impose a
21 200-mile setback that's now going to cover the
22 entire state?

23 MR. DUNN: I don't think the measure
24 answers that. I would defer to the Proponents to
25 interpret their own measure.

1 MR. ROPER: Thanks.

2 MS. STAIERT: Anything else?

3 (No response.)

4 All right, Ms. Tierney. Maybe you can
5 start with that question.

6 MS. TIERNEY: Sure. I think that, while
7 the measure doesn't directly speak to that, the City
8 of Boulder would only have jurisdiction over the
9 City of Boulder -- or the County of Boulder would
10 only have jurisdiction over the County of Boulder.

11 Now, what we've seen in other oil and gas
12 disputes is that counties endeavor to work together
13 so that they don't have oil and gas development on a
14 county line that would encroach on a setback across
15 the county line.

16 MR. ROPER: And I'm certainly not trying to
17 suggest anyone would do that. I'm just trying to
18 figure out what would -- there's nothing in the
19 measure itself that would prohibit that.

20 Are there other principles of law that
21 would restrict the ability of a local government to
22 impose a setback that goes beyond their boundaries?

23 MS. TIERNEY: Well, I think that I would
24 address it from the flip side that says that there
25 are plenty of doctrines that would say that a city

1 or a county can't set law in an adjacent county.

2 MS. STAIERT: I think a lot of the law in
3 Title 31 and in home rule talks about the boundaries
4 of the subdivision --

5 MS. TIERNEY: Right.

6 MS. STAIERT: -- that you have authority in
7 your boundaries of your political subdivision. So
8 --

9 MS. TIERNEY: And here, so that the
10 2500-foot statewide setback would apply in
11 neighboring counties, it would only be that one
12 county, should it desire to increase the setback,
13 couldn't affect setback in a neighboring county or a
14 neighboring city or --

15 MR. ROPER: So a county could increase a
16 setback that would effectively exclude anything
17 within that county but not beyond those boundaries?

18 MS. TIERNEY: That's my interpretation.
19 So, um, it's Groundhog Day, because here we are
20 again. And the Supreme Court has looked at the
21 exact issues that Mr. Dunn is raising twice before,
22 once in 2014 and once in 2016, both times affirming
23 that the measure contained a single subject.

24 MS. STAIERT: I do love that movie though.

25 MS. TIERNEY: I know. I watched it on

1 Groundhog Day with my kids who had never seen it.
2 It was quite fun. Um, I was about to start quoting,
3 but I'll refrain.

4 MS. STAIERT: So much material.

5 MS. TIERNEY: What the Objectors or the
6 Objector seems to be saying and what we have seen in
7 prior years is that they think this is a bad idea.

8 And the Supreme Court has said over and
9 over and over that a bad idea is not a reason to
10 reject or to find a single-subject violation in a
11 measure such as this.

12 And, in fact, the Supreme Court has been
13 very clear that it's not going to address the merits
14 of a proposed initiative or predict how it may be
15 applied if adopted by the electorate.

16 Whether a proposed initiative is a bad idea
17 is not the test of whether it meets the
18 single-subject requirement.

19 That was from the 2014 case, Cordero v. ___
20 Leahy (In re Title, Ballot Title and Submission
21 Clause for 2013-2014, #90, 328 P.3d 155.

22 And that was affirmed again in 2016 in
23 Martini v. Mason (In re Title, Ballot Title and
24 Submission Clause for 2015-2016, #78.)

25 The preemption issues and the home rule

1 issues also have been squarely addressed by the
2 Supreme Court in both the 2014 and the 2016 cases.

3 The court there said any effect the
4 proposed initiative would have on Colorado's
5 Constitutional Home Rule Provisions does not
6 constitute a separate subject.

7 That's 328 P.3d 155 at page 161. Rather,
8 the Court held the initiative effects this
9 constitutional provision only inasmuch as it
10 directly relates to the subject matter of the
11 initiative.

12 So the Court made clear we have never held
13 that just because a proposal may have different
14 effects it necessarily violates a single-subject
15 requirement.

16 The effects the measure would have on
17 Colorado law if adopted by voters are irrelevant to
18 our review of whether a proposed initiative contains
19 a single subject.

20 MR. ROPER: What was the initiative number
21 in that one, the 2013-14 one?

22 MS. TIERNEY: There were two cases and both
23 of them have related -- looked at related issues.
24 One was 85, which was the setback and then the other
25 was 90, which was the local control. And both of

1 those looked at some of these issues.

2 MR. ROPER: Thank you.

3 MS. TIERNEY: And then in '16, it was 78.

4 So those are the -- I think I've addressed the
5 first, second and third issues.

6 Again, Mr. Dunn's argument that it affects
7 the long-standing relationship between state and
8 local governments is just not something the Court
9 will take up at this point and has never found to
10 violate the single-subject argument.

11 Finally, the motion raises that the measure
12 would overturn recent Supreme Court decisions that
13 held because fracking and oil and gas development is
14 a matter of mixed state and local concern.

15 Again, the preemption argument, and again,
16 the Supreme Court has said it's not going to find a
17 violation of the single subject at this point on the
18 basis of a preemption argument.

19 So I'm happy to answer any questions that
20 the Board may have.

21 MS. STAIERT: Any questions?

22 (No response.)

23 Mr. Dunn, did you want to respond to any of
24 that?

25 MR. DUNN: Well, you know, I had a red well

1 with those prior cases sitting in my office. I
2 said, well, that won't come up this morning so I can
3 leave that in the office.

4 My recollection is on 78, and I could be
5 wrong, was that on 78 the home rule issue was not
6 specifically addressed on appeal.

7 Certainly, the Supreme Court -- well, my
8 recollection simply is that they did not get into
9 the -- that the home rule issue was not raised.

10 I could be wrong because I don't have it
11 with me, but that was my recollection as we were
12 working on this.

13 MR. ROPER: How about as to Initiative 90,
14 and specifically -- I'll read to you from paragraph
15 18 of the Supreme Court's decision.

16 They say, "Any affect the proposed
17 initiatives would have on Colorado's constitutional
18 home rule provisions does not constitute a separate
19 subject. The alteration of the existing power and
20 authority of home rule and statutory cities to enact
21 certain regulations pertaining to the central
22 purpose of the initiative does not violate the
23 single subject requirement."

24 MR. DUNN: I'd have to read it in context
25 and go back and look at the measure itself, so I

1 just can't answer that.

2 MR. ROPER: Okay.

3 MS. STAIERT: Anything else?

4 MS. TIERNEY: No.

5 MS. STAIERT: Thanks. Any discussion on
6 single subject?

7 MR. ROPER: I can start. The only argument
8 that had given me some pause was the constitutional
9 home rule argument. But I think in looking at the
10 Supreme Court decision that Ms. Tierney cited, it
11 does seem pretty squarely on point with respect to
12 altering the power and authority of the home rule or
13 statutory city. So I think I'm satisfied that we
14 have a single subject.

15 MR. GELENDER: I agree.

16 MS. STAIERT: All right. Someone want to
17 make a motion?

18 MR. GELENDER: Sure. I move that we find
19 that proposed -- I'm sorry. I move that we deny the
20 motion for rehearing on proposed initiative 2017-18,
21 No. 97 to the extent that it argues that the measure
22 does not contain a single subject.

23 MR. ROPER: Second.

24 MS. STAIERT: All those in favor?

25 (Unanimous.)

1 That takes us to your second argument, Mr.
2 Dunn, which has to do with the abstract.

3 MR. DUNN: So, thank you. So I know this
4 is a new provision in law. So if you'll bear with
5 me just for a moment since this is the first sort of
6 Title Board season that we've talked about the
7 Fiscal Impact Statement in the abstract, um, to talk
8 for a second just about the purpose of this
9 provision.

10 The measure was adopted or the statute was
11 adopted in 2015 for the purpose of providing voters
12 simply with more information at the time they make
13 the decision to sign a petition, when they're
14 standing there in the King Soopers' parking lot and
15 they're asked to sign a petition and they don't know
16 what the measure is about and they're not sure what
17 they're signing but they often sign just to get the
18 guy out of their face so they can go get their
19 groceries.

20 The idea was, let's provide some, at least
21 fiscal information on the signature petition so that
22 it can at least eyeball at a high level what
23 numerically that impact is going to be and quantify
24 that economic information in a short summary. And
25 that's the abstract portion of the fiscal impact

1 statement.

2 So that's the purpose of the measure. It's
3 not meant to be a preliminary estimate as opposed to
4 the Blue Book fiscal impact statement being a more
5 robust estimate.

6 It's not meant to be a light version of
7 what's provided for legislation. It's meant to be
8 at least the equivalent of those.

9 In fact, the statute says that for the Blue
10 Book process, the Legislative Council can change the
11 estimate only upon receiving new information that
12 would change their original analysis.

13 So, I'm sympathetic to Legislative
14 Council's position having a short period of time to
15 conduct an analysis and to get that over to you
16 before the first Title Board hearing.

17 But the requirement is the requirement. I
18 actually went back this morning and I listened to
19 some of the legislative hearings on the statute.

20 Back in 2015, there was a very robust
21 discussion on the House floor about adding in the
22 second requirement about providing the economic
23 impacts, what is described in the statute as the
24 benefits to all Coloradoans.

25 And it really was described as opposed to

1 the two other provisions that talk about estimates
2 on the impacts to local and state government.

3 The second provision about more the
4 economic impacts to the state as a whole was really
5 talked about in terms of what it might be to jobs
6 and revenue of the state, in general, or impacts on
7 industry.

8 And that was really the purpose of adding
9 that. That was an amendment on the House floor that
10 was added in.

11 And that's where a lot of, I think, our
12 focus is here. So what I would like to do is sort
13 of cede the floor to Chris Brown, who is with the
14 Common Sense Policy Roundtable and has signed up to
15 testify.

16 He is the one who submitted the economic
17 data to Legislative Council as part of their
18 process. I'll let him describe it.

19 But it's essentially two studies that were
20 done two years ago related to Initiative 78, and the
21 other setback measures, and let him talk a little
22 bit about when and how he submitted that and what
23 the response was and then what -- from a very high
24 level, because I don't want him to bore you with too
25 much economics, um, what is in that -- those reports

1 that we believe should have been used in the fiscal
2 impact statement that was done.

3 MS. STAIERT: If you can just start by
4 telling us your name and where --

5 CHRIS BROWN: Good morning. My name is
6 Chris Brown. I'm Director of Policy and Research
7 with the Common Sense Policy Roundtable.

8 We are a 501(c)(3) non-for-profit
9 organization based in Colorado, dedicated to
10 studying the economic implications of policy
11 changes, dedicated to the protection, promotion of
12 the Colorado economy and providing information,
13 insightful information to decision-makers around
14 the, again, outcomes as it pertains to the economic
15 well-being of the citizens of Colorado.

16 So I'm not here as an Opponent or Proponent
17 of this particular measure, but simply here to -- I
18 was asked to come in and provide information around
19 a previous study that was done in collaboration with
20 our organization and the CU, uh, University of
21 Colorado Leeds School of Business a couple years
22 back related to the economic and fiscal impacts of a
23 2100-foot setback rule for the State of Colorado.

24 So, as Mr. Dunn said, we did provide -- we
25 did submit this information to Legislative Council.

1 My understanding is that they were aware of
2 this along with one of the -- another study that was
3 done previously, not by Leeds School of Business,
4 but by COGCC related to the physical -- what this
5 would do to the actual -- physically do to the
6 amount of land that would be restricted as a result
7 of this particular measure, that then the Leeds
8 School of Business and their research department
9 provided sort of economic ramifications and economic
10 estimates as to what this would mean, more broadly
11 to -- to the overall economy.

12 So both of those studies, again, were
13 submitted and I believe are posted on their website.

14 So, you know, I was here -- again, happy to
15 come in and share what the information said and sort
16 of how, given the significance, given the fact that
17 this demonstrated very significant economic
18 ramifications, not just to the organizations that
19 would be directly impacted but those that -- you
20 know, indirectly to fraud industries, companies,
21 individuals outside of those that were directly
22 regulated.

23 In the study, just a couple highlights
24 found that, you know, over the first five years, an
25 average of 54,000 jobs would be lost over a time

1 period of 2017-2031.

2 A little over 103,000 jobs, on average,
3 would be reduced from a baseline projection. That
4 would reduce GDP growth.

5 Again, these were estimates at the time
6 (inaudible) 2015 dollars, but to the tune of around
7 \$7.1 billion, on average, over the first five years
8 and 14.5 billion in the time frame of 2017 to 2031.

9 That's a reduction in total personal
10 income, not broken out at this point to the average
11 individual on a per capita basis, but to the tune of
12 \$10.9 billion in reduction in personal income over,
13 again, the time period of 2017 to 2031.

14 Again, this was predicated on the COGCC
15 work which showed a roughly 90.2 percent reduction
16 in -- excuse me, reduction in the amount of surface
17 land that would be off limits for oil and gas
18 production as a result of this.

19 And that percentage is higher in the
20 particular counties and regions where most of the
21 oil and gas production currently exists.

22 There's associated discussion around what
23 this would do for severance tax to the extent that
24 they mention sort of previous estimates given by
25 Legislative Council related to declines in severance

1 tax as a result of production declines, um, around
2 price fluctuation.

3 But, again, to the extent that these could
4 be updated with current price estimates, current
5 production estimates, you could get additional
6 estimates around, again, the economic implications
7 and the fiscal impacts broadly to, say, government
8 around income and property tax on a dynamic basis,
9 but also directly related to the state severance tax
10 as a result of direct loss in production.

11 So, again, we feel that this information is
12 very important for individuals to have given the
13 broad implications in something that, again, we, as
14 an organization, are happy to discuss and provide to
15 the decision-maker, which ultimately in this case is
16 the citizenry of Colorado.

17 So, I don't have anything else that I
18 necessarily would like to say here, but I can stand
19 and take questions if that's appropriate.

20 MS. STAIERT: Do you have any reason to
21 believe that the numbers in the June 2016 study
22 would be any different today?

23 CHRIS BROWN: Yeah, I think so, absolutely.
24 I don't know if -- I can't say in what direction,
25 but I think that -- absolutely.

1 This is a market and industry that
2 fluctuates quite a bit and so the production has
3 changed, prices have changed, possibly regulation
4 has changed. And so, I think it is worth revisiting
5 these estimates.

