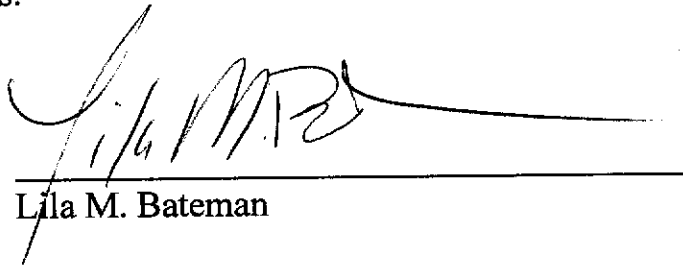


<p>SUPREME COURT OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80203</p>	<p>FILED IN THE SUPREME COURT, JAN 30 2012 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2011- 2012, #46</p> <p>Petitioners: LESLIE DURGIN, CATHY ALDERMAN and AMY PITLIK v. Respondents: ROSALINDA LOZANO and KEVIN SWANSON</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS; DANIEL DOMENICO; and JASON GELENDER</p>	
<p>Attorneys for Petitioners: Edward T. Ramey, #6748 Lila M. Bateman, #32297 Heizer Paul Grueskin LLP 2401 15th Street, Suite 300 Denver, CO 80202 Telephone: 303-595-4747 Facsimile: 303-595-4750 Email: eramey@hpgfirm.com; lbateman@hpgfirm.com</p>	<p>Case No. 12SA10</p>
<p>PETITIONERS' OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in those rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). The brief contains 5,016 words.



Lila M. Bateman

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Leslie Durgin, Cathy Alderman and Amy Pitlik ("Petitioners"), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Opening Brief in support of their Petition for Review concerning Proposed Initiative for 2011-2012 #46 ("Initiative #46").

Initiative #46 would seek to impose a constitutional "right to life" and also make *every* intentional act that results in the death of an "innocent person" unlawful. Yet it nowhere defines that controversial standard for purposes of this initiative. Even assuming the term "innocent person" could be defined by the criminal code or proponents' suggested definition, that definition only serves to clarify that there are at least two broad, unrelated subjects addressed in the initiative. Moreover, the title is misleading and does not accurately disclose the true intent and meaning of the initiative. Initiative #46 thus fails to meet even the minimum legal requirements established to ensure that initiative petitions promote informed voting decisions.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether proposed Initiative #46 violates the single subject requirement by incorporating multiple subjects, many of which are concealed in the folds of the language of the measure and omitted from the title.

2. The ballot title is misleading when it creates a new operative legal standard – extending “rights to all human beings at any stage of development” and prohibiting the killing of “all innocent persons” – without defining or apprising voters in the title of what the new, controversial standard will be.
3. The ballot title is inaccurate when the measure does not actually “exten[d] rights to all human beings at any stage of development;” rather, the text of the measure purports to provide a constitutional “right to life” to “innocent persons” and also to prohibit intentional killing in manners not limited to the ends listed in § 2(a)-(e) of proposed Initiative #46.

STATEMENT OF THE CASE

This is a challenge to the jurisdiction and actions of the Title Board with respect to the title, ballot title, and submission clause set for proposed Initiative #46.

I. Nature of the Case, Course of Proceedings and Disposition Before the Title Board

This original proceeding is brought pursuant to Colo. Rev. Stat. § 1-40-107(2), seeking review of the actions of the Ballot Title Setting Board regarding proposed Initiative #46. Petitioners are registered electors who timely submitted a Motion for Rehearing before the Title Board raising the objections presented herein pursuant to Colo. Rev. Stat. § 1-40-107(1). In addition, Petitioners timely

filed their Petition for Review within five days from the date of the hearing on the Motion for Rehearing. *Id.* at §1-40-107(2).

A Title Board hearing was held on December 21, 2011 to establish the initiative's single subject and set a title. *See Exhibit 1* (December 21, 2011 Transcript ("12/21/11 Tr. ")). On December 28, 2011, Petitioners filed a Motion for Rehearing and alleged that there were violations of the single subject requirement and that the title was unfair, misleading and contained impermissible catch-phrases. The rehearing was held on January 4, 2012, at which time the Title Board granted the motion for rehearing to the extent the Board amended the title and denied as to all other respects. *See Exhibit 2* (January 4, 2012 Transcript ("1/4/12 Tr. ")). The members of the Title Board were split on the single subject requirement, by a vote of two to one.

II. Statement of Facts

In 2008 and 2010, prior versions of Initiative #46 were presented to the Board. The measures in 2008 and 2010, known at that time as Initiative #36 and Initiative #25 respectively, proposed to add a new section to Article II to the State Constitution to alter a material term – the definition of “person” – in three other selected sections of Article II concerning inalienable rights (Section 3), equality of justice (Section 6), and due process (Section 25). In the 2008 Initiative, the

proponents sought to define “person” as “any human being from the moment of fertilization.” Similarly, in the 2010 Initiative, the proponents sought to define “person” as “every human being from the beginning” of “biological development.” The voters having rejected those measures by wide margins, the proponents now seek to offer Initiative #46. Proponents argued at the rehearing that they intend the new Initiative #46 to have the same effect as the prior initiatives, without specific reference to the Constitution Sections 3, 6 and 25. *See* 1/4/12 Tr. at 32:22-33:19, 42:7-19.

By its terms, however, Initiative #46 is something far broader and quite different from the past “personhood” initiatives, as one Title Board member expressly stated. *See* 1/4/12 Tr. at 43:15-25. Initiative #46 proposes to amend Article II of the Colorado Constitution to add a section with the declared “Purpose” or resolving that “the right to life in this Constitution applies equally to all innocent persons.” The proclamation is followed by a second substantive section, which the proponents labeled “Effects,” that reads in its entirety as follows:

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.

(emphasis added). Initiative #46 then provides the following "Definitions" 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.

The last section explains that the provisions of the initiative are self-executing and severable. At the rehearing, the Title Board set the title as follows:

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.

The Title Board agreed at the rehearing that its prior draft of the title contained an impermissible catch-phrase. The Board thus struck the phrase "right to life" from

the title, and that issue has not been appealed by proponents. *See* 1/4/12 Tr. at 60:8-10, 61:5-10. Petitioners brought this timely appeal.

SUMMARY OF ARGUMENT

The Title Board erred in even setting a title. The measure establishes a constitutional “right to life” that would prohibit all abortion and most forms of birth control, artificial reproduction and stem cell research. At the same time, the measure seeks to create an entirely new constitutional ban on the killing of “innocent persons.” There are no constraints on that prohibition and the critical term – “innocent persons” – is left undefined, both in the text and the title of the initiative. As presented, the measure applies to a wide range of conduct. It would prohibit everything from legal compliance with an advance medical directive to currently illegal euthanasia, and from citizens’ lawful use of deadly force to safeguard their homes, to law officers who lawfully shoot to kill a suspect not yet convicted of any criminal offense. One member of the Title Board voted against setting a title on Initiative #46 because the measure expressly combined and logrolled such broad, unrelated prohibitions. The remaining members of the Title Board erred in setting the title in violation of the single subject requirement.

The Title Board also erred by simply repeating the term “innocent persons” in the title to describe those entitled to the proposed constitutional “protections for

life.” There is no single or common understanding of what an “innocent person” is, nor is a definition provided in either the text of the measure or the title. There is nothing in the text of the measure or the title to suggest that this new critically operative term is in any way limited to the pre-birth context, leaving voters to guess as to its true meaning, intent and purpose. Use of the term completely without definition creates a new and controversial standard that will confuse and mislead voters.

The Title Board further erred in phrasing the title as an “extension of rights to all human beings at any stage of development.” There is no “extension” when the amendment creates a new constitutional prohibition on the killing of “innocent persons,” and misleads voters by detailing only those effects relating to reproductive rights and nothing else.

ARGUMENT

I. The Initiative Violates the Single Subject Requirement

A. Standard of Review

No title may be set for an initiative if that measure contains more than one subject. Colo. Const., art. V, sec. 1(5.5); C.R.S. § 1-40-106.5. This requirement has an important purpose. It prevents the practice of putting together in one measure multiple subjects “for the purpose of enlisting in support of the measure

the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.” *In re Proposed Initiative for 1999-2000 # 29*, 972 P.2d 257, 261 (Colo. 1999). The rule also ensures that ballot measures are not so convoluted that they conceal provisions that would come as a surprise to, or act as a fraud upon, voters who thought the measure addressed only one basic topic. *In re Proposed Initiative for 2007-2008 #17*, 172 P.3d 871, 873 (Colo. 2007).

This Court does not engage in an evaluation of the wisdom of the proposed initiative. When necessary, however, this Court “will characterize the proposal sufficiently to enable review of the Title Board’s action” as necessary to evaluate its compliance with the single subject requirement. *In re Proposed Initiative for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000); *In re Proposed Initiative for 1997-1998 #30*, 959 P.2d 822, 825 (Colo. 1998). The purpose of this assessment is to “root out incongruous subjects.” *In re Proposed Initiative #17*, 172 P.3d at 879 (Eid, J. dissenting).

B. Initiative #46 involves multiple subjects

Initiative #46 violates the requirements and core principles of the single-subject rule. The proposed initiative leaves a critical term undefined and, by doing so, disguises the meaning and operative subjects of the measure. Even assuming a

definition could be applied, any such definition would make clear that there are at least two unrelated subjects addressed in the measure. The Title Board therefore erred in even setting a title.

1. *“Innocent Person” is left undefined*

The text of the proposed initiative opens with the resolution that a constitutional “right to life” applies equally to all “innocent persons.” Initiative #46, Section 1. The measure goes on to say that it also prohibits the “intentional killing” of any “innocent person.” *Id.* at Section 2. Proponents have adamantly sought to preserve the hazy contours of the term “innocent person” by arguing that the term is intuitively understood, or that it is left undefined in the criminal code. *See* 1/4/12 Tr. at 14:20-15:5. This crucial term, however, is the lynchpin for understanding the multiple subjects of the initiative.

First, any attempt to obtain a contextual understanding of what the term means leaves more questions than answers. It may be that the parameters of the undefined “innocent persons” – and thus the subjects of the measure – should be synonymous with the term “innocent child” (also undefined), set forth in section 2(e) of the measure. *See generally*, 1/4/12 Tr. at 71:16-21. The “innocents” then endowed with a constitutionally guaranteed “right to life” presumably would be *each* fertilized egg and *each* born child, but not innocent adults. Alternatively,

some voters may assume the term is a rhetorical assertion that *all* “persons,” including adults, are “innocent” and endowed with a “right to life.”¹ Still others may rely on a dictionary definition of “innocent” person to mean one “free from or unacquainted with sin,” which is a “transgression of religious law.” *Webster’s Third New International Dictionary Unabridged*, 1166, 2122 (3d Ed. 2002).

Others may follow the proponents’ lead and refer to the manner in which the term is applied in the criminal code. *See* 12/21/11 Tr. at 8:17-10 (proponents). Thus neither voter intuition nor a contextual reading clarifies which, if any, is correct.

In the legal context an “innocent person” may be understood to involve only a non-culpable subset of “persons” who have not been convicted of a criminal offense. Under Colo. Rev. Stat. § 18-1-402, for example, the criminal code provides that “[e]very person is presumed innocent until proved guilty. No person shall be convicted of any offense unless his guilty thereof is proved beyond a reasonable doubt.” Moreover, Colo. Rev. Stat. § 18-1-602(b)(2) specifically

¹ These are the same concerns expressed by the Arkansas Attorney General this month in response to a 2011-2012 ballot measure proposed by Personhood Arkansas. Similar to the proponents’ measure at issue in this case, Personhood Arkansas sought a constitutional amendment to provide a right to life for “innocent” persons. In addressing the failure to define “innocent person” and the absence of any common, contextual understanding, the Arkansas Attorney General concluded that the provision was ambiguous, misleading, and not susceptible to summarizing without further clarification from the proponents. *See* <http://www.arkansasag.gov/opinions/search-agops.php>.

defines an “innocent person” as a person who *committed an offense but is not guilty* despite his behavior, “because of duress, legal incapacity or exemption, or unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose, or any other factor precluding the mental state sufficient for the commission of the offense in question.”

The term “innocent person” has no ordinary or intuitive meaning. Leaving this key term undefined disguises the subjects of the measure, and opens the door to voter confusion and fraud concerning the fundamental meaning and reach of the proposed initiative. Colorado law prohibits this as a violation of the single subject requirement, and thus no title should be set for Initiative #46.

2. *The proposed initiative contains multiple subjects*

Even assuming the term “innocent person” could be defined by reference to existing criminal statutes, that definition would only serve to clarify that the initiative contains two unrelated subjects: (i) prohibiting the killing of all persons who have not been convicted of a crime, and; (ii) prohibiting abortion, birth control, artificial reproductive technology, and stem cell research through a constitutional recognition of a “right to life” that applies to fertilized eggs.

The problem here is that the measure links at least *two* broad, unrelated substantive concepts in a single initiative. Section 1 proclaims that the purpose of

the initiative is to provide a constitutional “right to life” for “innocent persons,” which the proponents equate with a prohibition on such things as abortion. *See* 12/21/11 Tr. at 5:8-11. The first sentence in Section 2, however, extends much broader to prohibit killing every person who has not been convicted of a crime, which the Title Board members agreed is itself a material provision with a substantive impact. *See* 1/4/12 Tr. at 27:21-28:2, 32:2-4.

The broad wording chosen by the proponents in Section 2 therefore must be assessed in light of the single subject mandate. That blanket prohibition on killing un-convicted persons, *by its own terms*, sweeps in a wide range of unrelated conduct. Such conduct includes physicians’ compliance with patients’ do-not-resuscitate directives, euthanasia, vigilantism, or even law enforcement officers engaged in the line of duty who intentionally kill a person who has not yet been convicted of a crime. *See* 1/4/12 Tr. at 41:9-15, 45:18-22. (Mr. Domenico agrees provision in Section 2 prohibits euthanasia and a “number of things”); *see also* 12/21/11 Tr. at 9:1-17 (vigilantism prohibited by provision in Section 2). This prohibition is not bounded. Proponents made quite clear that the categorical prohibition in Section 2 is not narrowed by the specific, textual applications listed in Sections 2(a)-(e) of the initiative. *See, e.g.*, 1/4/12 Tr. at 16:11-20, 17:11-19; *see also* 12/21/11 Tr. at 11:13-12:13.

