

COLORADO SUPREME COURT  
101 West Colfax Ave., Suite 800  
Denver, Colorado 80202

Original Proceeding Pursuant to C.R.S. § 1-40-107(2)  
Appeal from the Ballot Title Board

**In the matter of the Title, Ballot Title, and  
Submission Clause for the Proposed Initiative  
2011-2012, #46**

**Petitioners:** LESLIE DURGIN, CATHY  
ALDERMAN and AMY PITLIK

v.

**Respondents:** ROSALINDA LOZANO and KEVIN  
SWANSON

and

**Title Board:** WILLIAM A. HOBBS, DANIEL  
DOMENICO, and JASON GELENDER

Attorney for Respondent Rosalinda Lozano:

John Case, Atty. Reg. #2431  
Benson & Case, LLP  
1660 South Albion Street, Suite 1100  
Denver, CO 80222  
PH: (303) 757-8300  
FAX: (303) 753-0444  
E-mail: case@bensoncase.com

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Supreme Court Case  
No.: 2012SA10

**OPENING BRIEF OF RESPONDENT ROSALINDA LOZANO**

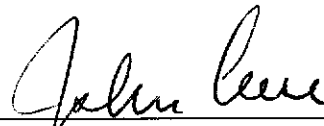
**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting and filing requirements set forth in those rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g) because it does not exceed 30 pages.

The brief complies with C.A.R. 28(k) because, for each issue, it contains under a separate heading (1) a concise statement of the applicable standard of review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issues was raised and ruled on.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.



John Case, #2431

Attorney for Respondent Rosalinda Lozano

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether Proposed Initiative 2011-2012 #46 (“Initiative 46”) violates the single subject requirement of Colo. Const. Art. V, Sec. 1 and C.R.S. § 1-40-106.5.
2. Whether the ballot title of Initiative 46 is misleading.
3. Whether the ballot title of Initiative 46 is inaccurate.

## **STATEMENT OF THE CASE**

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

In this original proceeding, Petitioners Leslie Durgin, Cathy Alderman and Amy Pitlik (“Petitioners”) seek to invalidate Initiative 46, which will allow voters to decide if all persons have an equal right to life under the Colorado Constitution.

Respondents Rosalinda Lozano and Kevin Swanson submitted Initiative 46. After a hearing at the Offices of the Legislative Council and Legislative Legal Services, Respondents submitted their final version of the Initiative to the Colorado Secretary of State. The Title Setting Review Board (“Title Board”) held a hearing on December 21, 2011. The Title Board determined that Initiative 46 satisfied the single subject requirement and set a title.

Petitioners moved for rehearing on December 28, 2011 pursuant to C.R.S. § 1-40-107(1). At a hearing on January 4, 2012 the Title Board reaffirmed its earlier decision regarding the single subject rule and revised Initiative 46’s title.

Pursuant to C.R.S. § 1-40-107(2), Petitioners filed an original action in this Court challenging the Title Board's actions. Petitioners contend that Initiative 46 violates the single subject requirement of the Colorado Constitution, Article V, § 1(5.5) and C.R.S. § 1-40-106.5 by "prohibiting entirely distinct and unrelated conduct, resulting in impermissible logrolling through the inclusion of incongruous subjects[.]" (Petition at 4.) Petitioners also claim that the ballot title is misleading because it adopts a new or controversial legal standard by extending "rights to human beings at any stage of development" and barring the intentional killing of "all innocent persons" without telling voters what those terms mean. (*Id.*) Petitioners further contend that the ballot title inaccurately describes Initiative 46.

**B. Facts Relevant to Issues Presented for Review:**

Initiative 46 reads in full as follows:

Be it enacted by the People of the State of Colorado.

In the constitution to the state of Colorado, add section 32 to article II as follows:

**Section 32. The Right to Life. (1) Purpose.** IN ORDER TO AFFIRM BASIC HUMAN DIGNITY, BE IT RESOLVED THAT THE RIGHT TO LIFE IN THIS CONSTITUTION APPLIES EQUALLY TO ALL INNOCENT PERSONS.

**(2) Effect.** THE INTENTIONAL KILLING OF ANY INNOCENT PERSON IS PROHIBITED.

(a) ONLY BIRTH CONTROL THAT KILLS A PERSON SHALL BE AFFECTED BY THIS SECTION.