6 I think it provides a substantial framework
7 that can be understood for what the implications
8 are, but I would not say that these numbers are what
9 you would expect today if this were now implemented.

10 MS. STAIERT: Okay.

11 CHRIS BROWN: But just a couple years ago
12 and so it could be very similar. Again, but, you
13 know, in any case, you always want to make sure that
14 you update projections based on all this
15 information.

16 MR. ROPER: And on that update, I mean, do
17 you have, when you prepare something like this and
18 if it just gives a flat number, you know, kind of
19 ranges or sort of a margin of error based on your
20 methodology, you tend to put this in, or is this
21 industry sort of so volatile in terms of the
22 variables and the prices that it's really hard for
23 anything to hold up over time?

24 CHRIS BROWN: I think it's -- you know,
25 anything that we do -- again, I was not directly

1 involved in this particular work. Our organization
2 was, but they explicitly provide a range of
3 estimates accounting for some of that uncertainty.

4 So there is, in fact, a range of estimates
5 that accounts for price fluctuations, alternatives
6 around changes in production, um, given different
7 assumptions.

8 Uh, to the extent technology changes,
9 there's a lot of parameters you can place on this to
10 provide a range which ultimately, I think, is very
11 important and is something that, again, we do and
12 I've done throughout my career.

13 And this type of economic research is
14 providing -- providing high/low range. And this
15 study does that related to -- it provides point
16 estimates on the economic impacts but it provides a
17 range as far as well depletion and some alternative
18 forecast scenarios given, again, as I said, some of
19 those alternative assumptions on price, technology.

20 Absolutely, I think it's very important to
21 provide ranges.

22 MR. ROPER: Thank you. This 90.2 percent
23 number that's included in here, just to make sure I
24 understand, that means that 90.2 percent of the land
25 area would be excluded from drilling under a

1 2500-foot setback? Am I reading that correctly?

2 CHRIS BROWN: My understanding of that
3 figure, which again was produced by COGCC indicates
4 the surface, the amount of aboveground surface land
5 which would be off limits for drilling as a result
6 of this.

7 MR. ROPER: Okay.

8 CHRIS BROWN: Yes.

9 MR. ROPER: And do you know what it is now
10 without the 2500?

11 CHRIS BROWN: I do not have an updated
12 figure based upon --

13 MR. ROPER: Sorry, I mean without the
14 measure, what percent would be --

15 CHRIS BROWN: No, I'm sorry, I don't have
16 that (inaudible) no.

17 MR. ROPER: Okay.

18 MS. STAIERT: All right. Any other
19 questions for --

20 MR. ROPER: I don't think so.

21 MS. STAIERT: Mr. Dunn, if you have
22 anything you want to wrap up with?

23 MR. DUNN: I do.

24 MS. STAIERT: Okay.

25 MR. DUNN: So a couple things on that.

1 Just to sort of put a finer point on the 92 percent
2 figure, it's 92 percent of the state, but it's 95
3 percent of the land in the five counties where the
4 vast majority of oil and gas production in the state
5 occurs.

6 So it's -- this isn't a 10 or 15 percent
7 reduction in production that would make quantifying
8 that more challenging.

9 I'm not an economist, but when you have a
10 95 percent reduction of land that can be drilled on,
11 combined with the fact that existing wells start out
12 at a very high production and taper off very
13 quickly, so those would become -- I don't know if
14 useless if the right word, but certainly less useful
15 wells over a short period of time.

16 It's very easy to calculate. We don't have
17 to know the spot price of oil five years from now in
18 order to estimate the economic impacts, right?

19 When you eliminate 95 percent of the land
20 in those counties, you're essentially wiping out the
21 industry. It's very easy to estimate the number of
22 jobs in the industry.

23 Ranges are wholly appropriate. And the
24 underlying data is all there in the report for them
25 to come up with estimates.

1 And they can say -- there was actually some
2 of this discussion on the floor at the legislature
3 where they said, you know, Legislative Council is
4 very talented.

5 I think they rightly said they were -- all
6 the people in Legislative Council are smarter than
7 all the people that were standing on the House floor
8 at the time. And they're able to come up with
9 ranges and say, based on projections, we think it
10 will have this impact or this range of impact.

11 It doesn't have to be concrete definitive
12 data. They can provide voters with a range of job
13 losses, the range of GDP impact, the range and loss
14 of personal income, et cetera.

15 MR. GELENDER: So, right now, and correct
16 me if I'm wrong, there's basically about a 500-foot
17 statewide setback in current law regulation; is that
18 right?

19 MR. DUNN: That's correct.

20 MR. GELENDER: And of this 90 percent or
21 whatever the land -- how much of it is excluded, do
22 we know, by the current 500-foot setback?

23 MR. DUNN: I don't know the answer, but I
24 think the numbers are that a 500-foot setback, just
25 to give you perspective, a 500-foot is, I believe,

1 18 acres.

2 A 2500-foot setback is 450 acres. So it
3 goes from 18 acres to 450 acres. It's essentially a
4 mile wide circle.

5 MS. STAIERT: And does this proposal have
6 that delta in it, that sort of, here's what it is
7 now or is this proposal just saying -- is this
8 proposal assuming there is no setback and saying, if
9 you do a 2500-foot setback, this is the land you're
10 going to affect?

11 MR. DUNN: You mean the economic report or
12 the measure?

13 MS. STAIERT: The CU report.

14 MR. DUNN: Yeah, so I believe it takes -- I
15 mean, the 500-foot setback was in place at the time.
16 So it --

17 MS. STAIERT: So it's comparing the
18 difference, or no?

19 MR. DUNN: Yeah, I think that's one way to
20 say it. I think it's -- it's against the current
21 baseline. It's against whatever the current policy
22 baseline is.

23 MS. STAIERT: Okay.

24 MR. GELENDER: I think that what I would
25 suggest at this point, so we have sort of a

1 challenging situation here in that this is new
2 stuff, I think the Board itself, you know, doesn't
3 have the technical expertise to know what the
4 correct number is for sure.

5 And we have a situation where on the one
6 hand the abstract is -- you know, it doesn't provide
7 any numbers at all.

8 And on the other hand, we have an estimate
9 suggested by Objectors that, you know, is a couple
10 of years old in a volatile industry and has a lot of
11 variables, that I don't know that we can just sort
12 of take that whole (inaudible) either.

13 I do see that Council staff is here. I'd
14 be curious if they've taken this into consideration
15 in the interim and have some ideas on how we might
16 want to go ahead.

17 MS. STAIERT: I think that's fine, but
18 let's hear from Ms. Tierney because she'll be fine
19 with the number.

20 MR. DUNN: Can I make a couple other quick
21 points? Because I think it's not just about whether
22 or not the information in these studies should be
23 included. There's other problems.

24 For example, the statute requires that
25 Legislative Council provide an estimate of the

1 impact to local and state revenues.

2 One of those obviously is severance taxes.
3 At a 95 percent elimination of produceable land, uh,
4 it's very easy to calculate what the impact on
5 severance tax will be.

6 It will all but eliminate the state
7 severance tax from oil and gas production. That's a
8 very easy number to calculate.

9 Some of that is dependent on the price of
10 oil, but if you're eliminating it, you can say based
11 on today's price or based on this price range, you
12 could easily calculate what that loss to the state
13 will be.

14 The same with royalty payments, lease
15 revenue. Those things are all knowable and
16 calculatable (sic). So that's one point on sort of
17 the fiscal estimate piece.

18 The other thing I want to point out is on
19 the language of the abstract itself because that's
20 what shows up on -- that's like the Title, right?
21 That's the Title for this process.

22 The statute says that it can be -- um, that
23 the Title Board can reject the analysis if it's
24 misleading or prejudicial and it's both in this
25 case.

1 It's misleading because it doesn't provide
2 those estimates. It says -- um, it says simply that
3 there may be less unemployment or revenue may
4 decrease, but it doesn't provide any meaningful
5 data.

6 But the prejudicial piece is, I think, even
7 perhaps more important. And this is somewhat
8 stunning, I think. It has a line in there, we point
9 this out in our motion.

10 It says, "Increasing the setback distance
11 to the extent less development improves health
12 outcomes for affected residents may increase
13 productivity and reduce medical costs."

14 That, to me, is a stunning analysis.
15 They're actually saying that, A, that a greater
16 setback is better for people's health. That's a
17 very disputed, if not improvable statement.

18 Um, it's also bias and it's really
19 inappropriate based on no information that they had
20 in front of them.

21 There was nothing else posted from
22 Legislative Council that they had received any
23 information that required to post it if they receive
24 any information.

25 So, you know, in a nutshell it's a made-up

1 statement that I think is extremely biased to those
2 looking to sign up a ballot initiative.

3 I think that's it. So I will -- you know,
4 we have suggested language in our thing that we
5 thought we drafted in our best effort to be unbiased
6 in terms of drafting an abstract. And we would ask
7 you to consider that.

8 MR. ROPER: Can I ask you a question, Mr.
9 Dunn?

10 MR. DUNN: Yeah.

11 MR. ROPER: So, at footnote 5 of your
12 motion, this talks about when things were submitted
13 to Legislative Council.

14 At the end of that you say, the reports
15 have been widely publicized and publicly available
16 for two years as Legislative Council acknowledged at
17 the time of submittal by Mr. Brown.

18 I don't know if you or Mr. Brown -- I'm
19 just curious as to what -- what happened there. You
20 know, there's no citation or anything.

21 MR. DUNN: I'll let Mr. Brown address that.
22 That's a good question.

23 MR. ROPER: Okay.

24 CHRIS BROWN: Specifically regarding --

25 MR. ROPER: Specifically regarding their

1 acknowledgment of the availability of these studies.

2 CHRIS BROWN: My understanding, I don't
3 know if it was in the e-mail response that I got
4 directly on the ballot initiative when I submitted
5 it or in a subsequent conversation and so I haven't
6 necessarily provided that, but basically said, yes,
7 thank you for submitting. We're aware of these
8 studies and then they posted them.

9 MR. ROPER: Okay.

10 CHRIS BROWN: So that's the extent of it.

11 MR. ROPER: Thank you.

12 CHRIS BROWN: Yeah. And I think that these
13 have been presented, I don't know, to them directly
14 previously, but as I said, our organization and
15 Leeds have gone out and talked about these over the
16 last couple years. That's the extent of it, nothing
17 more than that, yeah.

18 MR. ROPER: Thank you.

19 MS. STAIERT: Ms. Tierney, do you want to
20 --

21 MS. TIERNEY: Yeah, just briefly, because I
22 think it would be helpful to hear from the
23 Legislative Council staff. But a couple of really
24 important points and I think the Title Board has
25 grasped a couple of them.

1 One is that this measure covers -- does not
2 cover federal land, which is radically different
3 from the measure in 2016. So it would cover a
4 different percentage of the land area in the state
5 by quite a bit.

6 Um, the other is that the fiscal analysis
7 as it -- well, let me address one other thing. I
8 was deeply involved in the legislation that Mr. Dunn
9 says he listened to today and I'm glad I didn't
10 because it was deeply disturbing the first time
11 around.

12 But one of the things that was hotly
13 debated on the House floor and in Committee was how
14 you quantify other benefits to the state.

15 For example, if there was a ballot measure
16 that did away with kindergarten in the whole state
17 of Colorado, you could say that that ballot measure
18 saved the state X millions of dollars.

19 But what you wouldn't say or what the
20 measure -- what we ended up including in the measure
21 to try to capture was how do you quantify the damage
22 to the state that would be done for canceling
23 kindergarten for all of Colorado's residents?

24 It is not apples and oranges to just look
25 at what the revenue impact to the state is without

1 looking at what the damage to the state is.

2 So this gets to the health and welfare
3 statements that are in the fiscal impact. They are
4 required to look at more than just loss of jobs,
5 which I think their numbers are radically
6 overstated.

7 In fact, we were just pulling up data from
8 DOLA that says the number of oil and gas workers in
9 the state is under 12,000 right now. So the loss of
10 50,000 jobs is a little bit overstated.

11 But we -- so including those more difficult
12 to quantify but clearly relevant costs to the state
13 is something that the legislature debated and
14 decided to require so that there was not just
15 looking -- a snapshot of what the immediate revenue
16 projections would be and instead a longer view so
17 that -- and we talked at length about the
18 kindergarten example in Committee and on the floor.

19 I also want to say that we submitted a lot
20 of material to the Legislative Council staff on the
21 health and safety impacts of oil and gas
22 development. And they presumably did take that
23 stuff into account.

24 But I think the important information in
25 the fiscal analysis itself is that we're -- if you

1 look at page 3, for example.

2 "The measures impact" on the last sentence
3 in the paragraph or the last two sentences.

4 "The measures impact on local revenue and
5 expenditures will depend on the overall impact on
6 state severance tax revenue and the assessed value
7 of oil and natural gas development in each taxing
8 jurisdiction."

9 So they can't come up with real estimates
10 here. It's a moving target.

11 I also want to point out that the point on
12 severance tax is also radically overstated. The
13 severance tax has gone from 200 million to less than
14 30 million and right now is in the red.

15 So that the revenues to the state are not
16 what they once were as a result of efforts by the
17 oil and gas industry to avoid double taxation.

18 So I guess what I would finish with here is
19 all of these point out the staleness of the data
20 that the Objector is providing you here and should
21 not be the basis for any change to the fiscal
22 statement here today.

23 MS. STAIERT: Any questions?

24 (No response.)

25 Let's hear from Legislative Council then.

1 Hi, Jason, did you have questions?

2 MR. GELENDER: Yes. My question, I guess,
3 would be is, given the information received since
4 preparing the initial fiscal impact statement and
5 abstract, do you have any suggestions or thoughts
6 about any of this or do you stand by the original?
7 Give us your take.

8 NATALIE MULLIS: Thank you, Madam Chair and
9 Members of the Title Board and Mr. Gelender. For
10 the record, I am Natalie Mullis with Legislative
11 Council staff.

12 Yes, I do have some thoughts on it. First
13 of all, we were familiar with the reports from the
14 Leeds School and from COGCC in advance. So we did
15 actually take them into consideration. We had taken
16 them into consideration before we received the
17 information from Mr. Brown.

18 The other thought I have is that the
19 statute requires us to write a initial fiscal impact
20 statement and the abstract in, you know,
21 substantially similar form and content to what we
22 provide to the legislature during the legislative
23 process.