The *subject* of prohibiting abortion, birth control, assisted reproduction, and stem cell research is, therefore, distinct from and incongruent with the *subject* of prohibiting killing individuals who have not been convicted of a crime. Subjects this extensive do not comply with the single subject requirement and joinder is virtually certain to result in voter surprise or fraud. See e.g., *In re "Public Rights in Waters II,"* 898 P.2d 1076, 1080 (Colo. 1995).

The overly broad, multiple subjects and the potential for logrolling led Chairman Hobbs to vote to deny title setting on the basis of single subject. See 1/4/12 Tr. at 44:10-12, 45:23-46:5. The measure's broad prohibition on intentional killing, as Chairman Hobbs recognized, is different from and incongruent with its stated purpose of providing a "right to life" that would outlaw abortion and other forms of reproductive health care rights. He stated:

I'm just having difficulty with the broad prohibition against intentional killing of innocent people versus the primary purpose, I think, which is to limit or restrict abortion rights.

One is very popular. One would be very questionable.

You know, I think it really is a very, very difficult issue for me, and I may be the only one that's having the difficulty. I'm not certain that there is incongruous measures, but I do think the drafting approach has an actual real meaning in that the broad, what appear to be substantive provisions to the reader about applying the right to life in

the constitution to all innocent persons and constitutionally prohibiting intentional killing of innocent people-- persons.

Now, I think that's – a reader, I think, can attribute that has meaning and it's not just a drafting approach to the same results basically as the previous versions. And so, you know, it sure seems a lot like logrolling to me. I know Mr. Domenico disagrees and I respect that.

As I've said, I'm not even sure that that gets you all the way home with a single subject violation anyway because they have to be incongruent subjects. And I'm not entirely sure how to describe that, other than the fact that maybe there is one or two very broad, substantive provisions, and then there is some specific provisions that deal with the application of the measure to abortions basically.

Id. at 39:17-22, 43:12-44:9. Chairman Hobbs therefore voted to deny setting the title on the basis of the single subject violation. *Id.* at 44:10-12.

This Court has previously held that an initiative violates the single subject requirement when it is so broad and ambiguous that it risks misleading voters as to its multiple subjects. In *In re Proposed Initiative #55*, the Court reviewed the Title Board's actions regarding an initiative attempting to restrict access of persons not lawfully present in the United States to non-emergency governmental services.

See In re Proposed Initiative for 2005-2006 #55, 138 P.3d 273, 275-76 (Colo.

2006). By a plain reading of Initiative # 55, the Court identified two subjects connected only by a broad theme of restricting non-emergency services:

terminating services for persons not lawfully present in Colorado and restricting unrelated administrative services. *Id.* at 275. Because the measure failed to define

the critical term “non-emergency services,” the Court held that the initiative violated the single-subject rule because the ballot measure’s “complexity and omnibus proportions” were “hidden from the voter” and failed to inform voters of the services its passage would affect. *Id.* at 282. The Court reasoned that voters might find that they unwittingly voted to restrict all services, despite only wishing to reduce taxpayer expenditures for medical and social services. *Id.*

Like Initiative #55, the present Initiative #46 leaves the critical term “innocent persons” undefined in the measure. Yet even if somehow defined using proponents' suggestion or by reference to the criminal code, such definitions illustrate the existence of *at least* two unrelated subjects – prohibiting the killing of all persons who have not been convicted of a crime and prohibiting abortion and other forms of reproductive health care rights – impermissibly rolled into one initiative. Such omnibus proportions necessarily hide the measure’s meaning, intent and purpose from the voter. This proponents cannot do.

3. *Logrolling a prohibition on killing “innocent persons” with a prohibition on abortion and other reproductive health care procedures and a new definition of “person” violates the single subject requirement*

The two broad subjects contained in the proposed initiative are quintessential logrolling. *In re Public Rights in Waters II*, 898 P.2d at 1080. Chairman Hobbs expressed this concern and recognized that, by including

language that prohibits the intentional killing of innocent persons in Section 2 of the initiative, the new proposed measure is broader than the proponents' two prior unsuccessful "personhood" measures. As he stated:

And I do recognize that with respect to the details, the measure is more specific than the previous versions. I'm just focusing on the fact that the previous versions simply address the definition of 'person' and how early that definition applies in the stages of human development.

This measure -- and it goes in the other direction and has a much broader impact. It prohibits the intentional killing of an innocent person. It's a much, much broader measure on the surface, and that's something I would think everybody could agree with, that it should -- that it's wrong to intentionally kill an innocent person.

So that's why it's a little bit like logrolling. You get support for the main proposition that's expressed as a single subject in the measure, but once you really get into the definitions, it sounds like that's where we're back really trying to achieve the purposes of the previous versions of the first title.

1/4/12 Tr. at 24:22-25:15. As Chairman Hobbs recognized, a substantial number of voters may support a prohibition against killing "innocent persons," without also desiring to define fertilized eggs as "persons," and without supporting blanket prohibitions on many common reproductive health care procedures or a broad spectrum of medical research. The effect of the present initiative is to enlist voter support for the all of these disparate purposes, which the proponents' unsuccessful "personhood" initiatives from 2008 and 2010 indicate would be rejected if offered

on their own merits. There is no necessary or proper connection between these subjects. Initiative #46 is, therefore, a clear effort at logrolling and should be rejected by this Court.

II. The Initiative's Title Does Not Correctly and Fairly Express the True Intent and Meaning of the Measure

A. Standard of Review

The Title Board is statutorily required to set a title that “shall correctly and fairly express the true intent and meaning” of the initiative. Colo. Rev. Stat. § 1-40-106(3)(b). In addition, in setting a title, the Title Board “shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.” *Id.* In order to fulfill this duty, the Title Board must unambiguously state the principle or provision sought to be added, amended or repealed by the proposed measure, so that voters familiar or unfamiliar with the matter will be able to determine intelligently whether to support or oppose the measure. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990).

This Court's duty is to ensure that the title, ballot title, and submission clause fairly reflect the proposed initiative so that the petition signers and voters will not be misled into supporting or opposing a proposition by reason of the words

employed by the Title Board. *In re Proposed Election Reform Act*, 852 P.2d 28, 32 (Colo. 1993). This requirement helps ensure that voters are not surprised after an election to find that an initiative included a surreptitious, but significant, provision that was obfuscated by other elements of the proposal. *In re Proposed Initiative for 2001-2002 #43*, 46 P.3d 438, 446-47 (Colo. 2002).

B. The Title and Submission Clauses Are Misleading

1. *The title and submission clauses fail to inform the voters that there are new and controversial standards*

On a number of occasions this Court has addressed whether a particular definition must be included in a ballot title and submission clause. The determination turns on whether the definition “adopts a new or controversial legal standard which would be of concern to all concerned with the issue,” *In re Proposed Initiative on Parental Notification*, 794 P.2d at 242, or whether the definition concerns a term which is “within the common understanding of most voters.” *In the Matter of the Proposed Initiative on Taxation III*, 832 P.2d 937, 941 (Colo. 1992).

Initiative #46 creates an entirely new legal standard without defining that standard and without apprising voters in the title of what the limits of that controversial standard will be. The title, as well as the initiative itself, redefines the term “person” to mean every “member of the species homo sapiens at any stage

of development.” Both the measure and the title then adopt the term “innocent person” – with no guidance as to what that term may mean.

As discussed above, there is no single common understanding of the term “innocent person” on which the proponents can rely. This is all the more true given that the proponents use the initiative to redefine half that term— “person”— to include fertilized eggs. The title muddies the waters more when the first clause focuses on extending “rights to *all* human beings at any stage of development,” irrespective of innocence. Reasonable and detached voters will not understand from the title what the scope of the measure is and who the actual recipients of the subject rights, and objects of the prohibitions, are. Fertilized eggs, non-convicts, or simply everyone? Without additional language, the “general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear from reading the title.” *See In re Proposed Initiative on “Obscenity,”* 877 P.2d 848, 850 (Colo. 1994).

It was thus error for the Board to copy the measure’s language when the subjects of the measure are indeterminable. *Id.* Indeed, virtual word for word reiteration of the initiative in the title “does not establish that the title and submission clause fairly and accurately set forth the major tenets of the Initiative.” *Id.* Even in those instances, “there may be situations ... where the title and submission clause likely would create public confusion or ambiguity about the

effect of an Initiative even though they merely repeat the language contained in the Initiative itself.” *Id.* This is one such case.

2. *The title is inaccurate*

The title to this measure states that it is 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; ... prohibiting the intentional killing of any innocent person.” The title thus states broadly that there are existing “rights” that Initiative #46 will now extend to every human being. The Title Board made this change after it correctly determined that “right to life” provided in the text of the initiative is an impermissible catch-phrase and cannot be included in the title.

In redrafting the title, however, the Title Board erred when it phrased the single subject as an “extension” of rights. That phrase wrongly implies that the measure’s new constitutional prohibition against killing “innocent persons” is actually nothing more than an “extension” of existing constitutional rights. Further, it is certainly cannot be said that the measure does no more than “extend” rights that already exist when it would clearly outlaw all forms of abortion and would criminalize currently legal forms of birth control, artificial reproduction, and

biomedical stem cell technology. Finally, taking proponents at their word, the title at a minimum should include the forms of prohibited conduct that go along with the broad prohibition on killing "innocent persons," particularly when there are five lines at the end of the title that relate only to reproductive health care. Failing to include other conduct that would clearly fall within the initiative's virtually unlimited sweep would mislead voters into believing the scope of amendment is simply limited to birth control, assisted reproduction, and abortion. As such, the title is misleading and fails to reflect the true intent and purpose of the measure.

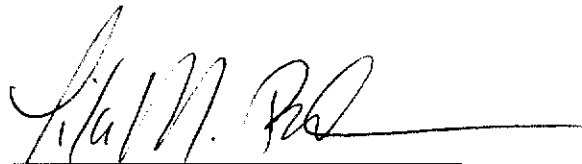
CONCLUSION

In the end, this Court must determine whether Colorado law permits a ballot measure that voters could legitimately understand to be: a complete ban on all abortion, regardless of whether the woman's life is at risk and regardless of whether she seeks an abortion because she was raped; a blanket prohibition on the use of lethal force, except against individuals actually tried and convicted of criminal offenses; a constitutional bar to stem cell research aimed at a cure for Parkinson's disease; a requirement that courts appoint guardians ad litem for fetuses at issue in marital dissolution proceedings; a declaration that Colorado physicians may no longer comply with their patients' advance medical directives

absent the threat of criminal prosecution; or, perhaps, all of these. The Petitioners respectfully submit that Initiative #46 is just such a measure.

Therefore, this Court should declare that the proposed initiative violates the single subject requirement and that the title fails to correctly and fairly express the initiative's true intent and meaning. The Title Board's decision should be reversed and the measure returned.

Respectfully submitted this 30th day of January, 2012.

A handwritten signature in cursive script, appearing to read "Lila M. Bateman", is written over a horizontal line.

Lila M. Bateman, #32297

Edward T. Ramey, #6748

Heizer Paul Grueskin LLP

2401 15th Street, Suite 300

Denver, CO 80202

Telephone: 303-376-3712

Facsimile: 303-595-4750

Email: lbateman@hpgfirm.com

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

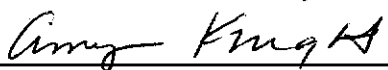
I hereby certify that on the 30th day of January, 2012, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was served via Federal Express to the following:

Rosalinda Lozano
8795 Ralston Rd., #1
Arvada, CO 80002

Kevin Swanson
8795 Ralston Rd., #1
Arvada, CO 80002

Gualberto Garcia Jones
8795 Ralston Rd., #1
Arvada, CO 80002
Attorney for Proponents

Maurice G. Knaizer, Esq.
Deputy Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203



Amy Knight

INITIATIVE TITLE SETTING REVIEW BOARD
 Secretary of State's Blue Spruce Conference Room
 1700 Broadway, Suite 270
 Denver, Colorado
 December 21, 2011
 2011-2012 #46, Definition of the Term Person

APPEARANCES:
 William A. Hobbs
 Deputy Secretary of State
 1700 Broadway, Suite 270
 Denver, Colorado 80290

Jason Gelender
 Senior Attorney
 Office of Legislative Legal Services
 091 State Capitol Building
 Denver, Colorado 80203

Mr. Dan Domenico

1 will be here.
 2 MS. LOZANO: Thank you, members of the
 3 board. I'm Rosalinda Lozano of Lighthouse Pregnancy
 4 Center. (Inaudible). We're going to talk about the
 5 amendment.
 6 MR. HOBBS: And you are the other
 7 proponent.
 8 MS. LOZANO: Yes.
 9 MR. HOBBS: Thank you very much. Thank
 10 you. So perhaps Ms. Burton and -- I'm sorry.
 11 MR. JONES: Gualberto Garcia Jones.
 12 MR. HOBBS: Thank you. If you'll come
 13 forward and we'll see if the -- and you may have an
 14 introductory statement, but my primary role is to
 15 give board members a chance to ask you questions
 16 about the measure. But if you'll identify yourself
 17 for the record and who you represent.
 18 MR. JONES: Gualberto Garcia Jones, and
 19 I represent personhood in USA, which is a member of a
 20 coalition that's promoting this proposed amendment.
 21 MS. BROWN: I'm Christy Burton Brown and
 22 I'm representing Colorado Fetal Rights, which is also
 23 a member of the coalition.
 24 MR. HOBBS: Questions for the
 25 representatives of the proponent. I do have a lot of

1 MR. HOBBS: Let's move on to number 3,
 2 2011-2012, number 46, application of the term
 3 persons. And again, the time is now 3:11 p.m. I
 4 believe we have both proponents present, and I know
 5 that -- I think that somebody else is going to speak
 6 for them, but if the proponents are here, if they
 7 could at least identify themselves and indicate who's
 8 going to speak for them, I would appreciate that.