(b) ONLY IN VITRO FERTILIZATION AND ASSISTED REPRODUCTION THAT KILLS A PERSON SHALL BE AFFECTED BY THIS SECTION.



(c) MEDICAL TREATMENT FOR LIFE THREATENING PHYSICAL CONDITIONS INTENDED TO PRESERVE LIFE SHALL NOT BE AFFECTED BY THIS SECTION.

(d) SPONTANEOUS MISCARRIAGES SHALL NOT BE AFFECTED BY THIS SECTION.

(e) NO INNOCENT CHILD CREATED THROUGH RAPE OR INCEST SHALL BE KILLED FOR THE CRIME OF HIS OR HER FATHER.

**(3) Definitions.** AS USED IN THIS SECTION,

(a) "PERSON" APPLIES TO EVERY HUMAN BEING REGARDLESS OF THE METHOD OF CREATION.

(b) A "HUMAN BEING" IS A MEMBER OF THE SPECIES HOMO SAPIENS AT ANY STAGE OF DEVELOPMENT.

(c) "SPONTANEOUS MISCARRIAGE" IS THE UNINTENTIONAL TERMINATION OF A PREGNANCY.

(d) "CHILD" INCLUDES A HUMAN BEING PRIOR TO AND DURING BIRTH.

(e) "MEDICAL TREATMENT FOR LIFE THREATENING PHYSICAL CONDITIONS INTENDED TO PRESERVE LIFE" INCLUDES BUT IS NOT LIMITED TO TREATMENT FOR CANCER, ECTOPIC AND MOLAR PREGNANCY, TWIN-TO-TWIN TRANSFUSION SYNDROME, AND PLACENTA PREVIA.

**(4) Self-executing, and severability provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND ARE SEVERABLE.

(Initiative 46, copy attached to Petition.) The title set by the Title Board reads:

An amendment to the Colorado constitution concerning the extension of rights to all human beings at any stage of development, and, in connection therewith, declaring that the protections for life provided for in the state constitution apply equally to all innocent persons; defining "person" as every member of the species homo sapiens at any stage of development; prohibiting the intentional killing of any innocent person; clarifying that the amendment affects only those methods of birth control and assisted reproduction that kill an innocent person and does not affect other methods of birth control or assisted reproduction, medical treatment for life-threatening physical conditions, or spontaneous miscarriages; and specifically prohibiting the killing of a person created through rape or incest committed by the father.

(Title Board Rulings at 1, copy attached to Petition.) The ballot title and submission clause designated and fixed by the Title Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the extension of rights to all human beings at any stage of development, and, in connection therewith, declaring that the protections for life provided for in the state constitution apply equally to all innocent persons; defining "person" as every member of the species homo sapiens at any stage of development; prohibiting the intentional killing of any innocent person; clarifying that the amendment affects only those methods of birth control and assisted reproduction that kill an innocent person and does not affect other methods of birth control or assisted reproduction, medical treatment for life-threatening physical conditions, or spontaneous miscarriages; and specifically prohibiting the killing of a person created through rape or incest committed by the father? (*Id.*)

#### SUMMARY OF ARGUMENT

Initiative 46 encompasses one subject: it prohibits the intentional killing of any innocent person. This single subject has one distinct purpose and one clear effect: to protect all innocent life at any stage of human development. The fact that persons of different ages or class, including pre-born children and the elderly, are protected equally does not violate the single subject requirement.

The ballot title for Initiative 46 is not misleading. It states the purpose of the initiative: to protect all innocent people at all stages of development. It declares that "the protections for life provided for in the state constitution apply equally to all innocent persons." The title defines "person" as every member of the species homo sapiens, at any stage of development. The term "innocent person" does not require further clarification because it is a common, familiar, well-understood

term. The use of the term “innocent persons” does not create a new or controversial legal standard. Rather, the title stands for a constitutional principle. To the extent that conferring a right to life on the unborn can be said to establish a new legal standard, the ballot title properly sets forth that standard.

The ballot title for Initiative 46 is accurate. It expresses the intent and meaning of the initiative. The title specifies that Initiative 46 applies to methods of birth control and assisted reproduction that kill an innocent person, and to the killing of a person created through rape or incest. The title specifies that Initiative 46 does not apply to methods of birth control or assisted reproduction that do not kill an innocent person, medical treatment for life-threatening physical conditions, or spontaneous miscarriages. The application of Initiative 46 is listed in the initiative itself. Everything in the ballot title accurately states the Initiative’s terms.