24 We have written some fiscal notes during
25 the legislative process on other setback measures in

1 previous years. And I went and looked at those
2 fiscal notes for the record.

3 The ones I looked at were House Bill
4 12-1176, House Bill 17-1256, neither one of which is
5 exactly like this measure, both of which do affect
6 setbacks.

7 And in both cases, the way that we wrote
8 the revenue impact and the expenditure impact was
9 very similar to what we put into our initial fiscal
10 impact statement and the abstract for this measure.

11 So, yes, we do still stand by the initial
12 fiscal impact statement and the abstract that we
13 wrote.

14 MS. STAIERT: Any questions?

15 MR. ROPER: I don't know if it's a
16 question. I will say I'm actually a little troubled
17 by the lack of numbers, I guess, in the statement
18 and the abstract.

19 I certainly don't envy the job you guys
20 have to do. It's very difficult and I think you do
21 an excellent job.

22 I worry though that without -- you know,
23 it's possible to read the abstract. It's just kind
24 of saying, yeah, things could go down, things could
25 go up. We really aren't sure. And that's always

1 going to be true because there are always some
2 unknowns.

3 My view of the purpose of this is, I really
4 think it's intended to give some hard data or ranges
5 or something that will enable the voters to be able
6 to understand what the actual impact is going to be.

7 And I worry looking at this abstract and
8 the statement that it really doesn't do that with
9 respect to this measure.

10 So I don't know what we do about that but I
11 am kind of troubled particularly where -- and again,
12 I don't know if the CU statement is good or bad, you
13 know, the Leeds School provision.

14 I have some trust in the COGCC analysis
15 because I kind of know how they do their work. But
16 having those available and not having, as far as I
17 can see, having them addressed or taken into
18 account, and I know you said that they were
19 considered as part of that.

20 I just don't see that reflected here and I
21 just worry that the -- and I don't mean in a
22 critical way but kind of the blandness of the
23 abstract doesn't provide the voters with the
24 information that we would hope it would or that I
25 would hope it would to be able to enable them to

1 evaluate the measure.

2 So I guess that's not really a question.

3 That's a comment on my view of it for everyone.

4 MS. STAIERT: Any questions for her?

5 MR. GELENDER: I don't think so, unless you
6 have anything else you want to talk about like the
7 process or anything like that, that you have to
8 follow.

9 NATALIE MULLIS: I would like to respond to
10 the comment.

11 MS. STAIERT: Sure.

12 NATALIE MULLIS: We don't like to provide
13 indeterminate impacts either. In the process of
14 writing notes for the legislative process it is our
15 -- what we consider to be a strong value to provide
16 a number any time we can provide a number in an
17 accurate and unbiased way.

18 What happens is when we cannot identify an
19 assumption for how a policy change is going to
20 change the behavior of an industry or any part of
21 the economy, uh, if we can't make an assumption for
22 that in an accurate and unbiased way, then we have
23 no starting point for putting numbers to it. And
24 that is what's going on here.

25 The CU Boulder study is put together by

1 some first rate economists and I think that their
2 work is world class.

3 But the study has a different purpose than
4 our fiscal note. It is predicated on an assumption
5 that the entire results of the study are based on.
6 And the assumption is, that because developable land
7 is going to be reduced by 90.2 percent, production
8 will immediately be reduced by 90.2 percent every
9 year beginning in the first year.

10 That is the assumption that the entire
11 study rests on. And making that assumption is what
12 we find difficult to do in an accurate and unbiased
13 way. You have to make that assumption in order to
14 put numbers to it.

15 We don't disagree with the assumption they
16 made for the purposes that they were doing, but for
17 our purpose of a fiscal note that must look at the
18 entire state, must look at the impact in the oil and
19 gas industry, but also any offsetting impacts for
20 other industries, perhaps reduce oil and gas
21 development will have other positive impacts on the
22 economy that aren't captured in the CU-Boulder study
23 and isn't the purpose of the CU-Boulder study to
24 capture.

25 The purpose of the fiscal note is to

1 capture all of that. Not only would we have to make
2 an assumption for how oil and gas production would
3 change and how that would flow through the economy,
4 but we would have to make an assumption for what
5 those offsetting impacts are.

6 We'd have to quantify them. And then we'd
7 have to put that through a model as well. And we
8 just don't have the ability to do that in an
9 unbiased and accurate way.

10 So, unfortunately, none of the fiscal
11 impact statements that we have written on these
12 measures have had numbers and that is why.

13 But it's not something that we like to do.
14 We do not like to put indeterminate estimates into
15 our fiscal impact statements.

16 MR. GELENDER: Thank you.

17 MS. STAIERT: Thanks.

18 MR. ROPER: I don't have anything else.

19 MS. STAIERT: I don't have anything. Okay,
20 thanks.

21 NATALIE MULLIS: Thank you.

22 MS. STAIERT: Well, I mean, I guess I feel
23 like we have to put something there or at least take
24 the statements about positive health impacts. I
25 mean, I just don't know what to do with it.

1 MR. ROPER: Before you go too far down the
2 road, can I make one more point?

3 MS. STAIERT: Sure.

4 MR. DUNN: I know I'm wearing out my
5 welcome. If I heard Ms. Tierney correctly, um, she
6 said they submitted something to Legislative
7 Council.

8 The statute requires that to be posted
9 online prior to the first Title Board Hearing. And
10 apparently that was not done. We were unaware that
11 any information was submitted other than what we
12 submitted which was posted online.

13 I'm not sure if that is a jurisdictional
14 issue. That's never come up before. But the public
15 had no ability to see that. The Title Board didn't
16 have ability to see that. We didn't have ability to
17 see that.

18 So I want to raise that point and if
19 nothing else, preserve it for appeal, but I think
20 it's something that you should consider.

21 If you need the cite, it's 1-40-105.5-6
22 which says, at the same time the director posts the
23 initial statement, they shall post all the data that
24 was provided.

25 MR. ROPER: Mr. Dunn, can I ask you a

1 question? On page 5 of your motion, you say the
2 Title Board should adopt language in the Objector's
3 abstract and/or return the fiscal impact statement
4 and abstract to Legislative Council to rewrite.

5 Is there anything in this statute that
6 would enable us to send it back to Legislative
7 Council?

8 MR. DUNN: That's a great question. I've
9 thought a lot about that question. I don't have a
10 provision statute I can point to that says you can
11 send it back.

12 But I don't think there is any reason you
13 couldn't, in essence, do that. You could delay the
14 hearing. You could hold over the hearing till the
15 next Title Board meeting and perhaps ask Legislative
16 Council to redo it.

17 I don't think there is anything in there
18 that prohibits that. That would in some ways
19 perhaps be easier than rewriting the abstract
20 yourself.

21 MS. STAIERT: Well, I don't know that it
22 would be because I think they'd come back with the
23 same conclusion. I mean, we'd essentially either
24 have to tell them what to put in it which we might
25 as well just do that here. Anyway, Ms. Tierney?

1 MS. TIERNEY: Thank you, Madam Chair. Just
2 a couple of points. One is that the statute does
3 say that the Title Board shall not conduct a hearing
4 on the impact statement at the Title Board hearing.

5 MS. STAIERT: At the initial --

6 MR. ROPER: Yeah, that's -- I think that's
7 -- go ahead, Suzanne.

8 MS. STAIERT: I think that's the initial
9 hearing. You can conduct one at rehearing.

10 MS. TIERNEY: Okay.

11 MS. STAIERT: Yeah.

12 MR. ROPER: And what I'm looking at in
13 1-41-07 which talks about the rehearing on the
14 initial impact statement, you know, there's --

15 MS. STAIERT: Yes.

16 MR. ROPER: Down in B it says the Title
17 Board may modify the abstract based on information
18 presented at the rehearing. But I don't see it
19 authorizing us to do anything else with the initial
20 impact statement or the abstract.

21 MS. TIERNEY: I would agree with that and I
22 apologize. I see where you're looking now. Um, and
23 I think that the Legislative Council staff has just
24 made it clear that they stand behind their
25 statement. And so I would strongly urge you not to

1 send it back to them to just delay this matter
2 further.

3 I do want to address something, Madam
4 Chair, that you said about altering -- removing the
5 portions of the abstract that address the revenue,
6 the fiscal impact of what the Proponents believe is
7 related to the measure and we would strongly object
8 to that.

9 If there was one thing that came out of
10 this legislative process, when the legislature in
11 its infinite wisdom decided to add 1-41-05.5 to the
12 statute, it was that that fiscal impact has to be
13 broader than just -- than just looking at the
14 immediate revenue impact to the state.

15 And so the date of that, the Proponent
16 submitted to the Legislative Council, was all about
17 the health and safety impacts and the revenue -- the
18 potential revenue outcomes related to those health
19 and safety impacts. And that presumably is why the
20 legislative staff included it in their estimate.

21 I also want to address one other thing that
22 Mr. Dunn said and that's in 1-41-05.5(6) where it
23 says that they have to post. What they have to post
24 is fiscal impact estimates received.

25 It doesn't say they have to post all the

1 data they received. And so, we did not provide them
2 a specific draft of an estimate.

3 We provided them a whole bunch of data and
4 a whole bunch of studies that show health and safety
5 impacts. And they then used that as a part of their
6 analysis to come up with their fiscal statements.

7 So I don't see that they violated the
8 statute in what they did or did not post.

9 MR. ROPER: So as I look at the fiscal
10 impact statement itself, I don't see anything about
11 the health and safety until that line is kind of
12 added in under economic impacts and to the extent
13 that it improves health outcomes.

14 But I don't see anything in here analyzing
15 whether it would or even addressing that until you
16 get to that sentence. And maybe I'm missing
17 somewhere else in the fiscal impact statement that
18 it refers to that.

19 MS. TIERNEY: Well, it says it in -- under
20 the economic impacts paragraph.

21 MR. ROPER: Right, and that's the sentence
22 I'm referring to that's kind of added in there. But
23 it's not addressed or analyzed elsewhere.

24 You know, there's a section on state
25 revenue, a section on state expenditures, a section

1 on local government impact and then with that
2 economic impacts it has that sentence kind of added
3 in there at the end.

4 Unless I'm -- you know, you're probably
5 more familiar with this than I am. And I don't know
6 if you -- if there's elsewhere that it's addressed
7 that I'm just not seeing.

8 MS. TIERNEY: No, I think that's where they
9 address it. But economic impacts is an overarching
10 category that they are writing a paragraph about.

11 MR. ROPER: Sure.

12 MS. TIERNEY: It's different than state
13 expenditures, different than state revenue, so I
14 don't -- it doesn't strike me that that's treated
15 differently than the other items pointed out in the
16 statement.

17 MR. ROPER: Right. It just says to the
18 extent that it does, but there's no -- as I look at
19 it, no analysis or evaluation of whether it would or
20 whether it wouldn't.

21 MS. TIERNEY: Right, I guess that's fair.
22 It's just letting people know that that's another
23 factor.

24 MR. ROPER: Yeah.

25 MS. STAIERT: Okay. I'll start. So I

1 think that the way Mr. Dunn proposes the language is
2 somewhat helpful in that it becomes not necessarily
3 a definitive statement from Legislative Council
4 about what the impact is but rather cites a study.

5 So to the extent that that provides a voter
6 information, it provides them information about a
7 study done by Colorado Oil and Gas Conservation
8 Commission.

9 I think the same could be done for
10 essentially what Ms. Tierney's Proponents submitted
11 with regard to economic impact, that there are
12 studies that indicate that this will preserve
13 property values and improve health outcomes.

14 And it seems like that would be a fair way
15 to present it would be to sort of reference these
16 studies rather than substituting a hard number,
17 which I don't think we're qualified to do.

18 I'm just concerned that we're giving the
19 voters really no information. To the extent that
20 we're giving them anything, we're making statements
21 about, you know, may preserve and to the extent it
22 improves health, it may increase -- I don't know.

23 I do have concerns that it's a bit
24 misleading and not very helpful. So I would be
25 inclined to look at something that would talk about

1 what this study says.

2 MR. ROPER: Yeah, I have some concerns. I
3 just don't know what to do given what the statute
4 says. It feels odd for us to modify the abstract to
5 include some of this information that's not even
6 addressed in the fiscal impact statement itself and
7 just for us to put that back in and then send it
8 back.

9 But I'm not sure what else we're authorized
10 to do other than modifying the abstract. And I
11 don't see anything in the statute directly that says
12 we could -- we could do anything else.

13 And as we talked about, I'm not sure
14 Legislative Council would feel like they could do
15 much else than they've already done.

16 I do like the idea of referencing the
17 study, although I'm also cognizant of the time --
18 timing of the study.

19 Things may have changed and I don't know
20 how -- I don't know if they are contrary studies
21 that look at it differently or come to a different
22 conclusion.

23 So I really feel kind of stuck on this one
24 because I do have concerns about whether we're
25 providing information that's helpful to the voters.

1 But I also am not quite sure what we can do to get
2 to that point.

3 MR. DUNN: Can I make one comment on that?

4 MS. STAIERT: Sure.

5 MR. DUNN: Just a quick reference to the
6 statute, 1-41-07-1(b). It says the Title Board may
7 modify the abstract based on information presented
8 at the rehearing.

9 So to the extent you modify, the abstract
10 has to be on information that was given to you. We
11 attached those studies to our motion. That's the
12 only information you have in front of you. So to
13 the extent you modify it, it can only be based on
14 that information.

15 MS. TIERNEY: Well, you know what I'm going
16 to say to that. We're here. We're telling you that
17 we've submitted all this information.

18 We've got the information right here. If
19 you would like it to be presented it before you, we
20 will present it.

21 MS. STAIERT: But you're fine with the way
22 their language is regarding the property values and
23 the health outcome.

24 MS. TIERNEY: Yes, but if you're going to
25 start putting in statistics based on a 2-year old

1 study that doesn't even apply to the same land mass,
2 because this new measure excludes federal land, I
3 think we would have a big objection to that.

4 MS. STAIERT: Okay. Well, I think we could
5 at least say something related to, um, the
6 percentage of the reduction in nonfederal land.

7 MR. GELENDER: If I may, I would suggest
8 that we don't go down a path of inserting any kind
9 of numbers, or at least not for something this
10 complex that no one can agree to.