9 UNIDENTIFIED SPEAKER: I think we lost
 10 one of our proponents.

11 MR. HOBBS: Okay.

12 UNIDENTIFIED SPEAKER: And (inaudible).

13 MR. HOBBS: Okay. So Mr. Swanson,
 14 perhaps if you would come to the podium. I'm not
 15 trying to make this too confusing, but I'm also
 16 trying to be faithful to the new law. I know both
 17 proponents were present when they signed the
 18 affidavits. So Mr. Swanson, if you'd just identify
 19 yourself.

20 MR. SWANSON: Yes. My name is Kevin
 21 Swanson. I'm the proponent for the proposed
 22 initiative Number 46, 2011-2012, number 46.

23 MR. HOBBS: Thank you.

24 MR. SWANSON: And speaking on behalf,
 25 Gualberto, Garcia Jones, also Christy Burton Brown

1 questions, so I don't know whether -- I'll go ahead
 2 and start out. I -- you know, I have a lot of
 3 specific questions, but I just generally I find the
 4 measure hard to understand. And -- and that's really
 5 significant for purposes of the title board because
 6 the case law says we have to be able to understand
 7 the measure well enough to identify the single
 8 subject and to draft clear titles.

9 And I don't know whether I'm there yet,
 10 but hopefully, you can get me there, because I just
 11 it's -- it seems very -- to me, just hard to
 12 understand what is really going on in the measure.
 13 You know, the basic language, the -- the fundamental
 14 element says the intentional killing of an innocent
 15 person is prohibited. And I would think that's not
 16 much of a change in current law, but I suspect I have
 17 to keep reading that that's not the operative
 18 provision of the measure; that it may be in the
 19 definitions.

20 So can you tell me -- you can start any
 21 way you want, but, you know, what is the single
 22 subject? What's -- what does the measure actually
 23 do? How does it change current law? Okay.

24 MR. JONES: Well, basically, the purpose
 25 of this measure is -- is to properly apply the right

1 to life, which is present in other sections of the
 2 Bill of Rights. However, we believe that the right
 3 to life is not currently being applied consistently
 4 because of the definition of who the subject that's
 5 worthy of the right to life is. And so this
 6 amendment clarifies the right to life and applies it
 7 universally to all human beings.

8 And so obviously, the right to life is
 9 synonymous with abortion being one of the contentious
 10 issues, but also euthanasia, and stem cell research,
 11 other things like that. And so I think when somebody
 12 looks at this, they should be thinking, you know, the
 13 right to life. This is a constitutional amendment to
 14 establish firmly and define the right to life within
 15 our constitution.

16 According to federal precedent, Roe
 17 versus Wade, and subsequent cases, the child in the
 18 womb since 1973 hasn't been considered a person and,
 19 therefore, although we guarantee the right to life to
 20 all persons in other sections of the constitution we
 21 think this is a necessary amendment; and in addition,
 22 because we believe that the right to life should be
 23 applied universally to all human beings and so that
 24 the -- the subject of this person should span the
 25 whole spectrum of the development of a human being.

1 MR. HOBBS: And, you know, how the
 2 measure seems to get there, it starts with the
 3 operative provision. I -- I think I can characterize
 4 it as the operative provision that the intentional
 5 killing of any innocent person is prohibited. Person
 6 then is defined to apply to ever human being
 7 regardless of method of creation.

8 And then human being is defined to be a
 9 member of the species homosapien at any stage of
 10 development. And I'm guessing that that's really the
 11 key phrase, that any homosapiens at any stage. Is
 12 that fair to say?

13 MR. JONES: I think in terms of being
 14 able to tell the difference in the law as it -- as it
 15 stands now and as we hope it (inaudible), I would
 16 agree that that's sort of the operative language. I
 17 still think, you know we're trying to deal with --
 18 with a universal right. It's one of the original
 19 right to -- rights and inalienable rights that
 20 proceed from our creator, something even prior to
 21 government itself and Declaration of Independence,
 22 Constitution.

23 And so that's why we felt that we needed
 24 to really lay out the right in the broadest terms
 25 possible and then go ahead and define of within this

1 -- this amendment who it applies to, every human
 2 being.

3 MR. HOBBS: Any stage of development.

4 MR. JONES: I mean, at every stage of
 5 development, right.

6 MR. HOBBS: And I'm not trying to be
 7 difficult, but I'm just -- it almost strikes me that
 8 kind of begs the question of when is someone -- a
 9 human being? You know, it's at any stage of
 10 development, but it's defined to be a homosapien at
 11 any stage of development. When is somebody a
 12 homosapien. I mean, I'm wondering about an
 13 interpretation that says this may not be very clear
 14 as to which stage of development you're trying to
 15 include.

16 MR. JONES: Based on the language for
 17 the stages of development on the Lacy and Connors
 18 law, it's actually current enacted in (inaudible)
 19 it's been upheld by the courts. And the way that
 20 they refer to the unborn in that law is to -- is
 21 actually the exact same term (inaudible) out of
 22 there. And part of that was because -- I don't know
 23 if you recall, but in the last election, 2010, there
 24 was a question about, well, what does biological
 25 development mean?

1 The opposition said it was ambiguous and
 2 so we tried to get something that's already
 3 established in federal law (inaudible) defined what
 4 -- what the or who the subject of the right to life
 5 is. So look at the (inaudible) act that's exactly
 6 the words that they use; at every stage of
 7 development for any member of the species.

8 MR. HOBBS: Further questions? I mean,
 9 that's sort of the gist of it, sort of the gist of
 10 what I'm struggling with. But I am kind of curious
 11 about the other words choice. I think there's
 12 references to innocent persons. And I'm wondering
 13 what that has.

14 I mean, I notice that one of the
 15 questions from legislative staff is, you know, what
 16 does the term innocent mean? But --

17 MS. BROWN: We included the term
 18 innocent persons because we just mean anyone who's
 19 not been proven guilty by a court of law. We didn't
 20 want to deal with the death penalty in this
 21 amendment. And if we just said people, then,
 22 obviously, we'd be -- the intention of killing of
 23 persons is not allowed to deal would deal with death
 24 penalty, and that's not what this is about. That was
 25 the reason for including (inaudible).

1 MR. HOBBS: And, you know, on one of
 2 their questions was would this provision permit a
 3 vigilante killing of a guilty person?
 4 MS. BROWN: No.
 5 MR. HOBBS: I'm wondering how you
 6 answered that.
 7 MR. JONES: (Inaudible) very interesting
 8 question that we've -- I've never thought of before
 9 that. But I think vigilante violence would be
 10 basically convicting somebody without a trial, which
 11 in our legal system, would basically be (inaudible)
 12 or, you know, convicting somebody without due
 13 process. And so --
 14 UNIDENTIFIED MALE SPEAKER: (Inaudible)
 15 innocent.
 16 MR. JONES: Right. Or considered
 17 innocent. And so we go through that process and have
 18 the trial by a jury of our peers.
 19 MR. DOMENICO: Well, and the -- just
 20 because the intentional killing of an innocent person
 21 that's prohibited doesn't mean that the converse is
 22 true. It doesn't mean that the killing of any guilty
 23 person is authorized.
 24 MR. HOBBS: Affirmative defense.
 25 MR. DOMENICO: It doesn't -- I don't

1 MR. JONES: Aren't we -- we looked at
 2 the prohibition on slavery that -- that Colorado
 3 enacted after it became a state. And one of the --
 4 one of the questions that we've had with attorneys,
 5 both friendly to our cause or not has been whether we
 6 tend (inaudible) actions (inaudible) constitutional
 7 amendment. And I think that when it deals with
 8 (inaudible) rights, I think the constitution is the
 9 proper placement and the proof would be that Colorado
 10 saw fit to prohibit clearly (inaudible) private
 11 action which was owning (inaudible) person.
 12 MR. HOBBS: Any other questions?
 13 MR. DOMENICO: I just wanted to clarify
 14 a couple of things in section two. The first -- 2A
 15 and 2B, if I'm reading that right, when it says only
 16 birth control, et cetera, only in vitro
 17 fertilization, et cetera, is affected by this, what
 18 -- what you're saying is not that this only applies
 19 to that type of birth control and that type of in
 20 vitro fertilization.
 21 It also applies to other types of
 22 actions. I mean, I think it's pretty clear that
 23 would take what you've defined as a person here. But
 24 when it comes to birth control, it's only this type.
 25 When it comes to in vitro fertilization, it's only

1 think that you necessarily go hand in hand.
 2 MR. HOBBS: And from all the comments so
 3 far, really, that changes nothing at all other than
 4 expanding the scope of the term person.
 5 MR. JONES: Right.
 6 MS. BROWN: And if you see in our first
 7 portion you called the operative language, it says it
 8 applies equally to all innocent persons. Basically,
 9 the purpose behind this amendment is we don't believe
 10 the right to life in Colorado is applied equally to
 11 all persons since the unborn are not defined -- or
 12 humans at every stage aren't defined as people. So
 13 in order to apply it equally, we have to put forth
 14 that definition.
 15 MR. DOMENICO: It also
 16 constitutionalizes what currently (inaudible).
 17 Murder is not unconstitutional generally. It's
 18 illegal because of statute. So this would -- that's
 19 another thing it actually changes about the law is it
 20 would make murder of anybody illegal setting aside
 21 that's the definition of a person, it would make it a
 22 constitutional aspect of the law.
 23 MR. HOBBS: (Inaudible) with that? This
 24 would constitutionalizes the crime of murder?
 25 MS. BROWN: Right.

1 this type. I think that's clear, but I -- I just
 2 wanted to make sure.
 3 MR. JONES: That's correct. And we
 4 actually, included this language in here after two
 5 prior amendments and basically the public debate that
 6 -- that came up as we put these on the ballot and
 7 people voted on it, which was what -- you know, what
 8 effect would this have on birth control.
 9 So we put that on there are as a clear
 10 statement of our intent that we're not intending to
 11 outlaw all birth control or even affect any kind of
 12 action unless that really deals with the deprivation
 13 of the right to life of a human being.
 14 We believe there are a lot of instances
 15 of use of birth control that don't involve ending the
 16 life of a human being. Same with IVF. So we put
 17 that out there for clarity.
 18 MR. HOBBS: Sorry. No to be redundant,
 19 but can you -- can you define for me biologically
 20 what is the earliest stage of development that this
 21 measure would include?
 22 MR. JONES: Right. We can. I think --
 23 I think it would be something that I believe a judge
 24 would -- would be able to discern from scientific
 25 evidence that would be presented. And that is, under

1 normal circumstances, the early stage of a individual
2 human being's development is fertilization of the
3 meeting of the sperm and the egg.

4 However, there are -- there are a lot of
5 technical situations, such as twinning, where there
6 isn't actual fertilization. It's -- there is a cell
7 and then that cell becomes two human beings. So we
8 didn't want to cut out any -- any person based on how
9 they -- they were created.

10 There's also medical advances with
11 cloning, with different forms of procreation that we
12 can perceive would not entail fertilization.

13 MR. HOBBS: Thank you.

14 MR. DOMENICO: So just to follow up on
15 that, I think the -- the fight were this to pass
16 would obviously be over what we've just -- what
17 you've just been talking about. What is a member of
18 the species homosapiens? Is that a scientific -- do
19 you understand that? That that will be somehow
20 fought out in court through battling scientific
21 experts or is it a legislative? Can the legislature
22 define that? Is it an accepted term? How -- is it a
23 legal question? Or how is that supposed to be
24 resolved?

25 MR. JONES: Well, with respect, I think

1 -- I think the question would be not necessarily who
2 a member of the species homosapiens is. I think that
3 medically that question is -- is defined. It's a
4 fact.

5 I think the question is when dealing
6 with competing interests what are the rights that we
7 are willing to guarantee to nascent human beings?
8 Right now, it's basically you're an equal member of
9 society once you're born, and before then, you're
10 sort of a second class.

11 MR. DOMENICO: Well, I understand that
12 will be sort of the debate before this is passed.
13 That will be (inaudible). But once it's passed, your
14 position is that that definition in 3B is sort of
15 well-established scientific fact, that maybe when
16 there's a unique DNA created, that is -- I just don't
17 know enough, I guess, about the science to know
18 whether pretty much everybody would say, okay,
19 well --

20 They might disagree with the amendment
21 saying, well, we should treat this member of the
22 species homosapiens as a person entitled to all the
23 rights that you want to extend them, but they are not
24 really much debate about when something becomes a
25 species, a member of the species homosapiens.

1 I mean, I don't know that it matters for
2 my purposes here as much as I just want to understand
3 sort of how you see this playing out. If it were to
4 pass, would that be something where there's a debate
5 in the lawsuit or how would it be defined?

6 MS. BROWN: I mean, I don't think that
7 there is a real debate on that issue. Certainly, the
8 opposition may bring a lawsuit trying to debate on
9 it. But the fact that a federal law already has used
10 this definition after a lot of research and several
11 states have copied that federal law for their own
12 unborn victims of violence act and this is the same
13 definition used multiple times over in law, so it's
14 pretty established by the medical community and
15 science and law.

16 So I don't think we really foresee a
17 debate beyond that issue.

18 MR. HOBBS: Okay. Thank you. Let's
19 turn then to the question of whether the measure
20 comprises a single subject. Is there anybody here
21 who wishes to object to the measure on the grounds
22 that single subject?

23 Yes, ma'am. If you'll come forward,
24 identify yourself and who you represent.

25 MS. BATEMAN: Good afternoon, Mr.

1 Chairman, members of the board. My name is Lila
2 Bateman. I'm representing Leslie Durgin, registered
3 elector of the state of Colorado. We do -- we are
4 here today because we believe that this initiative 46
5 does violate the single subject requirement. What it
6 does is, I think we just even heard, is bundle
7 several subjects with distinct purposes that are not
8 properly connected together and it puts them into a
9 very broad theme where it's almost impossible to
10 discern what the type of conduct that's going to be
11 prohibited because it covers so much. And that's by
12 the plain language itself.