### ARGUMENT

- I. INITIATIVE 46 DOES NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT BECAUSE IT HAS ONE DISTINCT PURPOSE AND ONE CLEAR EFFECT, NAMELY THE PROTECTION OF ALL INNOCENT HUMAN LIFE AT ANY STAGE OF DEVELOPMENT.

- A. **Standard of Review and Location in the Record:**

The standard of review is limited. This Court does not address the merits of a proposed initiative, interpret the meaning of the language, or suggest how the initiative could be applied if enacted. *In re Proposed Initiative Concerning “Auto.*

*Ins. Coverage*”, 877 P.2d. 853, 856 (Colo. 1994). The purpose of the single-subject requirement is to “prevent joining in the same act disconnected and incongruous measures.” *In re Ballot Title 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000). This Court’s review of a single subject challenge is limited to whether the initiative contains a single subject and whether the single-subject is clearly expressed in the title. *Id.* The Title Board’s single subject determination is found in the Title Board Rulings appended to the Petition.

**B. Initiative 46 has one distinct purpose and one clear effect.**

Any law proposed by initiative must be limited to a single subject, and the single subject must be clearly expressed in the initiative title. Colo. Const. Art. V, § 1(5.5); C.R.S. § 1-40-106.5(1)(a). To evaluate whether an initiative violates the single-subject requirement, the Court should first look to the text of the proposed initiative. *In re Ballot Title 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006). This Court employs customary rules of statutory construction and reviews the initiative as a whole, examining individual statements in context rather than independently of each other. *Id.*; *In re Ballot Title 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). Therefore, this Court should determine the purpose and effect of Initiative 46 from its plain language.

An initiative that “tends to carry out one general, broad objective or purpose” does not violate the single-subject requirement. *In re 2009-2010 #45*,

234 P.3d at 646. An initiative including statements that, taken individually, may cover several subjects does not violate the single-subject requirement when the statements, taken together, have the effect of one singular purpose or objective. *Id.* By way of example, this Court ruled that when the broad statement of principal regarding a “right to health care choice” was read in context with implementing provisions that further confined the reach of the first term and outlined when and where it would take effect, the result was a single-subject initiative. *Id.* at 646-47. Therefore, this Court found the initiative met the single-subject requirement.

Initiative 46 states as its purpose: “In order to affirm basic human dignity, be it resolved that the right to life in this constitution applies equally to all innocent persons.” The next sentence states the effect, “to prohibit the intentional killing of any innocent person.” Taking the purpose and effect statements together, the single subject of Initiative 46 is to protect all human beings at all stages of development. The term “person” is defined as any human being, and the term “human being” is in turn defined as homo sapiens “at any stage of development.”

Reading Initiative 46 as a whole, it has one subject – it prohibits the intentional killing of any innocent person. Initiative 46 applies the constitutional right to life equally to all innocent human beings at any stage of development. It protects that right by prohibiting the intentional killing of such persons.

**C. The matters included in Initiative 46 are connected.**

The single-subject requirement is *not* violated if the matters included are necessarily or properly connected to each other, *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996), if the initiative effects or carries out a general object or purpose, *In re 1999-2000 #200A*, 992 P.2d at 30, or if the implementing provisions are directly tied to the initiative's central focus, *In re 1999-2000 #258(A)*, 4 P.3d at 1097.

In conducting a single-subject review, this Court may not take into account policy or the initiative's efficacy, future application, or construction. *In re 1999-2000 #258(A)*, 4 P.3d at 1097. However, this Court may "characterize the proposal sufficiently to enable review of the Title Board's action." *Id.*

For example, Proposed Initiative 1999-2000 #258(A) would have resulted in several effects, constraints, and changes for school boards, school districts, and individual schools. This Court found that the separate effects each contributed to the initiative's central focus, "the instruction of all public school students using the English language." *Id.* at 1098. "[T]he mere fact that a constitutional amendment may affect" separate pre-existing governmental powers, "does not, taken alone, demonstrate that a proposal embraces more than one subject." *Id.*

The text of Initiative 46 states that its purpose is to apply the constitutional right to life to all innocent people. The Initiative lists actions that do or do not fall

under the Initiative's stated effect: to prohibit the intentional killing of any innocent person. Definitions clarify certain terms. The definitions relate to the stated effect and the effect supports the stated purpose. The single subject of Initiative 46 is to protect all innocent human life at any stage of development. The stated purpose, effect and definitions are necessarily connected to carry out this general object. In its first 42 words, the ballot title spells out Initiative 46's stated purpose and effect, and includes the conjunction "in connection therewith" to join the phrases. Furthermore, the title explains specifically how the Initiative's stated effect will be carried out. Looking to the broader objective of Initiative 46, both the text and title of Initiative 46 set forth a single subject.