11 I mean, I may not -- you know, we talk
12 about the -- what Legislative Council staff gave us
13 possibly being -- I would say not misleading is less
14 the word than perhaps not as informative as we'd
15 like or perhaps not especially helpful.

16 But I think trying with us having -- I
17 think not being in a position to judge the quality
18 of this study, the numbers, the studies considering
19 information presented at the hearing, we have -- you
20 know, Mr. Brown has basically said that the industry
21 is volatile, the study's changed.

22 In anything like this, inherently the
23 numbers are estimates. I just don't see how we can
24 really rely on them especially given what we've
25 heard also at this hearing from Ms. Mullis is that

1 this 92 percent reduction was an assumption based on
2 if you reduce this much land, it reduces this much
3 production and that's how much -- what everything
4 else flows from and then we have it applying to
5 statewide 2500-foot setback which doesn't apply to
6 federal lands which aren't covered by the measure.

7 I think we go from -- I think, while the
8 existing abstract we have is perhaps uninformative,
9 it's not necessarily actively misleading. And I
10 think anything we try to do otherwise runs the risk
11 of being actively misleading.

12 I don't like that result. One thing we
13 might think about is whether we can tweak abstract
14 language a little bit.

15 For example, in the first sentence of the
16 economic impacts it says, thus potentially reduces
17 future oil and gas development.

18 I mean, I think, is likely to -- I think
19 there can be some more weight put to those things.
20 I think that's a reasonable assumption we can
21 probably make based on what we've heard here on just
22 sort of our own common sense.

23 Much beyond slight changes like that, I
24 just think we're stuck. I don't like it, but I kind
25 of think that's where we are.

1 I think we have more of a duty to not
2 actively mislead than we do to try to increase the
3 extent to which this information is informative.

4 It's kind of sad, but it's my take on it.

5 MS. STAIERT: I mean, I just think we do
6 stuff like this all the time when we set titles. I
7 mean, to say we can't take somebody's language and
8 figure out which things are always going to apply
9 and which things are misleading, I mean, I think we
10 do that every time we meet.

11 So, I think we have an obligation to do it
12 -- to give some substance to this statute. And
13 typically what we do when we don't necessarily
14 understand something is just refer back to the
15 initiative.

16 And in this case what Mr. Dunn has
17 presented refers back to a study. Now, maybe we
18 could take out some of these hard numbers in here,
19 but it seems to me that a lot of stuff would still
20 apply regardless of what the hard number is or
21 regardless of whether we're talking about federal
22 land or not.

23 The study estimates that because oil wells
24 typically record the greatest volume of production
25 in the first year, I mean, that's going to apply

1 regardless, right?

2 I mean, that's just something about oil and
3 gas production. And the 2500-foot setback, I mean,
4 I don't have any reason to think that the study is
5 inaccurate nor have I heard anything that it won't
6 result in 90.2 percent reduction on accessible
7 drilling locations off federal land.

8 So it just seems like some of these numbers
9 are true anyway and we should refer back to the
10 study and indicate that this is happening.

11 I guess I'm just not willing to say -- I
12 mean, it seems to me like it's the Proponents who
13 come and -- or the Opponents who say, I don't
14 understand this measure, so it must not be a single
15 subject and there's no way to put the language up
16 and we deal with that all the time.

17 So it seems like we should be able to deal
18 with this, but anyway -- Ms. Tierney?

19 MS. TIERNEY: On the federal land piece,
20 the state is 30 percent or over 30 percent federal
21 land. So it really does radically change the
22 outcome of the study.

23 You can't say that's 90.2 percent reduction
24 off federal land because a lot of the drilling now
25 is on federal land.

1 So it's not apples to apples. You can't
2 just carve that out and say it's going to be 90.2
3 percent reduction.

4 I mean, I think that's the problem. And I
5 have to agree with Mr. Gelender that you've got to
6 be really careful about putting in real numbers here
7 that are two years old that don't reflect, not only
8 the current measure but the reality in the state
9 where oil and gas production has gone down in those
10 two years because the price of oil has gone way
11 down. So the number of jobs affected is different
12 and the number of wells affected is different. It's
13 just a different climate.

14 MR. GELENDER: If I may, do you agree with
15 the more general statements in the language posed by
16 Mr. Dunn, things like, you know, oil wells typically
17 record the greatest volume of production in the
18 first year.

19 I guess what I'm saying, would you object
20 to something that suggested that, you know,
21 therefore the measure would likely deplete total
22 production, you know, at a higher rate in the first
23 unit, decreasing rates thereafter or something like
24 that? Or are you sort of objecting to anything?

25 MS. TIERNEY: I do object to that because I

1 think there are other studies that would counter
2 that. And the Legislative Council would say, we
3 looked at the available information and we don't
4 think that there's a way to come up with an
5 appropriate estimate there.

6 MS. STAIERT: So does anybody have a number
7 for -- I mean, you know, we should be able to GIS
8 this, you know, 2500. What land do we have left? I
9 mean, how do we not even have that number?

10 MS. TIERNEY: With all due respect, Madam
11 Chair, I don't think we are in a position in this
12 hearing to have that -- to be deciding that stuff.

13 We know that 30 percent of the state --
14 more than 30 percent of the state is carved out. We
15 don't think that the number -- what they will do is
16 draw a circle, a 2500-foot circle radius around
17 every possible drilling site in the state.

18 Well, we can't say that every possible
19 drilling site in the state is going to be drilled.

20 MR. GELENDER: Well, it's around the
21 occupied structures, right, 2500 around the --

22 MS. TIERNEY: Yes, but --

23 MR. GELENDER: -- in the vulnerable areas.

24 MS. TIERNEY: As related to where you're
25 going to drill, right. So I think it is assuming

1 that you're going to drill everywhere and then
2 taking away and then saying, well, because of this
3 setback, you can't drill anywhere.

4 But that's not right. It's saying 92
5 percent reduction without saying you were even going
6 to drill there in the first place. So it is a
7 misleading statistic.

8 MS. STAIERT: You could say of land
9 available or something.

10 MS. TIERNEY: But we don't know that that's
11 -- but I don't think you can say that 90.2 percent
12 of --

13 MS. STAIERT: Possible exploration or
14 whatever. I mean, you could say there's this much
15 land left for the possibility of drilling.

16 MS. TIERNEY: So there's --

17 MS. STAIERT: I mean, it's geography. You
18 have to be able to say it.

19 MS. TIERNEY: You're right, but you don't
20 have that data before you.

21 MS. STAIERT: I know. That's what I'm
22 saying I am frustrated about. And the data that Mr.
23 Dunn and Mr. Brown are providing you is not accurate
24 because it is based on the whole state, not carving
25 out federal land.

1 MR. ROPER: What is the Proponent's view?
2 If we felt like there was more Legislative Council
3 could or should do, is there anything we could do
4 about that or are we limited just to being able to
5 modify the abstract?

6 MS. TIERNEY: I think the statute is pretty
7 clear that you're limited to just modifying the
8 abstract. And I presume that then the objector's
9 remedy is to see what the Supreme Court wants to do
10 with that.

11 MR. DUNN: Just on that point, I think it
12 would help everybody if -- I think we're at a
13 pivotal moment for the Title Board.

14 MS. STAIERT: There's no such thing.

15 MR. DUNN: I won't comment about that. I
16 think it's important that you, as a Board, make a
17 decision about what your jurisdiction is to do that
18 because right now it's unclear to me whether you're,
19 as a matter of preference in this particular case,
20 not wanting to send it back.

21 But I think that's an important point for
22 you to make and to perhaps vote on about whether you
23 have the jurisdiction to even consider sending it
24 back.

25 As I said earlier, maybe the option is to

1 hold it over and to ask Legislative Council to
2 revise or to reconsider.

3 Mr. Gold may want to advise you on whether
4 you can do that. But I think it's important that we
5 know sort of definitively what you think you can and
6 can't do.

7 MS. STAIERT: Get our money's worth out of
8 our attorney. All right. I think what we'll do is,
9 let's go into an executive session and then take a
10 break for lunch and then come back around 12:30.

11 We'll make a motion to go into executive
12 session. If it doesn't work, then we'll still take
13 a break and go to lunch.

14 Legal advice, do you know the section,
15 Matt? Is it on the agenda for the next -- for the
16 last one?

17 MR. GROVE: In executive session, we're
18 making the motion for --

19 MS. STAIERT: We're making the motion for
20 it, unless anybody has any other questions before we
21 go in.

22 MR. GELENDER: I don't.

23 MS. STAIERT: Okay. Um, is it on here,
24 Steve?

25 MR. WARD: No, I missed the reference on

1 there.

2 MR. ROPER: That may have it.

3 MS. STAIERT: I don't have my Title 24.

4 (Inaudible discussion.)

5 MS. STAIERT: Okay. I move that we go into
6 an executive session pursuant to 24-64-02 to receive
7 legal advice from our attorney regarding the
8 interpretation of this statute.

9 MR. ROPER: Second.

10 MS. STAIERT: All those in favor?

11 (Unanimous.)

12 All right. So we will go into executive
13 session. We'll leave the record on, but we'll go
14 off, obviously, the internet.

15 And then we'll come back at -- from there,
16 we'll go into a lunch break. So we'll come back
17 around 12:30.

18 (This concludes Audio 1 of 2 regarding
19 Initiative #97 that was requested to be
20 transcribed.)

21 (The Board went into executive session and
22 took a lunch break.)

23 (Back on the record after executive session
24 and lunch at 12:35 p.m.)

25 MS. STAIERT: All right. We are back on

1 the record. And I think the first thing we were
2 going to do is make a motion about whether to send
3 it back.

4 Does someone want to do that or do you want
5 me to do that?

6 STEVE WARD: Does the Board have to reopen
7 from executive session on the record or --

8 MS. STAIERT: Sure, we're back in session.

9 STEVE WARD: Okay.

10 MS. STAIERT: It's 12:35. Do you want to
11 go ahead?

12 MR. ROPER: Sure. I will make a motion
13 that the Title Board conclude that we do not have
14 authority or jurisdiction to send the fiscal impact
15 statement or abstract back to Legislative Council
16 and that our only authority under the statute is to
17 modify the abstract based on information presented
18 at the rehearing.

19 MR. GELENDER: Second.

20 MS. STAIERT: All those in favor?

21 (Unanimous.)

22 That pivotal moment -- that takes us back
23 to the abstract itself. And so I think I'll start
24 because I think we had a few minutes to think about
25 it over lunch.

1 I'm not comfortable putting numbers in, um,
2 Mr. Dunn, except numbers that I can pull out of the
3 fiscal impact statement because we had some
4 testimony that this was an old study and we had some
5 testimony that the land mass has changed. And so
6 I'm not -- I'm not ready to go that far.

7 But in the initial fiscal impact statement
8 it does have the language about currently the
9 500-foot setback prohibits on about 18 acres
10 surrounding a given point and 1000 prohibits
11 developments on 72 acres and 2500 will be 450
12 surrounding acres.

13 So, I think I'm okay taking the 500 foot
14 that it is now and then the 2500 feet and putting
15 that in an acreage calculation for the abstract.

16 And I think I'm probably okay doing some of
17 these things in the language that Mr. Dunn submitted
18 that I don't think are dependent upon the age of the
19 study.

20 So I wanted to call back up, if he's still
21 here -- did he leave?

22 MR. DUNN: He is. Let me get him in.

23 UNIDENTIFIED MALE: Mr. Brown is in the
24 back here.

25 MS. STAIERT: Oh, okay. Can you come back

1 up? So in terms of -- do you have the language that
2 Mr. Dunn submitted about what he thought?

3 CHRIS BROWN: I don't believe so.

4 MS. STAIERT: Let me just walk you through
5 some of the statements. I mean, you're pretty
6 familiar with the study. Were you part of the team
7 conducting the study or --

8 CHRIS BROWN: No, I previously worked for a
9 firm that built the economic simulation model that
10 was used. So they were a client of mine at the time
11 but I did not work for them directly.

12 MS. STAIERT: Okay, but you're familiar
13 with what's in the study?

14 CHRIS BROWN: More or less.

15 MS. STAIERT: Okay.

16 CHRIS BROWN: Yeah.

17 MS. STAIERT: So, the conversation that we
18 had about the 90.2 percent reduction, would you
19 agree that that number is going to change based on
20 the fact that there's no federal land in our current
21 initiative?

22 CHRIS BROWN: I was trying to read through
23 that. So that figure again came from COGCC
24 directly.

25 MS. STAIERT: Right.

1 CHRIS BROWN: And I was trying to read
2 through what exactly that said in their report. My
3 understanding is that that directly references all
4 surface land. And I couldn't find any specific
5 mention of whether it was designated as federal or
6 not.

7 MS. STAIERT: Okay.

8 CHRIS BROWN: So as to -- yes -- I don't --
9 so -- I forget what your question was. But that
10 does not -- so my understanding is that includes all
11 surface land throughout the entire state which would
12 include existing federal --

13 MS. STAIERT: Federal land, okay.

14 CHRIS BROWN: Yeah.

15 MS. STAIERT: What about this statement
16 where it says the study estimated, um, that because
17 oil wells typically record the greatest volume, that
18 sentence about the 42 percent, the first year, 24,
19 the second, 18, the third -- is that number going to
20 have changed over time or is that just a constant?

21 CHRIS BROWN: New production would deplete
22 total production at a rate of 42 percent. So new
23 production would deplete total production rate of 40
24 percent the first year. Um, new production would
25 deplete total --

1 MR. ROPER: Maybe one way to ask that is --
2 are those numbers dependent on the 90.2 percent
3 number?

4 CHRIS BROWN: I think that that is --
5 that's not a technology -- that not an individual
6 well, so it's not based upon a technology. That's
7 based upon the total production.

8 So the land would matter, the land amount.
9 And the current amount of investment that's
10 happening would also dictate that percentage.

11 MS. STAIERT: Okay.

12 CHRIS BROWN: That's not like this well
13 would be depleted at 42 percent is the sort of
14 average amount of production. That's my
15 understanding of it, the 42 and -- yeah, so that's
16 the amount of actual reduction and the total
17 production in the state as a result of this.

18 So to the extent that some of this
19 production would be able to be permanent and move to
20 federal land, those percentages might change.

21 MS. STAIERT: Okay, and then is that true
22 of the next sentence too then, I'm assuming, natural
23 gas well production would deplete at a rate of 17
24 percent in the first year? That's dependent on the
25 land.