13 As mentioned, it's the intentional
14 killing of any innocent person that's prohibited.
15 Now, again, that would include the reproductive
16 rights that it sounds like they would like to limit.
17 It would also, as they also say, prohibit euthanasia.
18 It would also go to vigilante killing.

19 It would also go towards Make My Day, to
20 an officer who's chasing an armed suspect who has not
21 yet been found guilty by a court of law. All of this
22 conduct is going to be prohibited by constitutional
23 amendment, which is something very different from the
24 law as it stands today, and it's getting conduct --
25 you mentioned earlier that seems like this is fairly

1 self-defining and it already exists, but it actually
 2 changes law.
 3 It would change Make My Day. It would
 4 change euthanasia. I think euthanasia is a great
 5 example of what this does. Again, the problem we
 6 have is it doesn't define innocent person and yet
 7 they do not define what is innocent. You can think
 8 of euthanasia in two contexts. There can be a
 9 person, for example, who's terminally ill and asks
 10 for assistance with respect (inaudible).
 11 That person may not be innocent. Under
 12 their definition, I think they would be because they
 13 haven't been judged guilty by a court of law.
 14 There's also the situation where you have somebody in
 15 a vegetative state. They cannot make a decision;
 16 that somebody, a family member, somebody who loves
 17 them or has a medical directive can flip the switch.
 18 That's the intentional killing of an innocent person.
 19 What this is doing is that is changing
 20 the law. Under manslaughter, that's absolutely
 21 allowed, this turning the switch when somebody has an
 22 advanced medical directive. So what this is doing is
 23 this is reaching out to completely legal conduct
 24 under an undefined term of innocent person.
 25 Lawful conduct, unlawful conduct and

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1 unknown conduct. Then we have with this is the
 2 potential of logrolling. Again, this is very
 3 reasons. For example, as a registered voter, we may
 4 want to protect the right to abortion or to have the
 5 reproductive rights that they are trying to
 6 (inaudible).
 7 But as a voter, I may also want to
 8 prohibit euthanasia. (Inaudible) vote yes on
 9 euthanasia (inaudible) order to make sure that my
 10 rights are protected, yet I can't vote just
 11 singularly yes. But for us, that creates the
 12 fundamental problem that we see here, which is
 13 unconnected, unrelated subjects (inaudible).
 14 MR. HOBBS: The question is for Ms.
 15 Bateman. Let me ask you about Make My Day, though.
 16 I mean, that seems like that would be the killing of
 17 an innocent person.
 18 MS. BATEMAN: Well, it's actually a
 19 person who is defending properly. Person is coming
 20 in and they are going to defend their life within
 21 their home, but that person who's coming in hasn't
 22 been judged guilty yet by court.
 23 So what we have is a killing of an
 24 innocent person because they have not yet been judged
 25 guilty at that point.

1 I would also add, because there was
 2 mention of this before in terms of prior initiatives,
 3 we have 2008, 2010. This law is very similar, but
 4 it's worse. What the prior initiatives did is it
 5 defined a singular term person and had it specific as
 6 to three constitutional provisions. This creates an
 7 entirely new operative right that runs soup to nuts
 8 through the entire constitution. And so within that
 9 new operative right, it also creates new definitions
 10 of person, human being, which we're all struggling
 11 with.
 12 That sounds to me like there's an
 13 agreement that as with past purposes, the definition
 14 of the person would apply to fertilized egg. And so
 15 in that respect, there are similarities that it's a
 16 fertilized egg. But again, it creates an entirely
 17 new right that's being created in this constitution.
 18 MR. HOBBS: I mean -- I mean, maybe a
 19 focus has to do with the rights of unborn children,
 20 but, you know, with respect to euthanasia, it seems
 21 to me we could view this measure as being fairly
 22 broad. I mean, the measure talks about affirming
 23 basic human dignity and right to life and arguably
 24 that -- it's a broad subject. It protecting human
 25 life, whether it's euthanasia or abortions or

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1 whatever.
 2 MS. BATEMAN: Yes, but the logrolling is
 3 what I think really creates the problem, which is
 4 (inaudible) of life in some circumstances some that
 5 you may not want to that protect others. And so
 6 you'd have to be able to vote yes and no instead of
 7 just yes. It's not just the prohibition, you know,
 8 abortion or reproductive rights. And may want to
 9 limit euthanasia because I just don't agree. There's
 10 a 2000 initiative that tried to do physician-assisted
 11 suicide.
 12 And I'm not speaking personally. I'm
 13 speaking hypothetically. I may not want to allow
 14 that type of intentional killing and so what we have
 15 to do is we have to get this to a single subject.
 16 And this very broad theme doesn't allow that because
 17 it covers so many different types of conduct when it
 18 comes to (inaudible).
 19 And again, there's no definition as to
 20 what an innocent person is, as again, in the
 21 euthanasia context, it would prohibit (inaudible).
 22 That is already a lawful conduct.
 23 UNIDENTIFIED MALE SPEAKER:
 24 Mr. Domenico?
 25 MR. DOMENICO: If PETA, for example,

1 came to us, with a measure that said all
 2 constitutional rights shall extend to animals, do you
 3 think that would violate the single subject
 4 requirement?
 5 MS. BATEMAN: What constitutional rights
 6 are we --
 7 MR. DOMENICO: That's all it says. All
 8 constitutional rights.
 9 MS. BATEMAN: I think we would have the
 10 same problems that we're facing here without any more
 11 specificity in terms of what is an animal and what is
 12 the conduct that's being prohibited. I mean, I think
 13 in the abstract that's a very difficult question to
 14 answer, but I do think we do have a lot of the same
 15 infirmities that we're facing here.
 16 MR. HOBBS: (Inaudible). Any other
 17 questions? Thank you. Anybody else wish to object
 18 to the measure on the basis of single subject? If
 19 not, then we'd like to hear from proponents again to
 20 respond to the comments from Ms. Bateman, if they
 21 would like.
 22 MR. JONES: I think the opponents
 23 mistake single subject with single effect. I don't
 24 think Colorado has a single effect rule. We have a
 25 single subject rule. And I believe the title board

1 I think it's clearly a single purpose.
 2 MS. BROWN: And I'd like to add that
 3 when the opposition mentions that we would be
 4 applying the right to life to many different stages
 5 and voters might be conflicted on, I want to vote no
 6 on this part and yes on this part, that's exactly
 7 what we're trying to resolve through this amendment.
 8 We're trying to specifically state that
 9 the right to life should be applied equally to all
 10 human beings at all stages of development. So the
 11 fact that people are conflicted, I mean, that's what
 12 we want to present them with in this amendment is we
 13 need to decide, are we going to apply the right to
 14 life equally to all human beings? And that is the
 15 point. That is the subject.
 16 MR. HOBBS: How would you describe the
 17 single subject of the measure? I mean, the staff
 18 draft described this (inaudible) set titles. We're
 19 required to express the single subject. Staff draft
 20 proposed to say prohibition on the intentional
 21 killing of any innocent person. That would be the
 22 single subject of the staff draft. But you also
 23 refer to, I think, the sanctity of life or something.
 24 So what's your articulation of the
 25 single subject?

1 made that clear in its brief to the court in 2008.
 2 And -- and so the fact that this single
 3 right, the right to life affects different facets of
 4 life has no detrimental affect on whether this is
 5 single subject or not. I think -- I think the
 6 opposition is being a little bit disingenuous with
 7 their arguments of -- of this not being a single
 8 subject.
 9 I'd just like to, I guess, quote
 10 comments (inaudible) from a court case here. It's 19
 11 -- in Re 1997, 1998. It says an initiative with a
 12 single distinct purpose does not violate the single
 13 subject requirement simply because it spells out
 14 details relating to its implementation as long as the
 15 procedures specified have been necessarily and proper
 16 relationship to the substance of the initiative.
 17 They are not a separate subject.
 18 And so I think the key here is that the
 19 -- the separate effects of this amendment on
 20 different facets of life are necessary to the single
 21 purpose and the single subject of affirming the right
 22 to life. And even in the context of this societal
 23 debate when somebody says the right to life, they are
 24 referring to -- to the beginning of life, the end of
 25 life, assaults on life through biotechnology. And so

1 MR. JONES: I think -- I think what your
 2 staff prepared is correct. I would just say that
 3 it's -- it says as a result of our desire to affirm
 4 the human -- basic human dignity and to apply the
 5 right to life equally to all human beings. That's
 6 why we need this amendment as a single purpose.
 7 MS. BROWN: We'd like to see a little
 8 more of that language in the title, but I assume
 9 we're talking about a little later.
 10 MR. HOBBS: Okay. Further questions
 11 from proponents? Thank you.
 12 I will turn to board discussion of the
 13 single subject question. Is there any discussion
 14 about the board or a motion?
 15 MR. DOMENICO: I'll briefly say that I'm
 16 comfortable that it's a single subject, that it's --
 17 the opponents are right, that it's a fairly broad
 18 one. It is in some senses broader than the previous
 19 efforts along these lines. But a broad subject can
 20 still be a single subject and I'm comfortable that
 21 it's a single subject.
 22 MR. GELENDER: I think also that I agree
 23 with Mr. Domenico that although broad, this does seem
 24 to be a single subject, and that while I do have
 25 concerns about the -- you know, what an innocent

1 person necessarily means, I don't know that what's
2 been said here today is going to be binding on either
3 the legislature which can enact legislation to
4 further define that term or necessarily the courts.

5 So I think I would also find the single
6 subject.

7 MR. HOBBS: I actually am really
8 troubled by this. I think I'll vote in favor of
9 single subject today, but I -- I really am struggling
10 with it. I don't -- and I can't entirely put my
11 finger on it. I mean, I do -- I do agree that a
12 measure can be broad and can have multiple effects.
13 I agree with that in principle.

14 I'm still not quite sure I entirely
15 understand the measure. I don't know. For example,
16 if constitutionalizing murder is -- it seems like it
17 arguably is a separate subject then, the rest of the
18 measure, but I don't know.

19 I mean -- I'm just -- I think this is
20 hard to understand, and I think it's going to be hard
21 to set clear titles. But I -- like I say -- and I
22 definitely prefer to give the benefit to a measure.
23 I don't think the role of the board is to be overly
24 technical.

25 But there is case law that says where

1 Like I say, I don't think -- I don't
2 want to belabor the point. I might be talked out of
3 it if there were a motion for the rehearing, but at
4 this point, I'm going to vote in favor of single
5 subject.

6 MR. DOMENICO: Well, I'm not going to
7 argue with the position you're agreeing with me on
8 other than to say that this strikes me as easier to
9 understand in that sense and sort of predict exactly
10 how it would play out, even though there are, I
11 agree, difficulties than, for example, adopting the
12 public trust doctrine, which leaves a lot of figuring
13 out the contours to litigation, legislation, various
14 steps along the way.

15 Here there is perhaps room for that as
16 well, but that's the sort of consequences that we
17 typically -- you know, we can tell people what you're
18 doing is saying that you can't kill an innocent
19 person, and a person is any member of the -- is any
20 human being, and a human being is any member of the
21 species. And whether -- what exactly that means may
22 be difficult to figure out.

23 But figuring out that that's what the
24 measure does is put that in the law is not -- is
25 easier to me than saying we're putting in the public

1 the board cannot understand a measure sufficiently to
2 set a single subject express clear titles that we are
3 -- we can't set a title. And this comes real close
4 to that, in my mind. This is really hard, in my
5 mind, for someone to read and understand what's
6 really going on.

7 As I indicated before, it does seem to
8 be -- almost begs the question so vague -- and at
9 least in early stages of life, it's very vague. Now,
10 later stages of life, it seems like, yes, euthanasia
11 would be covered. That's not a problem, I think.

12 But it is so vague with respect to what
13 may be the fundamental intent possibly that I'm not
14 sure I know for sure what it means or what it will
15 mean in practice. But I'm not -- I can't articulate
16 it very well.

17 But I -- I -- I -- I think this was a
18 bit of an issue with amendment number 62, but at
19 least that was a little clearer as it was just the
20 definition of person, and I think it -- I think it
21 referred to beginning of the biological development
22 which is at least a little bit clearer in that you're
23 referring to biological development as opposed to any
24 stage of development which is where I'm struggling
25 understanding what this measure means.

1 trust doctrine into the law. So anyway, I will move
2 that this is a single subject. Second?

3 MR. HOBBS: It's been seconded. Any
4 further discussion?

5 If not, all those in favor, say aye.

6 MR. DOMENICO: Aye.

7 MR. GELENDER: Aye.

8 MR. HOBBS: All those opposed, no.

9 Motion carries three to zero.

10 Then let's turn to the titles. Ms.
11 (inaudible) will display on the screen in the room
12 the staff draft. Mr. Gelender, I think, already got
13 -- already indicated he has the potential --
14 potential changes to the staff draft. Mr. Gelender.
15 And I guess I could start either with proponents'
16 comments about the staff draft, but I guess I prefer
17 to hear from Mr. Gelender first, if that's okay. I'd
18 like to get that out in the open.

19 MR. GELENDER: Okay.

20 MR. HOBBS: Or if you want to distribute
21 the copies of what you've got so (inaudible).

22 UNIDENTIFIED MALE SPEAKER: Yeah.

23 MR. HOBBS: I mean, I do expect that the
24 proponents have their own ideas about change to the
25 staff draft. And I need another copy myself. I'm

1 not sure what I did. (Inaudible). Thank you. Why
2 don't you just explain why the proponents (inaudible)
3 all proponents are having an opportunity to look at
4 it. Mr. Gelender, why don't you explain what you're
5 proposing to do.

6 MR. GELENDER: Okay. And this is my
7 comments regarding how I'm changing the staff draft
8 and so what I was thinking in making these
9 suggestions. First one is striking lines two, line
10 three affirming the right to life to all innocent
11 persons because I think just an affirmation
12 (inaudible) we already have above the prohibition on
13 the intentional killing. I don't think just that
14 affirmation that should (inaudible) has an actual
15 (inaudible). I mean, it's a statement, but it's not
16 a substantive change to law. So I'm not sure that it
17 needs -- necessarily needs to be in the title.

