

SUPREME COURT, STATE OF COLORADO

Court Address: 2 East 14th Avenue
Denver, Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)

Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE,
AND SUBMISSION CLAUSE AND SUMMARY
FOR 2007-2008, #36

Petitioners: ELIZABETH ANNISON, ELLEN
BRILLIANT, TRUDY B. BROWN, VICKI J.
COWART, CATHRYN L. HAZOURI, JACINTA
MONTOYA, and TONI PANETTA, Objectors,

v.

Respondents: KRISTINE BURTON and MARK
MEUSER, Proponents,

and

Title Board: WILLIAM A. HOBBS, DANIEL L.
CARTIN, and DANIEL DOMENICO

Attorneys for Petitioners:

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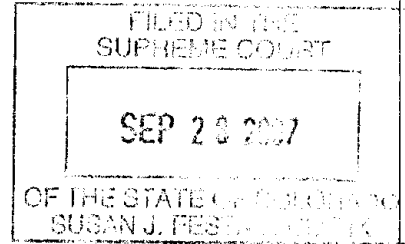
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Case No. 07SA245

ANSWER BRIEF OF PETITIONERS

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Elizabeth Annison, Ellen Brilliant, Trudy B. Brown, Vicki J. Cowart, Cathryn L. Hazouri, Jacinta Montoya, and Toni Panetta ("Petitioners"), through their undersigned counsel, respectfully submit the following Answer Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2007-2008 #36 ("Definition of Person"):

I. SUMMARY OF THE ARGUMENT

1. The proposed initiative violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2007), by asking the voters, in a single measure, to alter a material term in three separate selected constitutional provisions, addressing three distinct bundles of constitutionally defined rights, and addressing three separate and distinct subjects. The voters would be denied the opportunity to consider the merits of the proposal independently in the context of each of the distinct subject areas at issue.

2. The title set for the proposed initiative is unfair and misleading in contravention of § 1-40-106, C.R.S. (2007), by not disclosing that the acknowledged true intent and meaning of the initiative is to make it illegal to terminate a pregnancy.

II. ARGUMENT

A. Single Subject.

The parties do not dispute that this proposed initiative would ask the voters – in a single measure – to amend or refine the meaning of a material term in three separate constitutional sections.¹ Respondents and the Title Board present essentially the same argument as to why this should be permitted in the face of Colo. Const. art. V, § 1(5.5)'s single subject requirement:

[T]hese three sections of the Colorado Constitution are not only related, but *interdependent* upon each other and *inextricably tied together*.

Resp. Op. Br., p. 8 (emphasis added).

The inalienable rights granted under article II, § 3 are *integrally related* to the rights of access to courts in article II, § 6 and the right of due process in article II, § 25. If one is deemed a person with inalienable rights, then one *must, as a corollary*, have the right to go to court to defend those rights and have the right to due process in the courts and elsewhere.

Title Bd. Op. Br., pp. 7-8 (emphasis added).

If Respondents and the Title Board are correct that these sections are "inextricably tied together," and if it is necessary to amend all to accomplish the purpose of amending one, the initiative addresses a single subject. If this is not the

¹ Although rebuttable, the presumption is that a change in the law is thereby intended in the context of each section. Charnes v. Lobato, 743 P.2d 27, 30 (Colo. 1987).

case – and Petitioners respectfully submit that it is not – the initiative addresses multiple subjects and should not be permitted to go forward in this form.

A good place to begin seeking an answer to this question is in the text of the Colorado Bill of Rights itself. The framers separated these three sets of arguably "inextricably tied" and "integrally related" specifications of rights into three distinct and separate constitutional sections. One must presume this was for a reason, *i.e.*, they address three separate subjects. Respondents and the Title Board are now asking this Court to treat these three separately stated fundamental constitutional pronouncements as if they addressed not three, but a single, subject.

Second, amending all three sections is a far different exercise from simply assuring that the procedural protections of Colo. Const. art. II, §§ 6 and 25 are available to protect a refined definition of substantive inalienable rights under § 3. Sections 6 and 25 are independent provisions – not derivative of or limited by § 3 – that protect a panoply of rights extending well beyond the inalienable ones addressed in § 3. By taking the course they have chosen, Respondents propose to open the courts to an expanded concept of "person" with regard to "every injury to person, property or character" recognized in constitutional, statutory, administrative, or common law – not just with regard to inalienable rights – and to afford constitutional due process protections for all manner of deprivations of life,

liberty, or property whether within the "inalienable" category or not. Whatever this may mean, it means a whole lot more than simply recognizing and protecting a refined concept of inalienable rights.