1 CHRIS BROWN: Right.

2 MS. STAIERT: Okay.

3 CHRIS BROWN: Right.

4 MS. STAIERT: Um --

5 UNIDENTIFIED MALE: Madam Chair

6 (inaudible).

7 MS. STAIERT: Sure, you can come. So I
8 guess, Mr. Dunn, you know where I'm going which is
9 -- I mean, if there are parts of the study that
10 aren't dependent on that, then I'd probably be
11 willing to refer to the study and change some of the
12 language.

13 But short of that, I think, you know, I'm
14 comfortable bringing in things from the fiscal
15 impact statement, but I don't know.

16 MR. DUNN: So I was getting educated a
17 little bit over lunch on some of these issues. And
18 there is someone here who is admittedly from the
19 industry who knows more about a lot of these
20 permitting issues than I do or probably anybody else
21 here.

22 And if you would like them to come up,
23 they're reluctantly willing to.

24 So, as I learned over lunch, even when
25 drilling operations are on federal land, you still

1 have to get a state permit, so in essence, any
2 regulations on state permitting.

3 Now there are constitutional preemption
4 issues there that aren't relevant here. But putting
5 that aside, a state permit, as I understand it, is
6 required for drilling on federal land.

7 And so, therefore, then the setback
8 requirement in theory on state law would affect
9 that. You can't draw on federal land without that
10 permit, as I understand it. So I think the 90.2
11 number is still valid.

12 And the other point I would make is that,
13 if you are looking at No. 78, Initiative No. 78 from
14 two years or this one, neither one discusses that
15 federal land's piece.

16 So the analysis was done on the state as a
17 whole and it still applies.

18 MR. ROPER: So, as I look -- and I'm sure
19 that's what Ms. Tierney's standing up to say, but if
20 you look at the proposed initiative under Section 3
21 where it establishes the 2500-foot setback it says,
22 the people of the State of Colorado hereby establish
23 that all new oil and gas development not on federal
24 land must be located at least 2,500 feet from an
25 occupied structure.

1 MR. DUNN: Right, but -- is the -- as I
2 think you asked about the depletions curves, you
3 have existing operations that are essentially going
4 to deplete rapidly existing wells, right?

5 And then you will have no new wells
6 arguably, in our view, available to come online.
7 And so you can say that the acreage covered by the
8 measure will have X result because of both the
9 depletion of existing wells and then essentially the
10 elimination of new wells.

11 MR. ROPER: But wouldn't this exclude -- I
12 mean, the setback, as I read it, would only go up to
13 the border of federal land and would not prohibit
14 any new and gas development on federal land.

15 MR. DUNN: Yeah, I think it's a question
16 for the Proponents about whether or not --

17 MS. STAIERT: I mean, that's what the
18 measure says. So even if you had to pull a permit,
19 I mean, you could be, whatever 600 feet from an
20 occupied structure on federal land and you'd still
21 qualify for the permit under this initiative because
22 the initiative only bans --

23 MR. DUNN: Right, okay.

24 MR. ROPER: And that's how I read it. The
25 state or the local government could not deny you the

1 permit on federal land just because you were within
2 the 2500 foot --

3 MR. DUNN: Right.

4 MR. ROPER: -- radius.

5 MS. STAIERT: Yeah.

6 MR. DUNN: Okay. Ms. Tierney is nodding
7 her head yes, for the record.

8 MS. STAIERT: I guess my concern is, then
9 that does change the number because there's probably
10 some occupied structures that are within 2500 feet
11 of the entrance to federal land, but you could still
12 drill on that federal land. And so then these
13 numbers become not entirely reliable.

14 And if all of the numbers are dependent on
15 the calculation from the last initiative, then it's
16 hard to do much.

17 Now, I think that saying that it's
18 speculative (inaudible) will result, I think Mr.
19 Gelender already probably addressed some of that.

20 I think we know it will. It's not a maybe.
21 So we could be a little stronger in the language in
22 the abstract and we could certainly put in like some
23 of this language about the impact to revenues.

24 MR. DUNN: One of the things, I think, I
25 don't know what you'd do with it, but I believe it's

1 in the report.

2 Weld County where I think 85 percent of the
3 production occurs, there's no federal land in Weld
4 County. So in terms of calculating losses, then the
5 federal piece is not really an issue up there.

6 MS. STAIERT: I understand that. I think
7 we are a little hamstrung by our lack of, I don't
8 know, knowledge in this area.

9 But, I mean, I'm happy to go through, you
10 know, some of the things in the fiscal impact
11 statement and move some of these to the abstract.

12 I don't think I would have an issue maybe
13 being a little bit more explicit about the impact.

14 MS. TIERNEY: Madam Chair, could I address
15 one other issue and that's that -- may I?

16 MS. STAIERT: Yeah.

17 MS. TIERNEY: Thank you. It seems as
18 though we are needing to make a little bit more of a
19 record about what our data is.

20 So one of the Proponents, Suzanne Spiegel
21 is here and she is an expert on this -- in this
22 area. And if I could get your indulgence, she could
23 talk a little bit about the counters to what are in
24 the data that is being presented to you by the
25 Objector so that there is a record.

1 MS. STAIERT: Okay.

2 MR. DUNN: This is Jason Dunn. I would
3 object to that. I think we're getting into sort of
4 battling testimony.

5 The reports are in the record because they
6 were submitted to Legislative Council. I don't
7 think there's anything in the statute that allows
8 for new testimony or new evidence to be presented
9 sort of sua sponte at the hearing.

10 I know it says that you can only consider
11 in redrafting the abstract, information presented at
12 the rehearing, but I don't think that means new
13 information. This can't turn into a fact-finding
14 expedition.

15 MS. STAIERT: Well, I think it kind of
16 passed -- I mean, I think you can make that
17 argument. And if the Supreme Court wants to say we
18 can't, then that will be helpful to know for the
19 future.

20 MR. ROPER: Maybe, if Ms. Tierney could
21 give us just a little -- not an offer of proof, but
22 just a description of what generally the Proponent
23 would be talking about.

24 MS. TIERNEY: Well, let me say two things.
25 One is, Mr. Dunn has been very clear that he is

1 going to argue before the Supreme Court, I believe,
2 that the only thing you can take into account is
3 what is presented here.

4 And while we presented all sorts of data to
5 the Legislative Council, you don't have that data.
6 So I feel like I need to make a record of some of
7 the stuff that we presented. It will be short.

8 But Ms. Spiegel has a lot of information.
9 For example, one of the things that you just were
10 raising, Madam Chair, is what will the reduction in
11 production be as a result of the new setback?

12 And what Ms. Spiegel could talk about is
13 that with the fracking technology available, the
14 setback may require you to move your well, but you
15 can drill straight down and then sideways to extract
16 the mineral rights that are much closer than the
17 setback -- than where your wellhead needs to be.

18 So you can't really say that the reduction
19 in the extraction is equal to the reduction in the
20 available land mass in which to stick a wellhead
21 because the technology is there to get that mineral
22 out even if you have to move the wellhead to a
23 different location.

24 MR. ROPER: Are you saying that the 2500
25 feet only governs on the surface and would not

1 prohibit drilling underneath the 2500?

2 MS. TIERNEY: I would really like to have
3 Ms. Spiegel talk to that because I am not an expert
4 in well drilling.

5 MR. ROPER: Okay.

6 SUZANNE SPIEGEL: Well, actually I'll just
7 start with -- you guys kind of touched on it, but
8 about how much is produced in the first year
9 specifically. So I've been paying attention to the
10 trends in the oil and gas industry.

11 One of the biggest indicators of how much
12 drilling happens from one year to the next is simply
13 oil and gas prices.

14 So it's really hard to predict once this
15 happens how much drilling will happen. Um, the
16 economics of this industry, they're really close.
17 When oil and gas prices go up, production tends to
18 be directly impacted by that.

19 You can see in 2014, drilling came to a
20 standstill in a lot of our communities. When the
21 moratorium lifted in communities, the reason they
22 didn't start drilling was just because oil and gas
23 prices were still low.

24 So since those prices have started to go
25 back up, that's why we're starting to see more

1 permits now. That's probably the number one
2 indicator about what's going to determine the
3 quantity of drilling in the future. So I think it's
4 not totally --

5 MS. STAIERT: Can you just give us your
6 background for where you're formulating these
7 opinions because I don't really know anything about
8 your --

9 SUZANNE SPIEGEL: So I have been working on
10 this. I founded -- I've been working with many
11 different advocacy groups since 2012. So I'm a
12 Board Member of Resilient Communities Network.

13 I'm an advisory member to Colorado Rising.
14 I've worked with Frack Free Colorado since 2012. So
15 this has been like a full-time job for me since 2012
16 tracking studies, tracking the economics.

17 MS. STAIERT: Do you have an economic
18 background or --

19 SUZANNE SPIEGEL: I did study international
20 affairs and economics in the university level, yeah.

21 MS. STAIERT: Okay.

22 SUZANNE SPIEGEL: So that's just one piece
23 to consider. And it's kind of common sense that the
24 price of oil and gas is going to impact how much
25 they're drilling.

1 So I just want to point that out because
2 that's going to play -- it's going to have some
3 impact. The other thing is, you're right that you
4 asked the question if our measure impacts all of oil
5 and gas development and it does.

6 But the thing is, is that these pools of
7 mineral rights, they're pools, so you can access
8 mineral rights like traveling underground. So we
9 don't know how much they're going to be able to suck
10 out from 2500 feet if it's just what's underneath
11 the ground or not. Those are -- does that make
12 sense?

13 Have you ever heard of forced pulling?
14 Yeah, so with forced pulling, the reason that they
15 are able to force pull is that you can access other
16 people's mineral rights beyond what's just below the
17 surface.

18 And so if those mineral rights are part of
19 one pool, they might be able to access more than
20 what's just underneath the land that they have
21 access to.

22 So we can't predict exactly how much
23 they're going to be able to extract. So it's just
24 -- I think it's -- I just wanted to point that out
25 because I think trying to come up with those numbers

1 is really tricky.

2 MS. STAIERT: Right, but we can come up
3 with a range. You don't think we can even come up
4 with a range?

5 SUZANNE SPIEGEL: A range for what
6 specifically?

7 MS. STAIERT: For the impact. It doesn't
8 have to be an exact number.

9 SUZANNE SPIEGEL: Well, I mean, if we're
10 going to do that, then we have to look at, I think,
11 a number of other factors because there's also --
12 there's so many factors that we should be
13 considering on every end of this. So we --

14 MS. STAIERT: I guess what I'm trying to
15 ask is, are you saying it cannot be done or are you
16 saying you don't have time to do --

17 SUZANNE SPIEGEL: I'm just saying that to
18 try to squeeze it in right now to come up with a
19 number makes me a little nervous because it seems
20 really complex. That's all.

21 MS. STAIERT: Okay. Does anyone have any
22 other questions?

23 MR. ROPER: I don't know if you're the
24 right one to ask, but I do wonder if you have any
25 information to offer regarding the statement in the

1 abstract about effects on property values and
2 health?

3 SUZANNE SPIEGEL: I do have some
4 information on that. Like you want like what study
5 is coming from or --

6 MR. ROPER: Um, I guess just if there's --
7 well, I guess, are there studies or has it been
8 quantified or is there anything that you can tell us
9 about that statement on preserving property values
10 for homeowners and improving health outcomes for
11 affected residents?

12 SUZANNE SPIEGEL: Yeah, and if you want to
13 add anything to what I'm saying, I know you have
14 some access to those studies. But we did submit
15 some studies.

16 There are several, but one I can cite is a
17 Duke University study that found that homes that
18 were within a little bit less than a mile of oil and
19 gas development that depended on well water, that
20 they're home values declined by an average of 30
21 percent because of -- regardless if there was damage
22 or not just because of the perceived threat to the
23 water.

24 And then they go on, and there's other
25 impacts too, but that's one study that I would look

1 at for this.

2 MR. ROPER: Was that a study of Colorado or
3 just the board generally?

4 SUZANNE SPIEGEL: I think it was across the
5 board. I think they looked at a variety. So it
6 wasn't just specifically Colorado. I don't know if
7 they've done a study yet specific just to Colorado.

8 Um, and then there's a number of health
9 studies that have come out even just recently that
10 indicate that there's some major -- did we submit
11 economic? I don't know if there's any economic
12 argument specifically.

13 It just shows that on a large scale that
14 people's health is being impacted in a significant
15 way.

16 So, for example, there was a study that was
17 done by Princeton University that looks at 1.1
18 million babies and found that people living within
19 about three-quarters of a mile were likely to have
20 -- 25 percent more likely to have babies with lower
21 birth weights and lower health indexes, more likely
22 for sickness in the future.

23 So common sense says that these type of
24 issues have a cost associated with them. So that's
25 why we can't give numbers but just --

1 MR. ROPER: Sure.

2 SUZANNE SPIEGEL: -- yeah.

3 MR. ROPER: Did any of those studies
4 specifically discuss the difference between a
5 500-foot and a 2500-foot difference in distance?

6 SUZANNE SPIEGEL: Um, they did -- I mean,
7 so the way that that study looked at it was the
8 closer that they got, the worse the impacts were.
9 So they did delineate between like, at a mile it's
10 not as severe as at like three-quarters of a mile or
11 half of a mile.

12 So, yes, they do go into specifically --
13 you know, if the impacts are more grave as the
14 distance is less.

15 MR. ROPER: Okay.

16 SUZANNE SPIEGEL: And then another one that
17 I think is very relevant to Colorado is the Lisa
18 McKenzie study that looks specifically -- it's
19 actually like a big reason we chose 2500 feet is
20 because the Lisa McKenzie study cites that within a
21 half mile the health impacts are the most grave.
22 And 2500 feet is very close to a half mile.

23 MS. STAIERT: And I have one follow-up
24 question. When you talk about the process where you
25 go underground, so is it not the intent of this

1 measure to include that type of activity in the
2 definition of an oil and gas development facility?

3 SUZANNE SPIEGEL: I mean, it is. It is the
4 intent that it's all oil and gas (inaudible).

5 MS. STAIERT: Well, you're banning oil and
6 gas facilities within 2500 feet. And oil and gas
7 facility is defined including underground injection
8 wells.

9 So what I'm trying to figure out is what
10 you talked about where you can go underground and
11 you can't say it's 2500 feet. Is that part of the
12 facility or are you -- is that not part of the
13 facility?