18 Following at any stage of development,
19 and in this I may feel different about it, it's
20 striking the language regardless of the method of
21 creation, which is, I think, if you already cover
22 every member of the species. I don't think that
23 language necessarily adds.

24 I think, you know, if you're any -- if
25 you're, I guess, genetically a human being, you're at

1 any stage of development. I don't know that that
2 doesn't include every method of creation already.
3 Let's see.

4 After semicolon stricken and just taking
5 out the and there. So then clarifying a -- change
6 language, instead of saying clarifying that the
7 details -- as I understand it -- let's see. I just
8 want to go tracking language of the measure more
9 closely. I think that it looks like what is really
10 trying to do is just only affecting those forms of
11 birth control.

12 And actually, I don't know -- probably
13 should have said assisted reproduction instead in
14 vitro fertilization, which might be another good
15 change to kill an innocent person. So it looks like
16 the measure is not trying to affect any others.
17 It's more for clarity.

18 With the less than physical conditions,
19 that was just sort of technical, grammatical changes.
20 I thought it read a little better as plural.

21 And then I did think that the title
22 should include some mention of the specific
23 prohibition on the killing of a person created to
24 rape or incest that's in the measure. Because I
25 think that from a public debate, that that's

1 something that people take into account when voting
2 for or against the measure.

3 MR. HOBBS: The proponents like to
4 comments on the staff draft or the what you could
5 glean from Mr. Gelender's suggestions?

6 MR. JONES: I have a couple comments
7 (inaudible).

8 MR. HOBBS: (Inaudible) come to the
9 podium.

10 MR. JONES: Let's see. I think with the
11 taking out of the affirming the right to life, I like
12 the original draft that you presented us better. And
13 the reason is, I think we have the right to life is
14 in different sections of the constitution, and it was
15 also interpreted in a way that we're seeking to
16 interpret it for a hundred years prior to 1967. So I
17 think having the affirmation is an important thing
18 for us to communicate to the people (inaudible). I
19 don't (inaudible). So I would rather that be
20 included.

21 MS. BROWN: Yeah, I would, too, because
22 that's one of our main intents, is that we believe
23 the right to life is not equally applied to all
24 innocent persons, and so we want to include that in
25 the language. And also we would prefer at the end

1 when you say affirming the right to life to all
2 innocent persons equally. We use that in our
3 operative language. We specifically use the word
4 "equal" and we would like to see that included.

5 MR. JONES: Also in that same sentence,
6 pretty minor, but affirming the right to life to all
7 innocent persons, I think that we were saying we are
8 applying the right to life, too, would be correct.
9 But I think since we're saying we're affirming the
10 right to life, I think it would be better to say of
11 affirming the right to life of all innocent persons
12 and also highlights the belief that these rights are
13 inherent. They are inalienable. They are not
14 granted by government. They are just recognized.

15 Comments towards the end, where -- the
16 title right now where it reads -- clarifying that
17 birth control and in vitro fertilization that kill an
18 innocent person are affected by the provision, I
19 think, you know, we -- we try hard in the language
20 itself to put the emphasis on -- on the fact that
21 this will not affect birth control unless it kills a
22 person.

23 And so I don't know if we could word it
24 in negative as opposed to what it will affect, what
25 it won't affect, since that's the intent of the

1 language. We said only that assisted reproduction or
2 birth control that kills a person is affected. I
3 kind of reworded it. You want me to read it out
4 or --

5 MR. HOBBS: Well, why don't you just
6 read it, then maybe we'll cut -- if there's interest
7 in trying to get that up on the screen, we'll have
8 you all come back and read the idea.

9 MR. JONES: Okay. So I -- where it says
10 in vitro fertilization that, I would cross out that
11 and the subsequent words and replace it with, and
12 clarifying that birth control and in vitro
13 fertilization are not affected by the provision
14 unless they kill a person.

15 And I guess then we'd say (inaudible)
16 say and (inaudible) medical treatment for life
17 threatening conditions. (Inaudible). That's also
18 more consistent since both of those are worded as
19 excluding (inaudible).

20 MS. BROWN: One other point I liked in
21 Mr. Gelender's draft, instead of in vitro
22 fertilization he put assisted reproduction. I think
23 that would be more accurate, because it is a --
24 includes in vitro fertilization in the assisted
25 reproduction, so that term is better.

1 MR. GELENDER: I didn't actually put it
2 in there.

3 MS. BROWN: Oh.

4 MR. GELENDER: I meant to, but I was
5 going to recommend this regardless.

6 MS. BROWN: I like that change just for
7 that.

8 MR. JONES: And then the other thing, I
9 had a question for the board. Where you say that
10 it's unofficially captioned application of the term
11 person, where do you place that -- that title? Is
12 that at the top of the petition you're circulating?

13 MR. HOBBS: It doesn't get placed
14 anywhere. It's -- it's just used by -- it's assigned
15 by the legislative staff when you file the measure.

16 MR. JONES: Okay.

17 MR. HOBBS: And it's -- it's just a
18 short title, but it has -- it doesn't have any legal
19 significance, official significance. It won't appear
20 on the ballot, won't appear on the petition. So we
21 don't -- we don't try to change it or rephrase it.

22 MS. BROWN: Do you determine at a later
23 date the short title on the ballot?

24 MR. HOBBS: No. All we will set is the
25 titles themselves. (Inaudible).

1 MR. JONES: That's pretty much it. Do
2 you have any other comments? All right. With the
3 rape and incest, I think -- I think it is a topic of
4 discussion, that people obviously will gravitate to
5 it (inaudible) public discussion over it. So I
6 wouldn't -- I wouldn't oppose it being there. We
7 certainly don't run away from it since it's in the
8 language. However, I don't know how that jibes with
9 the rest of the specific effects in terms of the
10 actual occurrence of those facts and why we would
11 single out just -- just rape and incest as -- I guess
12 we do. In your draft you also have the life of the
13 mother exception. Right?

14 So I think -- I think, actually,
15 everything else is on the there, right?
16 Is there miscarriages? Yeah. So I guess we wouldn't
17 oppose because it just --

18 UNIDENTIFIED MALE SPEAKER: Thanks.
19 (Inaudible).

20 MR. HOBBS: Thank you. Ms. Bateman or
21 anyone else wish to comment on the titles?

22 Thank you. We'll turn to board
23 discussion. I think I should probably start with the
24 staff draft and mark that up as board members feel
25 appropriate perhaps with -- maybe I'll start with Mr.

1 Gelender if -- because I think he's got some
2 suggestions that have some support.

3 MR. GELENDER: Well, I think the first
4 one, just going through this, would be whether
5 proponents express desire to have the affirmative
6 right to life remaining in there. I think we should
7 discuss whether it should or not.

8 MR. HOBBS: Mr. Domenico?

9 MR. DOMENICO: Yeah. I think that it
10 probably -- maybe the specific language of it might
11 need to be worked on, but I think that that part of
12 section one of the measure actually does have an
13 affect beyond just what the rest of it does, or at
14 least it might, in that as I pointed out the right to
15 life is used in other clauses in the constitution,
16 other sections of the constitution other than what
17 would become section 32.

18 And so in that sense, it might affect --
19 as the opponents points out, it may affect things
20 beyond just this here. Now, what this does is
21 probably so broad that it seems pretty much anything
22 that those other sections would do, so maybe it's not
23 necessary.

24 But, you know, there are other -- the
25 right to life is mentioned in a couple, at least one

1 or two other places that I think of. So in that
2 sense, I would be -- I would think you might want to
3 include that.

4 MR. HOBBS: You know, I tend to think we
5 should maybe, but trying to draft the language for
6 measure (inaudible). I'm not sure I want to say
7 resolving that, but maybe say specifying the right to
8 life in the state constitution applies equally to
9 innocent persons.

10 I -- I think I'm leaning in that
11 direction. I just want to mention that I also wonder
12 if right to life is a catch phrase.

13 MR. GELENDER: Right. I thought about
14 that, too, and that was the main reason I thought it
15 would be quite useful to remove that language.

16 MR. DOMENICO: On the other hand, if
17 you're trying to refer people to the other times that
18 language is used in due process clauses, those sorts
19 of things, it's a little bit hard to refer to it as
20 anything else.

21 MR. GELENDER: In light of that, does it
22 make sense to amend the staff draft to keep it in,
23 but to be more specific in referencing that we're
24 talking about it as already sort of referenced in the
25 constitution? Is that sort of in the (inaudible) not

1 choose in this constitution, state constitution,
2 applies to include all innocent persons.

3 (Inaudible).

4 MR. GELENDER: Can we say provided for?

5 May seem silly, but (inaudible).

6 MR. HOBBS: Yeah.

7 UNIDENTIFIED MALE SPEAKER: Fine with
8 that, I suppose.

9 MR. HOBBS: So the proposal is changing
10 that clause to read declaring that the right to life
11 as provided for in the state constitution provides
12 equally for all innocent persons.

13 UNIDENTIFIED MALE SPEAKER: (Inaudible).

14 MR. HOBBS: Make that change. Is there
15 a second?

16 UNIDENTIFIED MALE SPEAKER: Second.

17 MR. HOBBS: All those in favor, say aye.

18 UNIDENTIFIED MALE SPEAKER: Aye.

19 UNIDENTIFIED MALE SPEAKER: Aye.

20 MR. HOBBS: All those opposed, no. That
21 motion carries three to zero. Mr. Gelender?

22 MR. GELENDER: I believe my next change
23 was after development on line four, striking
24 regardless of the method of creation. I don't recall
25 -- I don't believe the proponents had objection to

1 a fan of adding additional words usually.

2 I wonder if that kind of waters down the
3 catch-phrasy aspect of it.

4 MR. DOMENICO: Right. If you say that
5 the right to life as used in the constitution or as
6 recognized in the constitution or something like
7 that.

8 MR. GELENDER: I like that.

9 MR. DOMENICO: Okay.

10 UNIDENTIFIED MALE SPEAKER: You want to
11 run with it? Okay. Right to life (inaudible).

12 MR. HOBBS: Can I suggest though --
13 don't mean to cut you off. (Inaudible) say
14 affirming.

15 MR. GELENDER: Yeah. I agree with that.

16 MR. HOBBS: I was trying to get back to,
17 you know, the language of the measure. Even I don't
18 -- we could say resolving that, but that's not very
19 satisfactory to me.

20 MR. DOMENICO: It's not, but it is
21 define declaring.

22 MR. HOBBS: That's what I prefer unless
23 it's changing the meaning of the measure. If we -- a
24 if we said specifically declaring that the right
25 (inaudible) declaring that the right to life and

1 that.

2 MR. HOBBS: I'll second that. Is there
3 a motion?

4 UNIDENTIFIED MALE SPEAKER: Yes. Sorry.

5 MR. HOBBS: Second. Discussion. All
6 those in favor, say aye.

7 UNIDENTIFIED MALE SPEAKER: Aye.

8 UNIDENTIFIED MALE SPEAKER: Aye.

9 MR. HOBBS: All those opposed, no.

10 Motion carried three to zero.

11 MR. DOMENICO: Okay. Now, this -- can I
12 just -- before, I think, you get into any of the rest
13 of it, make one suggestion to -- that either accept
14 or reject before we move on and that is whether we
15 need to get into the back and forth at all between
16 what birth control, medical procedures, all that's --
17 all the other parts of, you know, 2A through E that
18 are the rest of the proposed title are sort of
19 clarifications of how exactly the broader points that
20 we've already discussed play out in specific
21 instances.

22 And they are all important. They are
23 all precisely the types of things that the public
24 debate, I'm sure, will involve, but I'm not sure they
25 necessarily need to be in the title. If they are, I

1 agree with where I think we were headed, which is
2 they all should be in there, but I just want to throw
3 out the idea of having none of them as a possibility.

4 I mean, none of them really strike me as
5 sort of a major exception that -- that doesn't
6 exactly fit with what we've already said exactly, if
7 you know what I mean. They are all sort of
8 clarifying the implications of having defined person
9 in the way that was measured as, you know, to me it
10 actually said this doesn't apply in cases of rape or
11 incest, that might be an exception to what we've
12 already said that you might want to call out.

13 But when you're just saying there isn't
14 this exception, I'm not sure you need to say that.
15 (Inaudible).

16 MR. HOBBS: Why don't you come to the
17 microphone.

18 MS. BROWN: I don't think we object to
19 that, but just one other suggestion would be that the
20 medical treatment for a life-threatening physical
21 condition and spontaneous miscarriage is -- those
22 would actually be an exception to the -- like I would
23 -- I would consider it if you don't want to include
24 all --

25 MR. DOMENICO: Maybe the medical

1 measure is fairly short and its exclusions are
2 covered. And I just don't know that we need to need
3 all of that detail.

4 MR. DOMENICO: I'm okay either way, as I
5 said. I just want to offer it as a -- and I think
6 the medical treatment is probably the one where it's
7 not -- if you just read -- if we stopped after
8 development, you would know, I think, the answer to
9 the birth control or you should know the answer to
10 the birth control and in vitro fertilization
11 questions and to the miscarriage question and to the
12 rape and incest question, if you just applied what's
13 already been said.

14 The medical treatment one, I think, is
15 -- you might not know exactly. That does seem to add
16 something.

17 MR. GELENDER: I think (inaudible) make
18 the argument in this case more actually, really is
19 more. I think when we consider that should this go
20 on the ballot there will presumably be considerable
21 advertising, considerable efforts on, you know, of
22 messaging to get messages across both by proponents,
23 opponents and, of course, just others who are not
24 under the control of, you know, people here today
25 that --

1 treatment might be. I'm not sure I -- the
2 miscarriages would be (inaudible). Yeah, it's not an
3 intentional killing. But yeah. I mean, I think --
4 right. So I mean, it's probably easier to just put
5 it in there. It's not a particularly long title,
6 even with them all in there. I just wanted to
7 suggest we could better it.

8 MR. HOBBS: Comment?

9 MR. JONES: With that exception, I think
10 -- I would say because of how we define it with the
11 life-saving treatment that it's actually the intent
12 as defined is not to -- to -- it's still not to take
13 a life. So I don't think -- you know, even though in
14 common parlance we say there's a life of the mother
15 exception, I think the way we define it is that as
16 long as the medical treatment is intended to save a
17 life, whether it's the baby's or the mom's, that that
18 wouldn't be affected.