The mere fact that the purpose applies to a broad class of people, *i.e.*, all human beings at all stages of development, is not "logrolling." The term "logrolling" in this context generally refers to "the practice of jumbling together in one act incongruous subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits." *Colo. Crim. Justice Reform Coalition v. Ortiz*, 121 P.3d 288, 291 (Colo. App. 2005) (quoting *Colo. Gen. Assembly v. Lamm*, 704 P.2d 1371, 1383 (Colo. 1985)). Nothing of the sort occurs with Initiative 46.

The Initiative specifies that medical treatment for life-threatening physical conditions intended to preserve life is not affected, whereas the prohibition against

intentional killing does apply to unborn children. The effect on an unborn child and an individual facing a life-threatening condition is the same: to protect innocent persons at any stage of development. This represents two connected and intertwined rights: freedom from intentional killing, and the equal right to life.

Petitioners contended before the Title Board that “reproductive rights” is a distinct subject from “euthanasia, stem cell research, vigilantism, make-my-day homeowner defense, or actions taken by state or federal law enforcement officers in the line of duty,” all of which are arguably implicated by Initiative 46. (Motion for Reconsideration at 1, ¶ 1, copy attached to Petition.) Regardless of whether those matters are “distinct,” they are in no way incongruous for single-subject purposes. All the Colorado Constitution requires is that separate matters covered in a proposed initiative be “properly connected.” *In re Parental Rights*, 913 P.2d at 1131. The matters at issue here plainly qualify. As previously established, Initiative 46 has the singular purpose and effect of protecting innocent human life at any stage of development. As the Initiative defines human life, the lives all persons from conception forward are protected. In that context, “reproductive rights” is a matter properly connected with euthanasia, stem cell research and any other topic that might involve the intentional killing of an innocent human being. That being true, those matters satisfy the connectedness requirement of the single subject rule.



Initiative 46 does not violate the single-subject requirement because its plain language states one clear purpose and effect: to protect all innocent people at any stage of development. The purpose of the initiative, to extend the right to life to all innocent persons, is bound together as a principle of law with its effect, the right to not be intentionally killed. The text of Initiative 46 and the connection between the purpose and effect of the initiative, establish that the Initiative has one distinct subject. Accordingly, this Court should affirm the Title Board's conclusion that Initiative 46 comports with the single subject rule.

II. THE BALLOT TITLE FOR INITIATIVE 46 IS NOT MISLEADING BECAUSE IT USES COMMON, FAMILIAR, WELL-UNDERSTOOD TERMS THAT FULLY EXPLAIN THE LEGAL STANDARD VOTERS WILL BE ASKED TO APPROVE.

A. **Standard of Review and Location in the Record:**

This Court affords "great deference to the [title] board's broad discretion in the exercise of its drafting authority." *In re Proposed Initiative Concerning "State Personnel Sys."*, 691 P.2d 1121, 1125 (Colo. 1984). This Court does not address the merits of a proposed initiative, interpret the meaning of the language, or suggest how the initiative could be applied if enacted. *In re "Auto. Ins. Coverage"*, 877 P.2d at 856. The Title Board's title and submission clauses are "presumptively valid," and challengers must "show wherein the assigned title does not meet the statutory requirement." *Say v. Baker*, 322 P.2d. 317, 319 (Colo. 1958); *see also In re Parental Rights*, 913 P.2d 1127. The Court determines

“whether the documents presented to the electorate fairly and succinctly advise the voters of what is being submitted.” *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990). Only in a “clear case” may the Title Board’s determination be overturned. *Id.* at 240. The Title Board’s fixing and determination of Initiative 46’s title is found in the Title Board Rulings appended to the Petition.