14 SUZANNE SPIEGEL: So an injection well is a
15 little different. Injection well is where they take
16 produced water and they --

17 MS. STAIERT: So that's not part of the
18 facility?

19 SUZANNE SPIEGEL: No, it is. I'm just
20 saying that an injection well is a little bit
21 different than the vertical drilling, the horizontal
22 drilling. Injection well is just where they
23 reinject the produced water.

24 MS. STAIERT: But what you described
25 earlier, is that not part -- is that a part of that

1 activity that's happening underground?

2 SUZANNE SPIEGEL: It is. All I was saying
3 is that sometimes -- when they go underground into a
4 pool, they may be able to access more than what is
5 just right underneath that piece of land. That's
6 all I'm saying.

7 MS. STAIERT: But they can't do it within
8 2500 feet?

9 SUZANNE SPIEGEL: But they may still be
10 able to access a pool of shale that's beyond --
11 because it creates fractures in the rock and then
12 that goes out.

13 When they send down the hydraulic fluid and
14 creates fractures, all I'm saying is that even if
15 they're not in that land, that pool could be drawing
16 from a larger pool. Yeah.

17 MR. GELENDER: If I may, I think what
18 you're asking is, if you -- say, there's an occupied
19 structure here and you drill a well 3,000 feet from
20 the occupied structure, are you allowed to go
21 underneath the occupied structure 5,000 feet
22 underground and pull stuff or not under the measure?
23 Is that what you're asking?

24 MS. STAIERT: Yeah.

25 SUZANNE SPIEGEL: And I'm saying, the

1 intent of the measure is to stop all oil and gas
2 drilling and dangers from 2500 feet from the
3 structures.

4 MR. GELENDER: So the answer is, no, you
5 would not be allowed to send those pipes underneath
6 the structure, but underground. It's not just a
7 surface (inaudible). That's the question we're
8 trying to get answered.

9 MS. STAIERT: I think there was just some
10 confusion in the question. I think I might have
11 contributed to that so I apologize.

12 I think what the answer is, you cannot go
13 horizontal within the 2500 feet, but that oil and
14 gas is liquid and it pools. And so you might be
15 able to go straight down and the activity that
16 you're doing straight down might draw from --
17 closer.

18 MR. ROPER: And I don't want to get too far
19 afield. But is the 2500 feet just like lines on the
20 surface or is it a sphere, meaning, if you're down
21 more than 2500 feet below the surface, can you go
22 anywhere? Does that make sense?

23 MS. STAIERT: I think they're saying no. I
24 need to confer on that one.

25 MR. ROPER: And maybe it's a question of

1 how the 500 foot is applied.

2 MS. STAIERT: Well, they redefined.

3 MR. ROPER: Yeah. And, again, I may be
4 getting a little far afield just trying to
5 understand the measure.

6 (Inaudible discussion.)

7 Sorry, I'm not trying to do ALS with that
8 question. That may be getting kind of far afield
9 but --

10 MS. STAIERT: No, but I think it's
11 something that we need to clear up. So I want to
12 make sure that I --

13 (Inaudible discussion.)

14 Could we have like one minute?

15 MR. ROPER: I don't even know if it's that
16 important of a question here for what we're trying
17 to figure out with the abstract. That was just my
18 --

19 MS. STAIERT: There is some disagreement
20 amongst my team here about whether or not we
21 answered -- I answered the last question correctly
22 about whether or not the horizontal drilling could
23 go closer than 2500 feet. And I would really like
24 to clear that point up.

25 SUZANNE SPIEGEL: Well, if it's horizontal,

1 isn't it the same as the well above it?

2 MS. STAIERT: Oh, no, you're talking --
3 okay, it was vertical.

4 SUZANNE SPIEGEL: Way down underneath. And
5 then it goes to your question is, does it need to be
6 2500 -- 2600 feet, 2501 feet or --

7 MR. ROPER: And that may just be idle
8 speculation. I don't know that it matters for what
9 we're trying to do --

10 MS. STAIERT: Okay, maybe not.

11 MR. ROPER: -- in figuring out the
12 abstract. That would have to do with how it's
13 interpreted and --

14 MS. STAIERT: Right, fair enough. Um, all
15 right. Well, Mr. Dunn, do you want to add anything
16 else? I --

17 MR. DUNN: This is really unprecedented.
18 I've really seen anything like this in all my years
19 with the Title Board. Um, it's turning into some
20 sort of trial.

21 If this were a courtroom and Ms. Spiegel
22 had got up to testify, I would ask the Court to
23 disqualify her as an expert.

24 And the flip side of that is, I suppose I
25 could call a bunch of engineers up here to talk

1 about it and we could turn into, you know, a
2 hydrology and oil and gas expert symposium. But I
3 don't think that's the role of the Title Board.

4 And I think we're just wandering way afield
5 of what type of testimony we should be presenting
6 and taking here and what you all should be
7 considering.

8 You're making great grounds for appeal, but
9 it's fairly stunning to me that we are wandering as
10 far afield as we are.

11 MR. ROPER: Well, let me ask you this, and
12 this is just a question I have.

13 With our discussion of the age of the CU
14 study, the fact that it doesn't appear to exclude
15 federal land, whereas the measure appears to, is
16 there any -- are there any numbers from that study
17 that you think would be relevant to be included in
18 the abstract and that we, as the Title Board could
19 feel comfortable including?

20 MR. DUNN: Um --

21 UNIDENTIFIED MALE: And obviously, the way
22 I phrased the question, I'm leaning no, but --

23 MR. DUNN: I think you could rely on the
24 job's data. I think you could rely on some of the
25 personal income impact.

1 But I think more the point is that, as it
2 has been talked about somewhat, your role is not to
3 come up with a number, a precise number and put it
4 in.

5 It's okay to say in the abstract, you know,
6 a study -- you could even say, uh, a study that
7 considered federal lands found the following
8 impacts.

9 You can say that this measure apparently
10 precludes or excludes federal lands in terms of the
11 setback.

12 I think there's a variety of ways to say
13 it, to describe it and leave that ambiguity in there
14 or use ranges and qualifying terms beyond just
15 saying, as Ms. Staiert pointed out, that it's not
16 enough to just well, there may be some job loss.

17 We all know that's not the case. And so, I
18 think we need to be more definitive of that, but you
19 don't have to be so definitive as to know a precise
20 number.

21 SUZANNE SPIEGEL: And I promise this will
22 be my last statement, if I can. I just did want to
23 clear up the record.

24 The measured is not intended to preclude
25 horizontal drilling under the surface. It is only

1 intended to preclude where the well site, the
2 development site is.

3 MS. STAIERT: Okay, that's helpful. All
4 right. Well, um, I think when it comes to the
5 impact statement, we could probably pretty easily do
6 some more definitive language. Like with state and
7 local government revenue, we could say the measure
8 will decrease the amount. Um, under "economic
9 impact" we could strike, "thus potentially" and just
10 say "reduces future oil and gas."

11 And rather than "to the extent that the
12 measure reduces" we could say "because the measure
13 reduces."

14 And then I would also propose putting in
15 "the current 500-foot setback prohibits oil and gas
16 development on about 18 acres surrounding a given
17 point. The measure increases the setback to a
18 minimum of 2500 acre -- or 2500 feet or about 450
19 surrounding acres."

20 I think I'm going to propose putting in
21 something more than that, but that seems a little
22 less controversial.

23 So I don't know what you all think about --
24 doing some changes like that? Or if you just want
25 to leave it the way it is?

1 MR. GELENDER: Sort of about two-thirds of
2 where you are. I think we can be a little stronger
3 with language.

4 I don't know that we should say things like
5 "will decrease the amount." I think, you know,
6 well, I mean that does say as expected to
7 (inaudible) word, you know.

8 It is likely and is highly likely so that I
9 don't know that I'm comfortable with certainty sort
10 of on anything but -- you know, like down especially
11 in the economics below where it talks potentially
12 reduces.

13 I think the measure constrains well
14 location. Maybe that's where you put in your
15 acreage point if you want to.

16 MS. STAIERT: Yeah.

17 MR. GELENDER: And thus, is likely to
18 reduce future oil and gas development in the state.

19 Then the next -- just -- yeah, just minor
20 tweaks like that, I think.

21 MS. STAIERT: Okay. Do you want to make --
22 what do you?

23 MR. ROPER: Yeah, I'm thinking along the
24 same lines. I like putting in the acreage number
25 because I think that helps give the voters some

1 context for the magnitude of the change.

2 I agree with not putting in specific job
3 loss or dollar amount numbers from the study just
4 because I don't think we can -- we can faithfully
5 draw those in.

6 And I like some of the -- making these a
7 little more definitive.

8 The one I'm not sure about is the property
9 values and health outcomes language. I don't know
10 what to do with that sentence because, as I see it,
11 there's nothing else in the initial fiscal impact
12 statement that even addresses that.

13 And the only place I see it mentioned is in
14 the beginning, you know, in the kind of (inaudible)
15 clause of the initiative itself.

16 But maybe we can save that last sentence
17 and work on some of the other --

18 MS. STAIERT: Sure. Do you want to do
19 basically where you're comfortable with and then
20 we'll move that since we know we have kind of
21 consensus on that?

22 MR. GELENDER: Well, first on that, I think
23 we should probably take an order. So the first one
24 is the state and local government revenues and
25 expenditures.

1 It sounded like I think you had something
2 there. I was probably --

3 MS. STAIERT: I just said, will -- I mean,
4 I'm fine with highly likely -- the measure is highly
5 likely to decrease.

6 MR. GELENDER: Okay.

7 MS. STAIERT: That's fine.

8 MR. ROPER: Do you mind redlining, Steven,
9 just we can see the --

10 MS. STAIERT: And then the next one was
11 under economic impact. Do we want to take out "thus
12 potentially?"

13 MR. GELENDER: Yes.

14 MS. STAIERT: And just say "reduces?"

15 MR. GELENDER: I would say "is likely to
16 reduce."

17 MS. STAIERT: Okay. That's fine. And then
18 we wanted to put in -- then I thought -- yeah, I
19 guess the rest is fine. And then we would put in
20 the current 500 language somewhere?

21 MR. GELENDER: Where were you planning on
22 putting that?

23 MS. STAIERT: Well, I was thinking we'd put
24 it in right after "heavily populated counties" but
25 it doesn't matter to me.

1 Here it is, Steven, if you want it.

2 MR. ROPER: Did you have language that you

3 --

4 MR. GELENDER: Yeah, she just gave some --

5 MR. ROPER: Oh, that he's typing up?

6 MS. STAIERT: It came from the -- yeah.

7 MR. ROPER: From the statement.

8 MS. STAIERT: Yeah.

9 MR. GELENDER: Yes, same up above. No,
10 never mind. That's correct.

11 MR. DUNN: Madam Chair, do you want comment
12 as we go or do you want us to wait until the end?

13 MS. STAIERT: You can comment on this. I
14 mean, we're going to have more to add, but if you
15 have comments on these changes.

16 MR. DUNN: Sure. Okay, so it looks I'm
17 going to be working on the Title.

18 So in line 2 where it said -- or I guess
19 line 18 on the screen, where it says "particularly
20 and heavily populated counties" given that it will
21 essentially serve as a virtual ban on drilling in
22 Weld County where the vast majority of it occurs,
23 and I would not call that a heavily populated
24 county, I think that's a little bit misleading
25 because the impacts are -- as dramatic in less

1 populated counties as they are in populated
2 counties.

3 The only thing I would say is that, if
4 we're going to make the point about increasing the
5 setback to 2500, I think it's important to point out
6 that it allows any local government to impose a
7 higher requirement that will -- and these are all
8 sort of Title-like issues, but -- um, that will
9 dictate for any overlapping jurisdictions as well.

10 MS. STAIERT: I'm not sure that goes to the
11 --

12 MR. GELENDER: Well, I think that a minimum
13 handles that issue.

14 MS. STAIERT: Yeah. I think I'm fine the
15 way that is.

16 MR. ROPER: I think maybe a good point is
17 as to the heavily populated counties point though,
18 because heavy population isn't as big a deal as how
19 spread out the covered areas are going to be.

20 You know, if you had a very loosely
21 populated county with the homes all 5000 feet apart,
22 it could still cover the whole county. So I would,
23 uh, maybe just take that whole clause out.

24 MR. GELENDER: I agree with that. Do we
25 want (inaudible) this measures constrains well

1 location, something like, throughout the state
2 except on federal lands?

3 MS. STAIERT: Yeah, that's fine.

4 MR. GELENDER: I mean, we are on economic
5 impact. This description is maybe not, but it does,
6 I think, help define the sort of the scope of it.

7 MR. ROPER: Do we say that in the Title?

8 MR. GELENDER: Probably.

9 MS. STAIERT: I wonder if maybe that's a
10 point for the Title --

11 MR. GELENDER: Yeah, maybe we talk about
12 that when we get to the Title but -- so that's all I
13 had in this round.

14 MR. ROPER: Well, Jason, what do you think?
15 Do you want the federal lands point --

16 MR. GELENDER: Yeah, I think so. I don't
17 think it hurts to repeat it anyway.

18 MR. ROPER: Okay, I'm okay with that.

19 MS. STAIERT: Where are we putting it?

20 MR. ROPER: I think Steven added it in
21 already on lines 17 and 18.

22 MS. STAIERT: Okay. So, um, I think that
23 is probably where we have some consensus. I'm also
24 going to -- well, let's make a motion to accept that
25 and then we'll move on.

1 MR. GELENDER: I move that we accept the
2 changes we've made so far.

3 MR. ROPER: Second.

4 MS. STAIERT: All those in favor?

5 (Unanimous.)

6 Okay. So I'm also going to move that we
7 take the language that Mr. Dunn has suggested about
8 according to the Colorado Oil and Gas Commission --
9 I am not going to ask Steve to type it because I
10 don't think my motion is going to survive.

11 And then after the "comma" where he has
12 "measure" we would say "that also included federal
13 lands," and then go from there, "the measure would
14 have resulted in a 90.2 percent reduction" and go on
15 from there.

16 But we would reference the study, that it
17 was in 2016 and I think -- I'm comfortable that that
18 would give voters some -- I think the voters would
19 understand that that was a study that was done in
20 2016.

21 Based on this language they would
22 understand that it was based on the measure becoming
23 effective in 2017, because it says it in there. But
24 it would give them some idea of how that measure
25 would have had an impact.