19 So I think it still fits with the main
20 effect and the main language, which is that no
21 intentional killing. So just a nuance.

22 MR. HOBBS: But I do like the concept,
23 Mr. Domenico, simplifying this that it's not a
24 (inaudible) necessary even though I think in this
25 case the details are really important. But the

1 I mean, the title is something that's
2 when it comes down in the blue book it's neutral,
3 it's, short and people can see it. And I think a lot
4 of people will see the title and only look at the
5 ballot and they don't look at the blue book. And I
6 think that while maybe the reasoning across us in a
7 vacuum lead someone to know the answers to these
8 things, by the time the people arguing over this and
9 advertising on both sides are done with it, I think
10 having a neutral statement in the title that gives
11 the details is helpful.

12 MR. DOMENICO: Yeah. I don't -- I don't
13 necessarily disagree with that. I just -- I think
14 the title is supposed to just give the material of
15 the measures and outside the process is the outside
16 process. As I said, I'm -- I'm fine leaving it in
17 there.

18 I don't disagree with you that --
19 especially since, in this case, it's fairly
20 straightforward to put them all in, that that's
21 probably marginally better than taking them all out.

22 MR. HOBBS: That's your preference, put
23 them all in.

24 MR. GELENDER: Yes, I think so. But if
25 someone wanted to put it to a vote either (inaudible)

1 if you have an opinion (inaudible).
 2 MR. HOBBS: I could go along with it.
 3 Let's try to do that.
 4 MR. DOMENICO: Keep them in?
 5 MR. HOBBS: That's fine. Yeah.
 6 (Inaudible).
 7 MR. DOMENICO: Then I think
 8 Mr. Gelender's draft does that. Right?
 9 MR. GELENDER: I think, yeah, It's
 10 pretty close.
 11 Where were we then? So we're at any
 12 stage of development, so I think we could -- I don't
 13 think anyone was disagreeing with the idea that in
 14 lieu of in vitro fertilization, line five, it should
 15 say assisted reproduction.
 16 MR. DOMENICO: The proponents did
 17 suggest, though, in that part to rewrite it sort of
 18 in the negative that's clarifying that birth control
 19 and assisted reproduction that not kill an innocent
 20 person.
 21 UNIDENTIFIED MALE SPEAKER: Yeah.
 22 MR. DOMENICO: Are not affected unless
 23 they kill an innocent person, I think, or something
 24 along those lines.
 25 MR. GELENDER: Fine. One of the things

1 say the effects how. Go ahead.
 2 MR. JONES: I think I would prefer
 3 effects because I think it -- it will be part of a
 4 legislature to amend the code to comport with this
 5 amendment and to actually regulate how they want to
 6 prohibit this for penalties or how they want to deal
 7 with this. I think effect is a little bit clearer
 8 and we just use prohibit at the top to basically
 9 emphasize the general purpose of it.
 10 MR. HOBBS: Okay. Thank you.
 11 MR. GELENDER: Affects only those forms
 12 of, or maybe it should say methods of birth control
 13 and assisted reproduction, kill innocent person, and
 14 then strike the as affected by the provision and
 15 substitute but does not affect other -- other methods
 16 of birth control or assisted reproduction, comma,
 17 strike the "that" and, comma, after condition and
 18 then -- let's see.
 19 I guess you'd strike the "and" and say
 20 or -- strike and. I think it should be or
 21 spontaneous miscarriages, and then above I think the
 22 medical should also be, I guess, for the -- and also
 23 go plural with -- with life-threatening physical
 24 conditions.
 25 Then take out the "a" before life.

1 the staff draft is just -- I think it's a little hard
 2 to follow just because it's with the like (inaudible)
 3 affected. It's not referring to actively.
 4 What I might suggest -- I'm just safe us
 5 all reactions it gets, something along the lines of
 6 clarifying that the amendment affects or, you know
 7 perhaps (inaudible) should say prohibits. Prohibits
 8 or affects only those forms of birth control that
 9 kill an innocent person and does not, again, prohibit
 10 or affect other forms of birth control or assisted
 11 reproduction or medical treatment, you know, in going
 12 down the line, for life-threatening physical
 13 conditions, and then at the end tacking on the bit
 14 about the rape and incest. I think that's it, yeah.
 15 MR. HOBBS: Let's try to get that up on
 16 the screen then.
 17 MR. GELENDER: (Inaudible). Clarifying
 18 that before birth control -- before -- after that,
 19 yeah. That the amendment, I think, affects or
 20 prohibits too much or is enough there because I think
 21 prohibits seems to intentional killing (inaudible)
 22 the language of the measure.
 23 MR. HOBBS: I -- I see (inaudible)
 24 thinking about asking in an opening question because
 25 I was curious about term effects because it doesn't

1 (Inaudible) spontaneous miscarriages and then strike
 2 "or not". And the only last thing is the semicolon
 3 after miscarriages. And then the (inaudible)
 4 semicolon, then it says (inaudible) add the phrase --
 5 instead of the final phrase "and specifically
 6 prohibiting the killing of a person" the measure
 7 (inaudible) I don't know if conceived is more
 8 accurately created through rape or incest.
 9 I think the only other thing to do is
 10 strike the and on line five after this (inaudible)
 11 creation. Yeah, that should be pretty close.
 12 MR. HOBBS: Comments for discussion?
 13 MR. GELENDER: You can tack a semicolon
 14 on line four after development. I believe move
 15 changes.
 16 MR. HOBBS: I move those changes. I'll
 17 second that. Further discussion?
 18 MR. GELENDER: Just one last thing for
 19 motion. I believe in line seven the "but" should be
 20 an "and" now, just grammatically.
 21 MR. HOBBS: We'll consider that part of
 22 the motion. All those in favor, say aye.
 23 UNIDENTIFIED MALE SPEAKER: Aye.
 24 UNIDENTIFIED MALE SPEAKER: Aye.
 25 MR. HOBBS: Call the (inaudible). Any

1 further changes to the staff draft? Even if you
 2 would maybe show how would it read with all of these
 3 changes and I'll -- I'll read it, while we all read
 4 it, to see if this is where we want to end up. The
 5 title would read an amendment to the Colorado
 6 Constitution concerning a prohibition on the
 7 intentional killing of any innocent person, comma --
 8 can we put a comma in there? There's no objection?
 9 I think this is a matter of form. Comma, and in
 10 connection therewith, comma, declaring that the right
 11 to life as provided for in the state constitution
 12 applies equally to all innocent persons, semicolon,
 13 defining, quote, person, unquote, as every member of
 14 the species homosapien at any stage of development,
 15 semicolon, clarifying that the amendment affects only
 16 those methods of birth control and assisted
 17 reproduction that kill an innocent person, comma, and
 18 does not affect other methods of birth control or
 19 assisted reproduction, comma, medical, treatment for
 20 life, hyphen, threatening physical condition, comma,
 21 or spontaneous miscarriages, semicolon, and
 22 specifying -- and specifically prohibiting the
 23 killing of a person created through rape or incest.
 24 Any further changes?
 25 MR. GELENDER: I think -- do we need the

1 That also completes action on our agenda.
 2 Again, if there is a rehearing on any of
 3 these measures that are filed within the next seven
 4 days, that will be heard in the first meeting in
 5 January, which is January 4th. Don't know what time
 6 it would be.
 7 Thank you all for coming and I
 8 appreciate your patience and contributions. We're
 9 adjourned.

1 comma after person on six?
 2 MR. HOBBS: I don't think so. Drop that
 3 comma where the cursor is. Objection on the motion.
 4 But if there's no other changes, then I would accept
 5 a motion to adopt the staff draft as amended.
 6 MR. DOMENICO: So moved.
 7 MR. GELENDER: Second.
 8 MR. HOBBS: Move and seconded. Any
 9 further discussion? All those in favor, say aye.
 10 UNIDENTIFIED MALE SPEAKER: Aye.
 11 UNIDENTIFIED MALE SPEAKER: Aye.
 12 MR. HOBBS: All those opposed, no.
 13 Motion carries three to zero. That completes action
 14 on Number 46, 5.
 15 Steven, help me out here. I think
 16 before I forget, I think we had a problem with
 17 contacting proponents, right? Did that get taken
 18 care of?
 19 UNIDENTIFIED MALE SPEAKER: Yes, it did.
 20 MR. HOBBS: Okay.
 21 UNIDENTIFIED MALE SPEAKER: (Inaudible)
 22 spoke with counsel (inaudible).
 23 MR. HOBBS: The address (inaudible)
 24 contact information. Okay. Thank you. So that does
 25 complete action on number 46. The time is 4:21.

1 CERTIFICATE OF TRANSCRIPTION
 2 I, JANICE DOYLE, do certify that
 3 transcription of the hearing was performed to the
 4 best of my skill and ability and that the foregoing
 5 is a true and accurate transcript of the proceedings
 6 had.
 7 I further certify that I am not related to
 8 any party herein or their counsel and have no
 9 interest in the result of this litigation.
 10 In witness hereof, I have hereunto set my
 11 hand this 19th day of January, 2012.
 12
 13
 14 Janice Doyle
 15
 16 My Commission Expires:
 17 January 6, 2015
 18
 19
 20
 21
 22
 23
 24
 25

INITIATIVE TITLE SETTING REVIEW BOARD
PROPOSED INITIATIVE 2011-2012 #46
("Application of the Term Person") Rehearing

Transcription taken from CD taken from the
Secretary of State's Website
www.sos.state.co.us

January 4, 2012 1:17 p.m.

Secretary of State's Blue Spruce Conference Room
1700 Broadway, Suite 200
Denver, Colorado

THE BOARD

WILLIAM A. HOBBS
DAN DOMENICO
JASON GELENDER

PROCEEDINGS

MR. HOBBS: Okay. Well, let's resume. The time is 1:17. I understand we have both petitioner representatives for #46, so we'll go to that item on our agenda. We'll still waiting for petitioner representatives for #45 and #38.

For #46, the first point here, we have a Petition and Motion for Rehearing, so I first would like to hear from Ms. Bateman, I think, on the Motion for Rehearing.

MS. BATEMAN: I'm Lila Bateman. I'm here on behalf of Leslie Durgin, Cathy Alderman, Amy Pitlik, who are all registered electors of the State of Colorado.

I did request a rehearing for several reasons. I don't want to go into as much detail as I last did on the single subject, but let's just say that I do want to re-raise the issue and address it as well again for your consideration.

Again, our point is that this violates the single subject requirement. That the plain language says that it's a significant constitutional prohibition on intentionally killing an innocent person. As we pointed out last time, this has such broad and far-reaching impact and disparate conduct that covers very different and very unrelated subjects. And it does so based on the undefined term of "innocent person."

Now, the proposed initiative cites some of these. It cites to birth control measures, and those that they say kill people. But we also heard at the last hearing that it's intended to cover such things as stem cell research, vigilante killings and euthanasia.

We also mentioned that the list really goes on and on. It's endless, in fact, in terms of what it does cover. It's going to cover an officer, for example, who shoots a fleeing suspect -- again, because there is no definition of what an innocent person is.

We heard what the proponents offered. It was somebody who had not yet been adjudged guilty. But this does not define "innocent person," and it covers an incredible array of very disparate conduct that's unrelated to what they say is the subject of this.

And it's constitutional prohibition on certain reproductive rights -- again, very different and distinct from euthanasia, vigilante killing and even actions that result in death by a federal or state officer.

Now, our concern is obviously with logrolling, and that in and of itself indicates that there are these multiple subjects. Again, it would require somebody who perhaps opposes abortion but supports euthanasia to be forced to what I call the Hobson's choice, the voting no in part and yes in another part. And that in and of

itself says that this is a multiple subject.

We also raised in our rehearing the fact that the title itself is flawed. It has impermissible catch phrases, the most glaring of which is "the right to life" contained within the title. Again, it also includes "innocent persons" without defining what that really means.

All of these play out in the abortion context in the political arena, but that is not appropriate here. Those phrases are fundamentally intended to sway voters to support this measure.

We also believe that this title is misleading. It sets a new, legal and controversial constitutional right that prohibits intentionally killing innocent persons without any definitions of what that means, without listing the measure's full ramifications.

In an earlier hearing we heard that certain members were concerned about the troubling aspect of this -- again, because it's not all certain what this initiative actually does. And that's a very real concern and obviously goes beyond our concerns with opposing this initiative fundamentally.