**B. There are no “catch phrases” in the title.**

The Title Board must avoid using catch phrases or slogans when formulating a title, ballot title and submission clause. *In re 2009-2010 #45*, 234 P.3d at 649. The purpose of that rule is to prevent prejudicing voters in favor of the proposed initiative merely through emotional appeal and to avoid distracting voters from considering the initiative on its merits. *Id.* Petitioners must prove that the phrases “impermissibly distracts voters” from considering the initiative’s merits. *Id.* A term or phrase is not an impermissible catch phrase if it merely describes the proposal, because such terms do not distract from the merits of the proposal. *Id.* This Court evaluates whether a term constitutes a “catch phrase” or a “slogan” by examining the phrase “in the context of public debate.” *In re Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871, 876 (Colo. 1994).

This Court has held that phrases such as “just cause,” “criminal conduct,” and “protect the environment and human health” do not evoke emotion to the

extent they distract a voter from the merits of a proposal. *In re 2009-2010 #45*, 234 P.3d at 649. Conversely, the phrase “as rapidly and effectively as possible,” was found improper because it masked the initiative’s underlying policy question. *Id.* Further, the phrase “open government” was considered a catch phrase because it elicits an emotional response concerning the accessibility of government information and public policy. *In re “Governmental Business”*, 875 P.2d at 876.

Initiative 46 states as its purpose “the right to life in this constitution applies equally to all innocent persons” and as its effect “[t]he intentional killing of any innocent person is prohibited.” The title, as fixed by the Title Board, states, “the protections for life provided in the state constitution apply equally to all innocent persons” and that the amendment concerns “extension of rights to all human beings at any stage of development.” The terms “innocent persons” and “rights to all human beings at any stage of development” describe the term identified in the text of Initiative 46. The terms are not catch phrases because they neither mask an underlying policy of Initiative 46 nor elicit an emotional response that would distract a voter from the Initiative’s substantive terms.

**C. “Innocent Person” is a common, familiar, and well-understood term that does not need a new definition.**

The duty of the Title Board is to designate and fix a title, ballot title and submission clause, and a summary for initiatives. C.R.S. § 1-40-106(3); *In re Parental Rights*, 913 P.2d at 1130. The Title Board need not restate all of the

provisions of the proposed initiative, describe every feature of the proposal, or include every aspect or every possible effect of the proposal in the title and submission clause. *In re Ballot Title 1999-2000 #235(a)*, 3 P.3d 1219 (Colo. 2000); *In re Ballot Title 1997-1998 #62*, 961 P.2d 1077, 1082 (Colo. 1998); *In re Proposed Initiative Concerning Drinking Age in Colorado*, 691 P.2d 1127, 1131 (Colo. 1984). In determining whether a term must be defined, this Court examines whether the term is “within the common understanding of most voters.” *In re “Governmental Business”*, 875 P.2d at 877.

The Title Board is not required to “restate the obvious or set forth every detail” of a proposed initiative; rather the Title Board’s goal is to “capture, in short form, the proposal in plain, understandable, accurate language” that will enable the voter to make an informed choice. *In re 1997-1998 #62*, 961 P.2d at 1083. A title that includes a term with a “common sense” meaning to the voter does not need to further define the term because the term is not misleading. *In re 1999-2000 #235(a)*, 3 P.3d at 1225. This Court found the phrase “base developed area” was not misleading because it had a common sense meaning. *Id.* Further, the phrase “governmental business” was within the common understanding of voters. *In re “Governmental Business”*, 875 P.2d at 877. The fact that the Title Board combined the terms “governmental” and “business” did not render the title invalid. *Id.* Rather, this Court found the terms remained understandable to the average

voter because “merely combining those otherwise commonly understood terms [did] not create an obscure meaning unknown to most voters.” *Id.*

Here, the title states that Initiative 46 informs voters that the amendment applies “protections for life provided for in the state constitution . . . equally to all innocent persons.” The term “person” is expressly defined in the text of Initiative 46 and in the ballot title. Every day, juries composed of Colorado voters are called upon to assess innocence in criminal cases. Everyone knows what it means to be “innocent,” so no further definition is needed. The phrase “innocent persons” does not require further definition beyond what the Title Board provided because the terms, taken together, are common, familiar, and well-understood.