1 I think it's still an accurate statement.
2 It might not be accurate for this particular
3 measure, but it's an accurate statement that
4 measured it at the time. And we give the voters
5 some information about the impact.

6 So I move that we would include that.

7 (No response.)

8 And that dies for a lack of a second. So
9 here we go.

10 Anybody have anything else?

11 MR. GELENDER: No.

12 MR. ROPER: Well, what do you think about
13 the last sentence?

14 MR. GELENDER: Oh, yeah.

15 MR. DUNN: If we're going to jump to the
16 last sentence, can I opine on the sentence prior to
17 that?

18 MS. STAIERT: (Inaudible).

19 MR. DUNN: So I would assume, and they can
20 speak for themselves, but the Proponents would agree
21 that the measure will reduce oil and gas
22 development.

23 If that's true, then the opening clause of
24 that sentence where it says "to the extent that the
25 measure reduces development" is unnecessary and it

1 could just start from there or adding some
2 introductory clause such as "as a result" or
3 something like that.

4 MR. ROPER: So we have now in the first
5 sentence is it says "it's likely to reduce future
6 oil and gas development." Are you saying --

7 MR. DUNN: My preference would be to say
8 "will."

9 MR. ROPER: Okay.

10 MR. DUNN: But where it's highlighted --

11 MR. GELENDER: I also think to the extent
12 -- I mean, we're saying -- the to the extent
13 language also goes in. It's not just saying -- it
14 doesn't just mean if. It also means that in some
15 way sort of proportionally to that there will be
16 less of these other things.

17 Like, if there is a little bit less oil and
18 gas development, there will be a little less oil and
19 gas employment.

20 If there's a lot, then there will be a lot.
21 And without going into too many words, I think that
22 that has some relevance in that sense regardless of
23 any conditional nature on the fact of some
24 reduction.

25 MR. DUNN: Okay. Then could we say

1 something like -- I'm not wed to this language, but
2 to the same degree that the measure reduces
3 development?

4 MR. ROPER: I'm interested in why the
5 Proponents would agree that it will reduce oil and
6 gas development in the state.

7 MS. TIERNEY: We would not concede that
8 because I think you don't know that yet. I think --
9 so -- and I agree with Mr. Gelender that that phrase
10 means more than -- doesn't mean that it may not. It
11 just means that it is the measurement.

12 To the extent that it does reduce
13 development, there will be less oil and gas
14 employment. So I think you need that phrase. You
15 can't just say there will be less because we don't
16 know that yet.

17 MR. ROPER: Yeah, I'm fine with the
18 language the way it is for those first few
19 sentences.

20 MR. GELENDER: Okay. Going on to the last
21 one then? Is that where you are?

22 MR. ROPER: That's where I am.

23 MR. GELENDER: Okay.

24 MR. ROPER: And again, my concern with the
25 last sentence is that, other than just saying that,

1 there's nothing in the fiscal impact statement to
2 indicate that there is this risk of reducing
3 property values and negatively affecting health
4 outcomes.

5 And, you know, the Proponents have said
6 that they've produced studies and information to
7 Legislative Council on that point. It's just not
8 addressed anywhere in the fiscal impact statement.

9 MS. TIERNEY: Well, if I might speak to
10 that, it is addressed in the fiscal impact statement
11 because they've included it in the fiscal impact
12 statement. And I think if you --

13 MR. ROPER: Just that bare sentence.

14 MS. TIERNEY: Right, but --

15 MR. ROPER: It just says, to the extent it
16 does and says that it may, right?

17 MS. TIERNEY: Right, but that's exactly
18 what you're going on above as well. I mean, if you
19 remove -- if you remove all of the proposed
20 benefits, you're going to be misleading the public
21 because you're only going to talk about the negative
22 aspects of this measure.

23 So you will have ignored everything that
24 the Proponents have submitted. And while they had a
25 person stand up here and testify, he was not an

1 expert on this. He was relying on the other studies
2 that were produced two years ago.

3 So I want to make sure the record is clear
4 that Ms. Spiegel and her credentials were equally
5 matched to Mr. Brown's in terms of what they brought
6 here to the podium.

7 And I want to make sure that this body
8 takes into account that material is before you just
9 as it is before you with the information they have
10 provided.

11 And to the extent that this becomes an
12 argument about the credibility of studies, I would
13 submit that this body is not equipped to make those
14 calculations here today.

15 (Pause.)

16 MR. ROPER: Mr. Dunn, did you have anything
17 you wanted to add to your motion as to that
18 language?

19 MR. DUNN: Well, just to respond to that
20 point, I was trying to bite my tongue, but you
21 invited me.

22 You can only consider in my view, at least,
23 what is before you. And you have the two studies
24 and you have the fiscal impact statement and that's
25 really it.

1 To the extent Mr. Brown introduced
2 statements that aren't part of those studies, they
3 probably shouldn't be considered and the same with
4 Ms. Spiegel.

5 As I said, this is not a evidentiary
6 hearing. And for whatever reason the Legislative
7 Council chose to put some of their information
8 online that they received and not others, um, and
9 only some of it was submitted with the motion for
10 rehearing.

11 So I don't think that you can take ad hoc
12 testimony about the health effects without having it
13 seeing what it was that Legislative Council
14 considered.

15 I haven't seen it so I can't even respond
16 to it. So I'm sort of fighting with one hand tied
17 behind on my back on that particular issue.

18 And I would suggest that you can't
19 formulate what to say about that having not seen it
20 either.

21 MS. TIERNEY: I thought maybe it might be
22 helpful to hear from Legislative Council on what
23 they considered on that point.

24 MS. STAIERT: I mean, I think it's pretty
25 -- yeah, we can. I think the whole thing is pretty

1 speculative anyway and I'm not sure. But so is the
2 rest of it so -- I'm not really inclined to take it
3 out, but go ahead.

4 NATALIE MULLIS: Thank you, Madam Chair.
5 For the record, Natalie Mullis with Legislative
6 Council staff.

7 We did look at the material that the
8 Proponents provided to us and took that into
9 consideration when we wrote the economic impact
10 section.

11 We did not post it online because it did
12 not resemble in any way a fiscal impact statement.
13 The CU report is not a fiscal impact statement but a
14 most technical definition either.

15 But since it was a quantitative economic
16 analysis, we thought it resembled it close enough to
17 post it.

18 I honestly would be interested in your
19 interpretation of what we ought to post and what we
20 ought not to post so that we're not making these
21 decisions --

22 MR. ROPER: Can I ask you, were there
23 studies or information presented to Legislative
24 Council indicating that less development -- less oil
25 and gas development might improve health outcomes

1 for affected residents?

2 NATALIE MULLIS: I have to be honest with
3 you that Josh Abrams, who is the author of the
4 fiscal note is the one who looked through that
5 material, not me, so I can't really speak to it.

6 MR. ROPER: Okay.

7 MR. GELENDER: I think -- I mean, I know,
8 as Ms. Staiert said, these things are speculative.
9 I think in the absence of additional information and
10 in the presence of testimony that Legislative
11 Council have due to the fact look at stuff.

12 I think at this point we defer to their
13 judgment rather than substituting our own. And I
14 would -- I mean, the language is very -- I mean, it
15 gives notice that if there's less development -- if
16 the setback distances increase, there may be some --
17 it doesn't try to quantify them.

18 I mean, it's hedging language. There's
19 "may" and to the extent that if it happens "may
20 increase." I mean, I think, you know, ultimately
21 they prepare this impact statement.

22 And, yes, we get to modify it, but I don't
23 have -- I think absence of a compelling reason that
24 that's wrong and inaccurate and false, I would defer
25 to it, speculative, though it is.

1 I think it's written in a way that it's not
2 sort of inherently prejudicial or misleading. And
3 I'd also note that the statute that they're required
4 to follow says "that the abstract must include" and
5 there's a little (inaudible) "it's not just economic
6 impact but a statement of the measure's economic
7 benefits for all Coloradoans."

8 And we've got what I think most people
9 would say is the flip side of that above it. So I
10 think it would be -- I'm hard pressed to be
11 convinced that we should take out the benefits side.

12 MR. ROPER: Yeah, I think I'm a little
13 bothered by the squishiness of the language, to the
14 extent it does this, it may do this.

15 But I think I agree with Jason. I'm
16 inclined to defer to Legislative Council having
17 reviewed the information on that that was provided
18 and this is their best attempt to state what the
19 economic benefits are.

20 So although I'm a little bothered by the
21 language, I'm comfortable leaving it in.

22 MS. STAIERT: Okay. Then I think that's
23 pretty much everything with the abstract.

24 MR. GELENDER: Okay, so then I guess all
25 the changes (inaudible)?

1 UNIDENTIFIED MALE: Yeah.

2 MR. GELENDER: It's not a Title. I don't
3 think we need to read it. I think (inaudible).

4 MS. STAIERT: Yeah, that's fine.

5 MR. GELENDER: I would move that we adopt
6 the amendments to the fiscal abstract -- sorry, that
7 we've adopted so far and that the abstract be
8 modified in that manner.

9 MR. ROPER: Second.

10 MS. STAIERT: All those in favor?

11 (Unanimous.)

12 All right. That takes us to the Title.

13 Mr. Dunn?

14 MR. DUNN: So you have our objections in
15 our motion. Let me go through those as quickly as I
16 can.

17 So the first one relates to the reference
18 to new oil and gas development. The measure also
19 applies to reentry into existing wells.

20 And as I understand the industry, um, the
21 oil and gas wells may be plugged for a period of
22 time for a variety of reasons and then may be
23 subsequently reentered, whether to go deeper or
24 horizontally or when prices return. It would apply
25 to those as well.

1 So it has an impact not just on new oil and
2 gas development but existing wells as well. So the
3 Title should reflect that.

4 Second, one of the existing provisions
5 under state regulation through the COGCC is that a
6 landowner in working with a developer may waive the
7 current setback requirement.

8 This measure, because it's putting the
9 setback, a 2500 setback in law and allowing other
10 governmental entities to increase that setback, that
11 waiver process is no longer available.

12 So the Title really should reflect that a
13 landowner's ability to waive the setback and allow
14 development on their property is significant if
15 you're a landowner. And that should be reflected in
16 the Title.

17 Third, with regard to the phrase "occupied
18 structures" the measure actually refers to
19 structures not that just are authorized for
20 occupancy by a governmental entity, typically a
21 local government, but it also applies to any
22 structure intended for human occupancy.

23 I'm not really sure what that means but I
24 think you have to take it on its face and say that
25 is any structure that a person would occupy, not

1 necessarily just through a governmental permitting
2 process because that's the first clause.

3 So I think it needs to reflect that that
4 dramatically increases the breadth of what
5 constitutes an occupied structure.

6 We put in somewhat of a fanciful example,
7 but you could in theory, you know, count one of the
8 10th mountain division huts up in the mountains
9 that's used for skiers as a structure intended for
10 occupancy and it would put the setback requirement
11 around that.

12 Fourth, the Title does not at all reference
13 the vulnerable areas definition and coverage, which
14 as we show in the motion, is by far the largest
15 portion of what is covered by the measure and it
16 actually covers more acreage by far than the
17 occupied structure definition. So that should be
18 reflected.

19 I think we're on fifth. The Title really
20 should reflect what I talked about earlier in the
21 single-subject discussion about the change to the
22 home rule structure of our government and that it
23 will allow local governments to trump larger
24 governments.

25 It will allow towns to trump the state. It

1 will allow counties to trump home rules. The Title
2 ought to reflect that when another governmental
3 entity imposes a larger setback that that would
4 apply.

5 And I think lastly, the Title contains an
6 impermissible catch phrase in that it says, it
7 refers to any area designated for additional
8 protection.

9 I think that just simply sort of presumes
10 that a 2500-foot setback provides more protection
11 than any other setback.

12 It necessarily invites the debate about
13 whether this is good policy or not and may incite
14 voters to support without actually knowing whether
15 the statement is true or not.

16 MR. GELENDER: And you do not find that the
17 phrase "used in the measure of vulnerable areas" has
18 sort of a similar connotation?

19 MR. DUNN: Yeah. That's a good point. I
20 think it needs to refer to that breadth of coverage.
21 I think you're exactly right on the phrase
22 "vulnerable" because as I said earlier, you could --
23 it doesn't limit it to somehow proving something is
24 vulnerable to oil and gas development or would be
25 harmed by it.

1 It says the main local government can
2 define it however it wants. So, as I said, a county
3 could come in and say -- well, an entire -- any city
4 that's incorporated is a vulnerable area.

5 So I think that's a good point about the
6 use of the word "vulnerable."

7 MR. GELENDER: Yeah, I guess given --
8 you're familiar with our brevity requirements.
9 Short of listing the whole laundry list, do you have
10 a suggestion in lieu of what we've done?

11 MR. DUNN: I think it needs to say
12 something about in any other area that a
13 governmental entity decides to provide -- to apply
14 the setback.

15 MS. STAIERT: Could you just say at least
16 2500 feet from any occupied structure and any other
17 area designated by a local government?

18 MR. DUNN: Well, on the first point, on the
19 occupied structure, I think you have to be careful
20 about that because people will think of an occupied
21 structure in the traditional way and not in the way
22 that they've defined it by including the additional
23 language to say it's -- or intended for human
24 occupancy. So I think you have to include that,
25 number one.

1 In regard to your second part of that, you
2 know, that may cover it just to say simply any other
3 area designated.

4 MS. STAIERT: Okay.

5 MR. ROPER: But that would leave out the
6 ones that are designated in the measure itself,
7 right?

8 MR. DUNN: In terms of vulnerable areas?

9 MR. ROPER: Yeah, I mean, these -- whether
10 or not the local governments would want to include
11 these, you know, playgrounds, sports fields, public
12 parks, et cetera, would be -- you'd need to do the
13 setback from those.

14 MR. DUNN: Correct.

15 MR. ROPER: Right.

16 MR. DUNN: And I'm not suggesting you
17 should include that laundry list. I just think it's
18 important to include the point that they can include
19 anything they want.

20 MR. ROPER: Yeah.

21 (Pause.)

22 Suzanne, are you ready to hear from Ms.
23 Tierney?

24 MS. STAIERT: Sure. Thank you.

25 MS. TIERNEY: I wanted to point out again

1 that the Supreme Court has ruled on almost an
2 identical Title in measure No. 78 in 2016 on almost
3 these exact same issues.