We don't know what this does, and we think that that is a real concern and prohibits the Board from being able to set a title without knowing what the single

1 subject is -- without ever defining what the standard that
 2 they're trying to impose does.
 3 And I want to point out that this is in almost
 4 every respect identical to an initiative that was just
 5 struck in Arkansas. And the AG in Arkansas struck "the
 6 right to life to all innocent persons including the unborn
 7 at every stage of development."
 8 He struck it in part because of the failure to
 9 define and the ambiguity of the term "innocent person."
 10 He went on to clarify that this just really was
 11 never defined. He says, "With regard to already born
 12 innocent persons, it's unclear how, if at all, your
 13 proposal changes existing law. Without clarification, I
 14 am consequently unable to summarize these provisions in a
 15 ballot title."
 16 He also says, "It's unclear in your measure,
 17 given your failure to identify a person's first stage of
 18 development, what constitutes abortion in certain
 19 instances."
 20 We suffer -- the proponents here suffer the very
 21 same flaws that were just struck as too ambiguous by the
 22 attorney general in Arkansas and, therefore, he refused to
 23 set a title in that instance -- not so very similar to a
 24 personhood initiative in Nevada that was just struck.
 25 There the judge struck it because it was excessively

1 protected class. So it's not the same. It's not an
 2 apples to apples comparison.
 3 And what we have here exceeds the single
 4 subject. I mean it's a misleading title that also
 5 includes infamous catch phrases.
 6 MR. HOBBS: Any questions for Ms. Bateman?
 7 MR. GELENDER: I do have a question.
 8 Ms. Bateman, please give me a -- I'm not sure if
 9 you're arguing one point or two. Are you arguing that
 10 it's not a single subject both because it's simply too
 11 broad or because it's too confusing or both?
 12 I guess to use -- go back to a variation on
 13 Mr. Domenico's example, if this didn't make any
 14 distinction between kinds of persons are innocent as
 15 opposed to just saying, you know, "the killing of any
 16 person is prohibited under all circumstances," would that
 17 be a single subject or would you argue that that's just
 18 too broad -- it's just too big because of all these
 19 effects?
 20 MS. BATEMAN: I'm arguing both. It's too broad
 21 because it creates modification by changing both existing
 22 law and tries to create a new constitutional standard.
 23 But it's also an undefined standard that they're trying to
 24 create.
 25 And so, again, the ramifications of this are

1 vague. It covers who knows what?
 2 That's exactly what we have in this instance. It
 3 covers who knows what? It's trying to create a new
 4 constitutional prohibition on intentionally killing
 5 innocent persons without ever defining what that means and
 6 the ramifications of what that means.
 7 Quite simply, it's just not possible to set in
 8 the title any subject here because it's unclear what that
 9 subject is.
 10 The last time I was here, Mr. Domenico, you asked
 11 a very interesting question, and I have been sitting here
 12 trying to think of the answer to it. And so I want to see
 13 if I can give you an adequate answer because I don't feel
 14 like I did that last time.
 15 The question really had to do with PETA, if
 16 you'll remember that. You asked whether the
 17 constitutional amendment that gave all the same
 18 constitutional rights to animals could be a single
 19 subject. And I said it was a difficult question, and it
 20 has been a difficult question for me to figure out.
 21 And I think the answer is actually yes, but
 22 that's not what we have here. And the reason is because
 23 those would be the same constitutional rights given to
 24 another protected class, and that's not what we have. We
 25 have a new constitutional right given to a new set of

1 beyond single subject because it covers so much disparate
 2 conduct. And so the problem we have is that, again, it's
 3 a new constitutional right to an undefined set of folks.
 4 And that covers all kinds of conduct, from birth control
 5 prohibitions to euthanasia to police conduct.
 6 So I guess the best way to answer your question
 7 is yes, both.
 8 MR. HOBBS: Mr. Domenico?
 9 MR. DOMENICO: Well, I'm not quite sure what --
 10 are we're discussing the title, the single subject? I
 11 mean, I'm not quite sure where we are.
 12 MR. HOBBS: We can do both, if that's acceptable
 13 to the Board -- address both the single subject issues as
 14 well as the adequacy of the title.
 15 MR. DOMENICO: I agree that the subject by
 16 defining what constitutes a person in a more expansive way
 17 than it's currently defined is broad and has broad
 18 implications across a variety of constitutional statutory
 19 other types of rights. But being broad and being multiple
 20 subjects are not, in my view, the same thing.
 21 Similarly, I agree that it's hard to know exactly
 22 how this would play out in certain circumstances because
 23 of some of the terms, because of some of the broad terms
 24 that they use. And -- but again, that doesn't strike me
 25 as either a problem for setting a title or as a single

1 subject violation.

2 I mean, I don't think any anybody -- we've had
3 this discussion before on very different proposals about
4 well, what if someone came in here and said that they
5 wanted to add a right to freedom of speech to our state
6 constitution? I don't think any of us would dispute that
7 that's a single subject and that it -- despite how broad
8 it is.

9 I don't think anybody who's looked at the Supreme
10 Court's interpretation of the constitution would dispute
11 that it's a phrase that is hard to predict how it would --
12 how it plays out in every circumstance. There is
13 thousands of pages of litigation trying to explain what
14 freedom of speech means.

15 But that doesn't mean it's not a single subject,
16 and it doesn't mean we couldn't set a title for it just
17 because we don't understand or can't predict all the legal
18 consequences of enacting it.

19 To set the title in this case, I think we have to
20 know what the material terms are and be able to write them
21 into the title, which I think we can do.

22 And so I'm still convinced that this meets the
23 single subject requirement, and that we can set a title
24 for it. I do think there are some potential changes we
25 should make in response to the petition to the title when

1 MR. JONES: We prepared a couple of documents,
2 and we have extra copies -- just in response to the
3 motion. We just got them so we didn't have a chance to --
4 I guess we're dealing with the single subject
5 requirement first; is that correct?

6 MR. HOBBS: Yes.

7 MR. JONES: Okay. Well, I think the law is very
8 clear on the issue of single subjects. I think the
9 opponents are infusing their ideological opposition to
10 this amendment into the process of a Title Board.

11 And the case law is quite clear in that -- I can
12 quote. It says, "Neither the Secretary of State, nor any
13 court should be concerned with the merit or lack of merit
14 of a proposed constitutional amendment."

15 In the cases that the opposition has cited in
16 Arkansas and Nevada, in Arkansas the statute specifically
17 asks the attorney general to express an opinion on how the
18 amendment would play out with existing federal or
19 constitutional law. And that was the reason, the main
20 reason that the attorney general cited for rejecting it
21 there.

22 In Nevada there were actually two amendments.
23 One of them was rejected. The other one was not. And the
24 one that was not rejected is the one that mirrors ours
25 most closely. The judge did include some changes to the

1 we get to that point.

2 But I think I'll stop there then. I want to stay
3 a little focused

4 MR. HOBBS: Maybe we should stay with the single
5 subject because if the Board wants to change its mind, I
6 guess the title becomes moot. So if that's okay with
7 Mr. Gelender. Are you okay with that?

8 MR. GELENDER: Yes.

9 MR. HOBBS: We'll stick with the single subject
10 question, that aspect of the Motion for New Hearing.

11 Ms. Bateman -- well, at least I have questions
12 that relate to title, I guess, so maybe I don't have any
13 questions on the single subject at this point.

14 MS. BATEMAN: Okay.

15 MR. HOBBS: Thank you.

16 I'd like to hear from the proponents next. Both
17 petitioners representatives have signed up, but I expect
18 that their representatives may want to address the Motion
19 for Rehearing. So if you'll come forward and identify
20 yourself again for the record, please.

21 MR. JONES: I'm Gualberta Garcia Jones, and I'm a
22 member of the Personhood coalition that's funding this
23 amendment.

24 MS. BROWN: I'm Christy Burton Brown, and I'm
25 also a member of the same coalition.

1 summary aspect of the amendment, but they didn't touch the
2 amendment itself, so I just wanted to clarify that.

3 I think the guidance that we have from the courts
4 in Colorado as the single subject requirement make this a
5 very clear-cut case. In addition, we have the previous
6 two amendments which were related to this one amendment,
7 48 in 2008, Amendment 62 in 2010, in which the Board and
8 the Supreme Court issued unanimous decisions that this was
9 single subject.

10 I think Mr. Domenico's example of freedom of
11 speech is correct -- I think. If we were to institute
12 freedom of speech in the state constitution, it would
13 cover not simply speaking politically, but as the Supreme
14 Court has interpreted it, anything from pornography to
15 art.

16 And it's these foundational concepts, which the
17 people have the right to establish, are by definition
18 broad because they're the foundations of civil society, of
19 a lot of different aspects of our society.

20 And so I think an amendment that is foundational
21 by necessity is going to have a lot of different
22 applications and the court has addressed that exact issue
23 in -- let's see here -- in re: 1997, 1998 at the bottom of
24 the first page of the packet that I gave you, it says, "An
25 initiative with a single distinct purpose does not violate

1 the single subject requirement simply because it spells
 2 out details relating to its implementation. As long as
 3 the procedures specified have necessary and proper
 4 relationships to the substance of the initiative, they're
 5 not a separate subject."
 6 Now, I think the ultimate proof that this is
 7 actually a single subject and the opposition is being
 8 disingenuous in actually recognizing that it is, is that
 9 in the past we didn't lay out any of these scenarios. We
 10 simply defined the word "person." And in their campaign
 11 propaganda, they actually address the very issues that we
 12 decided to include in the amendments.
 13 So they recognize that those were functionally
 14 related to the amendment. Then they took what is their
 15 right in our democracy, our republican democracy, to go
 16 ahead and try to convince people that, you know, all of
 17 these scenarios would play out the way they said they
 18 would.
 19 Well, we wanted to actually address that within
 20 the language, and that's why we put it in. But obviously
 21 it is a single subject. They recognized it, as I think
 22 the Board and the Supreme Court has, as well.
 23 Another thing is, it's difficult to understand
 24 the argument of the opponents in that they try to argue
 25 simultaneously that this is too vague and too broad, and

1 then they also try to argue that it's multiple subjects.
 2 It seemed like those two things are incongruous.
 3 If they're saying that it's too vague -- and they said
 4 that last time as well -- and then we go ahead and specify
 5 it, then they can't argue the other side at the same time
 6 and say it's a multiple subject -- where we're trying to
 7 clarify the vagueness that they've asserted.
 8 And that I think played out in the elections
 9 where people obviously bought their arguments, and so we
 10 tried to modify our amendment to clarify that and
 11 definitely not to confuse or to try to piggyback
 12 euthanasia or stem cell research or make the amendment
 13 more powerful in that way. We're simply trying to clarify
 14 it.
 15 So I think with that, that's pretty much our
 16 comments on single subject. I also have some comments on
 17 the catch phrase, and then also the use of -- we prepared
 18 a document for you on the specific use of the wording of
 19 the stages of development, so that you can see where it's
 20 been used in legislation and in the courts as well.
 21 MS. BROWN: In addition, I know that Ms. Bateman
 22 was talking about the words "innocent person" not being
 23 defined, and so we did some research in Colorado law on
 24 the use of the word "innocent," and it's a person in
 25 current Colorado law and the Colorado Revised Statutes

1 mention the word "innocent" 86 times, 31 of those times
 2 are in the criminal code, and not one of those times is
 3 "innocent" or "innocent persons" defined specifically.
 4 So clearly the Colorado legislature finds that
 5 the word "innocent" and "innocent persons" is self-
 6 explanatory. Even, for example, in the murder statute,
 7 murder in the first degree, it specifically says, "A
 8 person commits the crime of murder in the first degree if
 9 by perjury or subordination of perjury he procures the
 10 conviction, execution of any innocent."
 11 "Innocent person" is not defined in that section
 12 of Colorado law. So we believe that for us to be required
 13 to define a word that Colorado law nowhere defines would
 14 discriminate against specifically what we're doing and we
 15 don't believe that specific definition is necessary since
 16 the legislature has found it to be self-explanatory.
 17 MR. HOBBS: Questions from the Board?
 18 Maybe I'll start because I may be the most
 19 troubled about this issue. And I want to maybe go over
 20 some ground that we covered at the first hearing because I
 21 want to make sure that I understand the measure.
 22 In your own words I'm wondering, you know, what
 23 is the single subject of the measure and what is the
 24 purpose of it? The title set by the Board described the
 25 single subject as "a prohibition on the intentional

1 killing of an innocent person."
 2 So I'd like to hear it in your words what do you
 3 think the single subject is and what's the purpose of the
 4 measure?
 5 MR. JONES: Right. The single subject, and the
 6 -- well, first the single purpose is -- of the Right to
 7 Life Amendment is to guarantee the application of the
 8 right to life equally to all persons. And the single
 9 effect of that purpose is that the amendment will prohibit
 10 the intentional killing of innocent persons.
 11 MR. HOBBS: So the purpose is fairly broad, to
 12 prohibit the intentional killing of innocent people --
 13 persons.
 14 MR. JONES: That's the effect. The way we worded
 15 it in the amendment and also as I like to explain it is
 16 that the purpose is to protect this right to life
 17 equally. And what that entails when you protect
 18 somebody's right to life means you can't take their life
 19 and, therefore, the effect is that we prohibit all the
 20 intentional killings of innocent people.
 21 MR. HOBBS: And the Motion for Rehearing says
 22 that the purpose of the measure is the proponents admit is
 23 to make euthanasia, stem cell research and abortion
 24 illegal. Would you agree with that?
 25 MR. JONES: Yeah. I don't think we said that. I

1 think maybe in speaking with you back and forth we said
2 that those procedures would be affected because they deal
3 with the taking of an innocent life as defined in the
4 amendment, and so that would be affected by this. But we
5 felt that hasn't been a source of confusion.

6 I think when people talk about the right to life,
7 immediately stem cell research is one of the things that
8 we debate that, you know, opposing political sides spend
9 millions, if not tens of millions of dollars, to argue it
10 in the public arena.

11 MR. HOBBS: I believe you stated at the last
12 hearing that one of the purposes of the measure is to
13 constitutionalize prohibitions against murder. Is that a
14 fair statement?

15 MS. BROWN: Well, I think we said that it would
16 have that effect since we're writing it into the
17 constitution. But our purpose is to ban intentional
18 killings, and I think this process does constitutionalize
19 it, yes, we agree that it does that.

20 MR. HOBBS: In that murder basically is already
21 prohibited but it's not in the constitution.

22 MS. BROWN: Right, right. And we would also say
23 that murder is not prohibited against all persons as we
24 define it.

25 MR. JONES: Right. And I would say that I think

1 that murder is already prohibited within our state
2 constitution. I think, you know, if we had a crazy
3 legislature that decided to legalize murder, we could
4 bring a lawsuit under the state constitution even to say
5 that the equal protection and the right to life in the
6 state constitution isn't -- even as it's understood now
7 before our amendment passes, it would be violated.

8 MR. HOBBS: One of the things -- and I'm not sure
9 where this leads, but one of the things that I'm trying to
10 look at is how this measure does differ from previous
11 versions that you've mentioned. And for me personally
12 this one is harder to understand.

13 The measure in 2008 was the most specific, I
14 think, in defining "person" to mean any human being from
15 the moment of fertilization. And in 2010, I think it was
16 a little less precise with respect to the biological
17 reference to fertilization in that it defined "person" to
18 include "any human being from the moment" -- well, here it
19 does say "moment of fertilization."

20 But here -- and we touched upon this last time.
21 Here I had to ask at what -- biologically at what point in
22 time, you know, does this reach back because it just says
23 "any stage of development."