Third, it is just not correct to suggest that inalienable rights are meaningless without a corollary grant of a right of access to the courts and constitutional due process. Inalienable rights may be protected by other means if the people so choose (and it is quite possible that they may so choose with regard to pre-embryonic fertilized eggs). The Title Board itself (Op. Br. p. 7) cites a perfectly illustrative example in State Farm Mut. Auto. Ins. Co. v. Broadnax, 827 P.2d 531 (Colo. 1992), upholding mandatory binding arbitration as a constitutionally permissible alternative to Colo. Const. art. II, § 6's guaranty of general access to the courts, in the context of assertion of an inalienable right, as long as due process is accorded. Id. at 533-37. Inalienable rights may be protected in some instances by prohibiting deprivation altogether or employing limiting criteria not dependent upon notice and a hearing (the essence of "due process") – thus making even due process concerns irrelevant.

Finally, where the people choose to recognize an inalienable right to be held by a defined class of "person," and where they do not choose to protect that right in another manner, it would be remarkable indeed – in fact absurd and patently

unconstitutional of itself – were the independently established protections of Colo. Const. art. II, §§ 6 and 25 to be arbitrarily withheld from any segment of that defined class. The term "person" in those independent procedural sections follows the holder of the protected right: in some cases this means only natural persons (as with inalienable rights), in some cases it includes business or other entities, in some cases it is limited to citizens or taxpayers or adults, and – were Colo. Const. art. II, § 3 alone to be amended as the Respondents propose – it would extend to "human being[s] from the moment of fertilization" with regard to the rights conferred thereby. The scope of these independent, and broadly sweeping, procedural protections need not be separately amended every time the scope of a substantive right is refined or amended.

If indeed, as both Respondents and the Title Board argue, the purpose of amending Colo. Const. art. II, §§ 6 and 25 is simply to assure protection of the refined inalienable rights Respondents seek to establish under § 3, the step is both (a) unnecessary and (b) laden with implications and effects sweeping well beyond the core subject of their initiative. If the purpose is something broader – *i.e.*, to independently impact the sweep of these separate and distinct constitutional provisions and bundles of procedural rights along with the proposed refinement of

the substantive rights recognized by § 3 – the initiative indisputably addresses multiple subjects.

B. Unfair and Misleading Nature of the Title.

Both the Respondents and the Title Board take Petitioners to task for purportedly asking this Court to engage in "conjecture" about the purposes and intended effects of this initiative, *i.e.*, that it is directed primarily, if not exclusively, at abortions. The Title Board adds the point (correctly) that, especially in consideration of federal constitutional law, "any impact the measure may have on abortion is unknown and unknowable at this point." Title Bd. Op. Br. p. 9.

These rejoinders would be well founded were Petitioners asking this Court to speculate as to Respondents' purposes in proposing this measure or to predict the measure's ultimate impact. But that is not what Petitioners are requesting. As noted in Petitioners' Opening Brief (at p. 13), Respondents have candidly acknowledged that their dominant purpose – indeed the only purpose they could articulate before the Title Board – is to stop abortions. There is nothing speculative or "conjectural" about this. Whether the initiative would succeed in accomplishing this purpose is completely irrelevant to the present inquiry, and Petitioners are not asking the Court to address that. All Petitioners are requesting

is that the title disclose to the voters the acknowledged and undisputed primary, dominant, and quite apparently sole, "true intent and meaning" of this initiative – § 1-40-106(3)(b), C.R.S. (2007) – thereby "enabling informed voter choice." In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845, 846 (Colo. 1999).

III. CONCLUSION

For the reasons set forth above, Petitioners request the Court to reverse the actions of the Title Board and to direct the Board to strike the titles, ballot titles, and submission clauses and return proposed Initiative for 2007-2008 #36 to its proponents.

Respectfully submitted this 28th day of September, 2007.

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I HEREBY CERTIFY that on this 28th day of September, 2007, a true and correct copy of the foregoing **ANSWER BRIEF OF PETITIONERS** was served as indicated to the following addressees:

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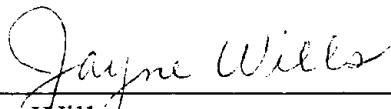
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