4 On No. 2, the Title is misleading because
5 it should reflect that it eliminates a landowner's
6 ability to waive a setback.

7 The measure doesn't talk at all about a
8 wavier. And, in fact, in the Title in (inaudible)
9 or in the review and comment process, the Proponents
10 were asked if they wanted to address that issue and
11 opted not to.

12 So I don't think the Title should address
13 something that the measure does not. The occupied
14 structural language was in measure No. 78, the
15 identical definition.

16 And it references some examples, homes,
17 schools and hospitals being the examples. So Mr.
18 Dunn's example, I think, is far-fetched.

19 And the Supreme Court found that it was not
20 misleading in No. 78, that occupied and structure
21 are words that are easily understood by readers and
22 would not constitute sheds and things that are not
23 lived in or as in a school or hospital large periods
24 of times spent in on a daily basis.

25 As in 78, where the language in the Title

1 was specified or locally designated area, which is
2 what this body came up with to address in that
3 measure the word instead of "vulnerable areas" was
4 slightly different. And it was areas of special
5 concern.

6 I actually think this Title does a better
7 job of describing what that means with areas
8 designated for additional protection because that's
9 what they would be, right, areas that are designated
10 to be -- to fall within the 2500-foot setback.

11 So you could use the term "vulnerable" but
12 I think this, as you've written it, as the staff
13 draft was written, is more descriptive and tells the
14 voter more about what the measure does.

15 MR. GELENDER: My only question is -- I
16 know you don't address it, but do you believe that
17 -- I mean, when I look at Subsection 3 of the
18 measure, to me it says -- you know, it has the word
19 "all." "All new oil and gas in all the nonfederal
20 land must be located at least 2,500 feet."

21 To me that says nonwaivable. And if, in
22 fact, current regulation does allow waiver, whether
23 you've addressed it not, I think it's --
24 functionally it's likely to be a change in the law.

25 MS. TIERNEY: Well, the current law -- I'm

1 sorry. I didn't mean to interrupt you.

2 MR. GELENDER: Go ahead please.

3 MS. TIERNEY: The current law says that the
4 setback is 500 feet. It doesn't say anything about
5 a waiver. The Oil and Gas Conservation Commission
6 promulgated regulations providing for a waiver.

7 So this does not differ from existing law
8 in that way at all. And if the oil and gas industry
9 decided to do that, I'm not sure what the result of
10 that would be, whether there would be a challenge to
11 that or not. But the Proponents decided
12 specifically not to address that.

13 MR. GELENDER: Okay. Thank you.

14 MS. TIERNEY: And the issue -- the fifth
15 issue, the Title is misleading because it does not
16 indicate that the jurisdiction with the greatest
17 distance governs. Same thing in 78. 78 had that
18 exact same language that the Supreme Court did not
19 find that that language needed to be included in the
20 Title.

21 And finally, any area designated for
22 additional protection, I submit to you, is not a
23 catch phrase.

24 A catch phrase is something that voters
25 will be swayed by because it is something they have

1 heard or it is in popular culture or in popular
2 language and it triggers them to vote a particular
3 way because of that.

4 And any area designated for additional
5 protection does not constitute a catch phrase under
6 the Supreme Court's definition of what a catch
7 phrase is.

8 MS. STAIERT: Any questions?

9 MR. GELENDER: No.

10 MS. STAIERT: All right.

11 MS. TIERNEY: Thanks.

12 MR. DUNN: A quick response to that, with
13 regard to the waiver issue, the reason the waiver is
14 allowable right now is because the setback itself is
15 a regulation, not a statute.

16 So COGCC has put the setback in place, but
17 now you'll have in state statute a setback, a
18 mandatory setback that does not provide for any
19 waiver. And with any reasonable interpretation I
20 don't see how the COGCC could come in and write a
21 waiver to that.

22 MS. STAIERT: Um, well, I don't think we
23 generally describe in a Title what there isn't in
24 the measure. There isn't a waiver. So I'm not too
25 inclined to include that.

1 I am a bit sympathetic to the additional
2 protection language. I think protection is, we all
3 want to be protected. So I think there could be
4 some reading into that.

5 So for that one I think I would prefer the
6 language "any other area designated by a local
7 government" rather than using the word "for
8 additional protection."

9 MR. GELENDER: I think you have to say --
10 because the measure itself designates some sort of
11 thing.

12 MS. STAIERT: Right.

13 MR. GELENDER: You'd have to say like, in
14 the area -- in the other area designated by the
15 measure of the state or a local government.

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

17 MR. GELENDER: It's wordy, but I think
18 that's how you have to do it.

19 MS. STAIERT: Yeah.

20 MR. GELENDER: I'm also -- um, based on Mr.
21 Dunn's last statement, I had thought the 500 was in
22 regulation, I wasn't sure. But assuming that is, in
23 fact, the case, I would be interested in putting --
24 adding the word "nonwaivable" right before
25 "statewide" on the first line because I do think

1 that that's a significant -- I mean, it is a
2 significant change to -- I guess, it's not the
3 (inaudible) current practice.

4 And if the regulation is, it can be waived
5 and this thing says, no, it can't, then I think
6 that's worth noting.

7 There may be, you know, landowners out
8 there who want to -- you know, someone has a small
9 farm or something and they're just perfectly willing
10 to let someone put a well on the outskirts from
11 their house and it's 1,000 feet away and they're
12 comfortable with that and this measure says, no, you
13 can't do that.

14 MR. ROPER: Ms. Tierney, do you agree that
15 it's -- I guess, do you dispute that it's in
16 regulation currently?

17 MS. TIERNEY: I was just having my team go
18 check that. I thought it was in the statute already
19 but it may be that it is in regulation.

20 MR. ROPER: And would you agree under the
21 measure that it does not allow -- it would not allow
22 COGCC to promulgate a regulation allowing for
23 waiver?

24 MS. TIERNEY: I don't agree with that. I
25 think that the COGCC is going to be allowed to

1 promulgate regulations and there may be situations
2 where they would be allowed to find a reason for a
3 waiver.

4 MR. ROPER: Even with the "must be located"
5 language in the proposed initiative?

6 MS. TIERNEY: Well, um, what I will say is
7 the Proponents very deliberately did not say
8 "unwaivable" and that was really a discussion.

9 So, um, it's certainly not contemplated
10 that that's going to be the practice where it is now
11 where a waiver is the standard and not the
12 exception. But I think that they purposefully chose
13 not to address or make it nonwaivable explicitly.

14 MS. STAIERT: I mean, I'm fine with either
15 way you all want to go. I just think we generally
16 don't put -- I mean, everything's -- and we could
17 put that in every measure we ever wrote because any
18 law is presumably not waivable. I mean --

19 MR. GELENDER: But in this case the
20 situation is different because there's an existing
21 regulation that is -- in the existing practices you
22 can.

23 MS. STAIERT: Right.

24 MR. GELENDER: I mean, we're having a law
25 that, I believe on the face of it regardless of what

1 Proponents might have been tendered or wanted,
2 changes that.

3 And I think it's a significant change
4 because you could have like a property owner, for
5 example, want someone to put a well on his own
6 property so we can get the (inaudible) from it and
7 now can't.

8 MS. STAIERT: I just think that the number
9 of people who are going to know that aren't the same
10 population that are going to go actually read the
11 initiative.

12 MR. GELENDER: Well --

13 MS. STAIERT: I just don't know who in the
14 general public believes laws are just waivable and
15 that we have to then say that they're not waivable.
16 I don't know.

17 MS. TIERNEY: Let me just add one more
18 point and that's that I think the Supreme Court has
19 been consistent in its direction that the Title
20 should not have to spell out what the measure's
21 effect on all or any other laws is.

22 MR. ROPER: So what if we took the word
23 "distance" off the beginning of line 3 and added
24 "must" before "be located?"

25 So, you know, we're not saying

1 "nonwaivable" and we're just using -- near the end
2 there right before "be located" and we're just using
3 the "must" from the initiative.

4 I don't know if that helps with your
5 concern, Jason, or not.

6 MR. GELENDER: Sure. It's a nice more
7 pleasant word than "nonwaivable" so there's that.

8 MR. DUNN: If I may?

9 MS. STAIERT: Sure.

10 MR. DUNN: Yeah, I'm not huge on either
11 one. I don't think "must" really advances the ball
12 any. And I agree that nonwaivable, just putting it
13 right before statewide minimum distance requirement,
14 is not clear who would be doing the waiving.

15 I would propose that we say a change to
16 Colorado Revised Statute concerning a statewide
17 minimum distance requirement for new oil and gas
18 development, uh, that will no longer be waivable by
19 landowners.

20 To respond to the statement that, you know,
21 who knows if these are waivable? I can promise you
22 the landowners who have mineral rights know what's
23 waivable and what's not.

24 MR. GELENDER: And I haven't seen the
25 regulation. That's who it says waives it. It's

1 essentially whoever has this structure that's
2 subject to the setback is the person who does the
3 waiving.

4 MR. DUNN: Correct.

5 MR. GELENDER: It's more words than I like,
6 but I would be in favor of that.

7 MR. ROPER: Would you like me to restate
8 that?

9 STEVE WARD: Yes, please.

10 MR. ROPER: On line 2 after "development"
11 "that will no longer be waivable by landowners."

12 (Pause.)

13 (Inaudible conversation.)

14 MS. TIERNEY: Again, I just think that's
15 not what the measure says. And I think it's
16 debatable if that's what the measure does. So I
17 think it's misleading.

18 MR. GELENDER: Well, how about this? I
19 think we're good with -- why don't I move that
20 particular language? I think we may have a
21 disagreement amongst us on it. So I move we adopt
22 the language that's been added on line 2.

23 Can we have the ruling on the spelling of
24 waivable?

25 STEVE WARD: I don't know if there's an "e"

1 or not.

2 MR. GELENDER: I'm quite curious actually.

3 MS. STAIERT: I'll Google it for you. See
4 if he gets a second. Then we won't know, we won't
5 need to know.

6 MR. ROPER: Yeah, I'm not going to second.

7 MS. STAIERT: Okay, then we don't need to
8 know.

9 MR. GELENDER: That concept, not only the
10 motion, but I think the concept appears to be lost
11 as well. Is there anything else we're looking --
12 we're considering adding?

13 MS. STAIERT: No. I don't think waivable
14 is a word though except in a wicktionary.

15 MR. ROPER: Mr. Dunn's argument on the
16 occupied structure did resonate with me because I do
17 think just reading that you would assume that meant
18 it had to be occupied.

19 And I think meaning there had to be a
20 person living there at the time. And I think the
21 definition is broader. So I would, instead of
22 "occupied structure" I would say "structure intended
23 for human occupancy" not that I love that language
24 but I think it's a little more accurate.

25 MR. GELENDER: We could go with habitable.

1 MS. STAIERT: That's in the eye of the
2 beholder. A tent is habitable.

3 MR. ROPER: What do you think of that
4 change?

5 MS. STAIERT: Um, I think the Supreme Court
6 thought that it was fine the way it was, but a
7 different board, if you all want to improve upon the
8 language.

9 MS. TIERNEY: If I might, I might say that
10 if you make that change, we would push for the rest
11 of that part of the definition then that says
12 "including homes, schools and hospitals" so that
13 it's not the shed in the woods.

14 MR. ROPER: Well, I mean, this is just the
15 language from the measure.

16 MS. TIERNEY: Right, but that's modified by
17 including homes, schools and hospitals, right? So
18 it's giving the measure, the context, that that's
19 the type of occupied structures or structures
20 intended for human occupancy that are regulated.

21 MR. ROPER: Yeah, the others may feel
22 differently but I would make this change and not add
23 the homes, schools, hospitals.

24 MS. STAIERT: Do you want to make a motion
25 and see if you get a second?

1 MR. ROPER: Sure. All right, I move that
2 we change the language on line 4 from -- just the
3 first part of that from "occupied structure" to say
4 "structure intended for human occupants."

5 MR. GELENDER: And I'll second that.

6 MS. STAIERT: All those in favor?

7 MR. ROPER: Aye.

8 MR. GELENDER: Aye.

9 MS. STAIERT: I'll be opposed just because
10 I was on the board for the first language.

11 MR. GELENDER: I may well have been too.

12 MS. STAIERT: I don't know. Um, anything
13 else?

14 MR. ROPER: So, as we have it up there
15 right now, I'm worried that it -- it talks about the
16 structure and -- I guess we have "other area"
17 designated by the measure.

18 Yeah, that's the concept that I was -- do
19 we need to flush that out and indicate something
20 about what those are?

21 I know it's hard because we have that long
22 listing in the measure.

23 MR. GELENDER: I would leave it as is. I
24 think it's time to move on.

25 MR. ROPER: I'll second that.

1 MS. STAIERT: Okay, well, I'm going to just
2 read it the way it is right now.

3 This is a change to the Colorado Revised
4 Statutes concerning a statewide minimum distance
5 requirement for new oil and gas development in
6 connection therewith, changing existing distance
7 requirements to require that any new oil and gas
8 development be located at least 2500 feet from any
9 structure intended for human occupancy in any other
10 area designated by the measure, the state, or a
11 local government in authorizing the state or a local
12 government to increase the minimum distance
13 requirement.

14 MR. GELENDER: Ready?

15 MS. STAIERT: Yes.

16 MR. GELENDER: I would move that we grant
17 the motion for rehearing only to the extent that
18 we've amended the Title as was just read into the
19 record.

20 MR. ROPER: Second.

21 MS. STAIERT: All those in favor?

22 (Unanimous.)

23 Okay.

24 STEVE WARD: I have one question for the
25 board before we continue. You also chose to amend

1 the fiscal abstract?

2 MS. STAIERT: Uh-huh.

3 STEVE WARD: So, how -- since this is new
4 for us, how do we note that on the result? Motion
5 for rehearing granted to the extent -- only to the
6 extent that the fiscal abstract and titles were
7 amended?

8 MS. STAIERT: Yes.

9 STEVE WARD: Okay. That's all I need.
10 Thank you.

11 MR. GELENDER: Can we take five?

12 MS. STAIERT: Sure. We're going to take
13 five.

14 (The portion of the hearing requested to be
15 transcribed regarding #97 on the agenda is
16 concluded.)

17 (This portion of the second audio concluded
18 at 1:26:11.)

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