By way of example, a Lexis search reveals that the Colorado Criminal Code uses the terms “innocent” and “innocence” in at least 28 distinct sections without providing so much as a single definition. For example, C.R.S. § 18-3-102(1)(c) states that “[a] person commits the crime of murder in the first degree if . . . he procures the conviction and execution of any innocent person.” C.R.S. § 18-1-402 explains that “[e]very person is presumed innocent until proven guilty.” The Colorado Legislature obviously understands that the word “innocent” is self-explanatory and does not need to be defined in law. The Title Board obviously shares that understanding, and was under no obligation to define “innocent.”

To sum up, the Title Board included the phrase “innocent person” in the title to Initiative 46 as it appears in the text of the Initiative itself. The term “person” is defined in the Initiative and the title. “Innocent” is a familiar term that does not create or imply any new legal standard. No definition of that term is required.

**D. To the extent that Initiative 46 proposes a new legal standard, that standard is fully defined in the ballot title.**

The Title Board is tasked with approving a clear and concise title and submission clause. *In re 1997-1998 #62*, 961 P.2d at 1083. The title must include particular definitions for terms only if the definition “adopts a new or controversial legal standard which would be of concern to all concerned with the issue.” *In re “Governmental Business”*, 875 P.2d at 877.

Petitioners suggest that the extension of “rights to human beings at any stage of development” is a “new legal standard” that must be defined. (Petition at 4.) To the extent Petitioners are correct that the extension of a constitutional right of life to the unborn is a new legal standard, their challenge nonetheless fails because the Title Board adequately defined the standard in the ballot title.

The ballot title correctly advises voters that the Initiative 46 “concern[s] the extension of rights to all human beings at any stage of development[.]” (Title Board Rulings at 1, copy attached to Petition.) The title goes on to say that the term “person” means “every member of the species homo sapiens at any stage of development.” (*Id.*) Both statements accurately describe the substantive terms of

Initiative 46. Moreover, the definition of “person” set forth in the title apprises voters that the amendment would extend rights to all human beings “at any stage of development.” That description is clear, unequivocal and leaves no room for misunderstanding. A voter possessing even the most rudimentary language skills will be able to read the title and discern that a vote for Initiative 46 is a vote to confer a right to life upon the unborn. To the extent that qualifies as a new legal standard, the Title Board fully discharged its duty to define the standard.

III. THE BALLOT TITLE FOR INITIATIVE 46 IS ACCURATE BECAUSE THE INITIATIVE DOES JUST AS THE TITLE STATES; IT PROTECTS ALL INNOCENT LIFE AT ANY STAGE OF DEVELOPMENT.

A. **Standard of Review and Location in the Record:**

Once again, this Court does not address the merits of a proposed initiative, interpret its language, or suggest how the initiative could be applied if enacted. *In re “Auto. Ins. Coverage”*, 877 P.2d at 856. This Court simply determines whether the ballot title “correctly and fairly reflect the purpose of the proposed amendment.” *In re Parental Notification of Abortion for Minors*, 794 P.2d at 241. The language of a title is sufficient if it “fairly summarizes the intent and meaning of the proposed amendment.” *In re Parental Rights*, 913 P.2d at 1129. This Court shall not “rewrite the titles or submission clause” and will only reverse the Title Board’s actions if they “contain a material and significant omission, misstatement, or misrepresentation.” *In re 1997-1998 #62*, 961 P.2d at 1081. The Title Board’s

fixing and determination of Initiative 46's title is found in the Title Board Rulings appended to the Petition.

**B. The ballot title accurately presents the intent and meaning of Initiative 46.**

A ballot title need only "correctly and fairly express the true intent and meaning" of the propose amendment. C.R.S. § 1-40-106(3)(b). Once again, the Title Board is not required to restate all provisions of the amendment, or to include every component of the proposal in the title and submission clause. *In re 1999-2000 #235(a)*, 3 P.3d at 1225. Only if the Title Board has adopted language that is "so inaccurate as to clearly mislead the electorate" will this Court find the title inaccurate. *In re Proposed Initiative for a Petition on Campaign and Political Fin.*, 877 P.2d 311, 313 (Colo. 1994).

Finding that the Title Board is "only obligated to fairly summarize the central points of a proposed measure, and need not refer to every effect" the measure may have, this Court determined the Title Board's actions were proper where it did not preface the title with an explanation of its broader effect. *Id.* at 314. Further, the Title Board's actions were proper where it did not set forth definitive estimates of the fiscal impact of a proposed measure, because "many variables affecting the . . . effects of a proposed measure are unknown." *Id.*

Although an initiative may have a broader impact on an existing statutory scheme, the Title Board need only inform voters of the intent of the initiative such



that concerned voters are on alert “that they should read the complete language of the summary of the initiative” to determine the details and subtleties. *In re 1997-1998 #62*, 961 P.2d at 1081. Requiring the Title Board to include a description of every possible effect in the initiative title would undermine the very purpose of the Title Board, namely to fix a title that concisely, correctly, and fairly expresses the intent and meaning of the initiative. *In re 2009-2010 #45*, 234 P.3d at 648.

Here, the Title Board fixed a title stating that Initiative 46 stands for “an amendment to the Colorado constitution concerning the extension of rights to human beings at any stage of development, and, in connection therewith, declaring that protections for life provided for in the state constitution apply equally to all innocent persons.” The text of the initiative clearly indicates the purpose is to equally apply the constitutional right to all innocent persons; and, the effect is to “prohibit the intentional killing of any innocent person.” The text goes on to describe the effect the initiative would or would not have on certain forms of birth control, medical treatments, and acts. The text of the title and the text of the Initiative are practically identical. There is no hidden agenda that is not represented in the title. Rather, the title includes the purpose, effect, scope of Initiative 46. Therefore, the text of the title clearly represents the true intent and meaning of the proposal, and would not result in confusion to the electorate.

Petitioners claim that the ballot title of Initiative 46 is inaccurate because it does not really “exten[d] rights to all human beings at any stage of development.” (Petition at 4.) What the Initiative actually does, Petitioners claim, is grant “innocent persons” a “constitutional right to life” and proscribes intentional killings “in manners not limited to the ends listed § 2(a)-(e) of the Proposed Amendment. (*Id.*) Petitioners are incorrect.

The title’s statement that the proposal would extend rights to persons at any stage of development is correct. That is established in the definitions of “person” and “human being,” which are summarized in the title. The Title Board stated the broad general rule of Initiative 46, namely that the amendment would prohibit the intentional killing of innocent persons. The title then lists specific “exceptions” to the general rule, circumstances in which the general prohibition would not operate.

The Title Board accurately described Initiative 46. That is all the Title Board was required or permitted to do. Petitioner’s contentions amount to a claim that Initiative 46 is bad policy or might result in consequences that the title does not spell out. Those are objections to the merits of Initiative 46, a topic this Court does not entertain. If Petitioners consider Initiative 46 bad for Colorado, they are free to voice their concerns to the voters. For present purposes, the ballot title is accurate and the Title Board’s actions should therefore be affirmed.

**CONCLUSION**

For the foregoing reasons, Respondent Rosalinda Lozano respectfully requests that this Court affirm the Title Board's actions in connection with Proposed Amendment 2011-2012 #46.

Respectfully submitted January 30, 2012.

BENSON & CASE, LLP

A handwritten signature in cursive script, appearing to read "John Case", is written over a horizontal line.

John Case, #2431

Attorney for Rosalinda Lozano

**CERTIFICATE OF SERVICE**

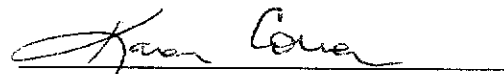
I hereby certify that on January 30, 2012 the original and ten copies of the foregoing **OPENING BRIEF OF RESPONDENT ROSALINDA LOZANO** were filed with:

Clerk of the Colorado Supreme Court  
101 West Colfax Avenue, Suite 800  
Denver, CO 80202

I further certify that true and correct copies of the foregoing **OPENING BRIEF OF RESPONDENT ROSALINDA LOZANO** were served via Federal Express overnight delivery upon the following:

Mr. Edward T. Ramey, Esq.  
Ms. Lila M. Bateman, Esq.  
Heizer Paul Grueskin, LLP  
2401 15th Street, Suite 301  
Denver, CO 80202  
*Attorneys for Petitioner*

Mr. William A. Hobbs  
Mr. Daniel Domenico  
Mr. Jason Gelandner  
Colorado Secretary of State  
1700 Broadway  
Denver, CO 80290  
*Members of the Title Board*

  
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Karen Corner