24 Ultimately when you work your way down through
25 the definitions, you get to a definition that says we're

1 talking about a member of the species homo sapiens at any
2 stage of development.

3 And I still have been trying to figure out how
4 one would know that that means "at the point of
5 fertilization," that that's when a life becomes a member
6 of the species homo sapiens.

7 MS. BROWN: Sure. And I'll speak to that. I did
8 give you a document that references some of the research
9 that I did on that. But we took our definition, "a member
10 of the species homo sapiens in every stage of development"
11 from the Unborn Victims of Violence Act, the federal law
12 that's been passed, as I think we mentioned before.

13 But looking through congressional records when
14 Congress was discussing that specific law, they
15 demonstrate that they use that definition because it is
16 already an established legal definition. 27 states and
17 the federal government currently protect unborn victims of
18 violence from the very beginning, and several of the
19 states use the exact same definition as the federal
20 government.

21 At least ten court challenges -- I think even
22 more than that -- have been brought against states that
23 use "that protect the unborn child from any stage of
24 development" and they've always lost. This definition has
25 always been upheld many times it's ever been challenged in

1 court.

2 And, in fact, the State of Utah vs. Roger Martin
3 MacQuire, the Utah Supreme Court, they upheld the law and
4 they ruled that the common sense meaning of the term
5 "unborn child" is a human being at any stage of
6 development in utero.

7 So Utah law actually had not even used that
8 definition. The Utah Supreme Court ruled that that was
9 the common sense definition of the term "unborn child."

10 Now, the reason we don't specifically say "in
11 utero" or "unborn child" is because we are extending the
12 right to life to all persons, not only the unborn child.
13 That's why we can't use that portion of the definition.
14 But the rest of our definition matches with what multiple
15 state courts and U.S. Congress has found is the legal
16 definition.

17 Yeah. And also from the Congressional Records --
18 I referenced this in the document as well -- both --
19 people on both sides of the issue were very clear that
20 they recognize that every stage of development included
21 fertilization in the embryonic stage. If you look in
22 Congressional Hearings, it's clear that both sides knew
23 that that's exactly what that definition meant.

24 MR. HOBBS: Well, in some the courts have been
25 consistently interpreting and, you know, was aware of the

1 -- you had mentioned this last time that the language was
2 used in the federal law, which doesn't apply to abortions,
3 but I think it still does apply to unborn children.

4 MS. BROWN: Exactly.

5 MR. HOBBS: But it sounds like you're saying the
6 courts have been pretty consistent with finding that that
7 language means from the point of fertilization.

8 MS. BROWN: Yes. I mean, not every single state
9 that's been challenged has used this exact definition that
10 the federal law used, but 27 states, whether they use this
11 exact definition or a slightly different one, included
12 unborn children from the moment of fertilization or every
13 stage of development and, yeah, the courts have never had
14 a problem with that definition.

15 MR. JONES: Another element is the reason why we
16 chose different language last time is we leaned more
17 towards the medical ethics language that's used, and that
18 was biological stages of development. That comes directly
19 from the standard nomenclature that's used in embryology
20 to classify the development of a human being, and it's
21 based on the Carnegie stages of development.

22 And so with this language I think we're able to
23 bridge and sort of take the best of both the scientific
24 definition and the legally recognized definition.

25 MS. BROWN: I'm sorry. I also failed to mention

1 that there is another federal law that uses this
2 definition as well, The Innocent Child Protection Act,
3 that the House actually passed unanimously and would ban
4 the federal government from executing any pregnant women.
5 It used the same definition, "a member of the species homo
6 sapiens at every stage of development" when defining an
7 unborn child.

8 MR. HOBBS: You know -- and I'm still trying to
9 think this through in my mind, but I'll just go ahead and,
10 kind of, cut to the chase where my greatest difficulty is
11 in the single subject area, is that at least what the
12 Title Board has expressed as a single subject, you know,
13 which I think is fair based on the language of the
14 measure, is what this measure is about is a prohibition on
15 the intentional killing of an innocent person.

16 I'm not quite sure the best way to articulate
17 this, but I think there is an argument that there is a
18 kind of logrolling going on, in that that's what it
19 appears to be about on the face of it. But if you do work
20 your way down through the definitions, the primary effect
21 really relates to abortion.

22 MS. BROWN: Well -- okay. One thing that we
23 would say about that is that, say, we took away the issue
24 of killing innocent people. We talked about another issue
25 in the law and everyone agrees on, like theft, stealing,

1 and say we put a broad ban on all stealing, and opposition
2 made the argument that, Oh, well, some people are going to
3 want to allow stealing from businesses but not just
4 stealing from homes, and we're forcing people to vote for
5 both by doing this, you know, if stealing from businesses
6 is the only acceptable thing in that world.

7 Clearly, the intent of that amendment would be to
8 ban all stealing, if people bringing that forward would
9 believe that all of it was equally wrong. And so we in
10 bringing this amendment forward in regards to the public
11 debate on the issue believe that abortion is equal to
12 murder. Abortion is equal to killing any other human
13 being.

14 And so it's not logrolling. We're just including
15 every kind of killing of any human being, innocent human
16 beings as illegal under this.

17 MR. JONES: I would like to comment, too, that in
18 2009, I believe, the State Supreme Court ruled -- was it
19 2009 in January? Okay, November of '08. They were ruling
20 on whether the definition of the term "person" was too
21 vague and whether that was sort of logrolling abortion
22 into it. And obviously the debate at the election stage
23 was about -- mostly about abortion and the most
24 contentious application of this.

25 You know, if we were to make the argument that

1 we're trying to logroll, I think we would have -- the
2 person that's making that argument would have a better
3 argument saying that we're trying to logroll it when we
4 just say the word "person" as opposed to in this amendment
5 we actually laid out, for example, abortion in cases of
6 rape and incest -- not a politically favorable position to
7 have I think if you poll, but it's something that we felt
8 we needed to make sure clear in our amendment.

9 So I think this amendment is clearer because of
10 all of those applications. I think people reading it also
11 when they see the "right to life," I think that people
12 that are even totally disconnected from political
13 discourse are going to recognize what this is about.

14 So I would just disagree. I think this one is
15 even more clear than in the past, you know, previous.

16 MR. HOBBS: Well, two things about that. I mean,
17 number one, I'm not remotely suggesting that there is any
18 attempt to logroll or deceive or anything else. I
19 understand the way the measure has developed over time and
20 how you -- I think I understand how you went from there to
21 here, so I'm not suggesting any intent to logroll.

22 And I do recognize that with respect to the
23 details, the measure is more specific than the previous
24 versions. I'm just focusing on the fact that the previous
25 versions simply address the definition of "person" and how

1 early that definition applies in the stages of human
2 development.

3 This measure -- and it goes in the other
4 direction and has a much broader impact. It prohibits the
5 intentional killing of an innocent person. It's a much,
6 much broader measure on the surface, and that's something
7 I would think everybody could agree with, that it
8 should -- that it's wrong to intentionally kill an
9 innocent person.

10 So that's why it's a little bit like logrolling.
11 You get support for the main proposition that's expressed
12 as a single subject in the measure, but once you really
13 get into the definitions, it sounds like that's where
14 we're back really trying to achieve the purposes of the
15 previous versions of the first title.

16 MS. BROWN: If I understand what you're saying
17 correctly, I think you're saying that in '08 and '10 it
18 was clear that we were talking about only the beginning
19 stages of life, and now you're saying we're getting to
20 later stages of life, as well.

21 Okay. Well, my comment on that would be that
22 it's actually -- while it may appear that way to some
23 people apparently, it's not exactly true. In '08, for
24 example, I was one of the co-sponsors in '08, and we said
25 "from the moment of fertilization." In other words, we

1 weren't saying "only at the moment of fertilization." We
2 are saying that is the starting point and it goes to the
3 end.

4 So in all reality, in '08 and '10 and now we're
5 including every stage of human life. So does that make
6 sense what I'm saying, from the moment of fertilization on
7 into the future forever?

8 MR. HOBBS: That's kind of what I think I'm
9 saying.

10 Mr. Domenico.

11 MR. DOMENICO: I don't see any real logrolling
12 problem here. I do potentially see a problem that I think
13 you've identified, and I'm not sure the proponents would
14 disagree that as we've stated the single subject, it
15 doesn't really capture the most important part of what
16 would be going on here.

17 The important part of what you're trying to do is
18 extend the definition. Because as you've said, generally
19 killing an innocent person is already illegal, prohibited.

20 What you're trying to do here is extend the
21 definition of "person" beyond what it's currently defined
22 as. And so my question is, for Mr. Hobbs and for the
23 proponents, whether we could solve that by rewriting
24 the -- state single subject in a way that is more true to
25 what's actually the major purpose of what's going on,

1 which has to do with defining "person" in a new way, as
2 opposed to "prohibiting killing an innocent person."

3 I mean, I think that one point Mr. Hobbs made
4 that I agree with is, if all you had was Section 2 of this
5 measure, you didn't have Section 3, you would have
6 something very different, right? It might not do much, at
7 all --

8 MS. BROWN: Correct.

9 MR. DOMENICO: -- if you didn't have the
10 definition of "person."

11 MS. BROWN: Yes.

12 MR. DOMENICO: And so the single subject as we
13 have it written now mostly talks about number -- Section
14 2, which is really -- I understand why it's in there and
15 it makes perfect sense to me, but it's not really the
16 major movement that this would entail.

17 So to me, if we focus more on in the single
18 subject, it might solve this problem and some of the other
19 problems that the petition for rehearing raises and that
20 I've been thinking about with the title.

21 MR. HOBBS: Well, you know, and that's
22 theoretically possible, but I think that is my
23 difficulty. I don't know how we narrow or refocus the
24 title without losing sight of the fact that the measure
25 does, in fact, prohibit the intentional killing of an

1 innocent person. I mean -- and I'm led to believe that
2 that's intended to have a substantive impact.

3 Now, the comments today were a little different
4 than last time in that, well, the constitution already
5 prohibits the taking of a life. I'm not, quote, trying to
6 decide whether that's the case or not.

7 MR. DOMENICO: I'm sorry to interrupt, but I
8 guess my question is, I find it sort of implausible that
9 if we focused the title more on expanding the definition
10 of "person," that someone would say, Oh, yeah, you know
11 what, I do want to expand the definition of "person" in
12 the law and the constitution to include every member of
13 the species homo sapiens at every stage of development,
14 but I'm really shocked to find out that this prohibits
15 killing them.

16 In fact, that just doesn't seem to me to be a
17 potential surprise to anyone, that this would include a
18 prohibition on killing what are now defined as persons.
19 Because as you said, everybody sort of knows that that's
20 generally illegal already. So to me that part of it is
21 not a surprise.

22 The real action here, the real difference as
23 you've highlighted between this, there are sort of two
24 differences here. One is the way a person is defined, and
25 the second is Section 2, the specifics about what's

1 prohibited.

2 Section 2, though, doesn't contain a lot of

3 surprises to me. The definition of "person" can just be

4 repeated, as we've already done in the title.

5 And so then to me -- if this were to pass, Maury

6 and I would have to figure out these legal issues about

7 what exactly the definition means. But it's not really

8 relevant, as I see it, to the Title Board's obligation to

9 figure out the biological difference between this one and

10 the last one when we can just say, here is what it says,

11 and people can figure out that that is going to entail

12 some disagreement at some point.

13 So I think if -- I think I agree that the way the

14 title is written now contains some problems. I don't

15 think that they're single subject problems, or that we --

16 that it's so hard to figure out what 3(b) means that we

17 simply can't set a title because I don't think we need to

18 figure out what 3(b) means, when we can just say, this is

19 what the measure would do. It would put into law this

20 definition.

21 So that's what I would sort of focus our energy,

22 is on trying to see if we write the title in such a way

23 that it is accurate about the subject.

24 And so that's it, I guess, where I would urge us

25 to move.

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1 MR. JONES: The ordering of how we chose to order

2 the sections is important and has a -- we have a reason

3 why we did that.

4 What we're trying to do is -- I guess it's

5 similar to how in the Declaration of Independence there is

6 ordered liberty -- life, liberty and property, and we

7 tried to lay out the greatest iteration of our purpose in

8 the first section.

9 And I do notice that the title actually goes

10 right into the effects, and that was a decision, I guess,

11 you made in trying to find the clearest way to explain

12 this to the public. But for us it's quite important that

13 we are able to portray our efforts as saying we're trying

14 to apply the right to life equally to all persons. That's

15 a point that we want to communicate to people. That's

16 sort of our platform. That's why a lot of us are doing

17 this thing.

18 And the subsequent sections then go ahead and

19 apply that initial statement. And so I think keeping that

20 order is important for us because it more accurately

21 reflects the purpose and the hierarchy of purposes that we

22 have. I guess not purposes of it. It is one purpose, but

23 the purpose versus the effects and that differentiation.

24 MS. BROWN: There is a reason we chose this

25 format versus the '08 and '10 format, so we wouldn't want

1 to see the title or ballot question be the same as it was

2 back in '08 or '10. But like Gualberto said there's a

3 reason we said, we're equally applying the right to life

4 to all innocent persons.

5 MR. HOBBS: Well, just to comment, I'm just

6 having trouble getting past that first sentence in

7 Subsection 2. I mean, it may have little import, and it

8 may be the real substance like the previous versions are

9 down in Subsection 3. But what's new and different to me

10 is that provision that the intentional killing of innocent

11 persons is prohibited.

12 And I'm just assuming that that means something,

13 and that's just where I'm hung up.

14 MR. JONES: Well, I think they're functionally

15 and they're logically related to each other in our world

16 view that we're trying to promote through this amendment,

17 and that is that an equal right to life by definition has

18 the effect of protecting all innocent persons from having

19 their lives taken, and so we set out the equal right to

20 life. That's our purpose. The effect of it, you can't

21 kill, you know, a child in the womb; you can't kill a

22 child in a IVF clinic who is being experimented on, or any

23 member of the species homo sapiens that would be

24 considered. Whether they're in a petri dish, in the womb,

25 in the nursing home, you can't kill them.

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1 And that's the single purpose of this.

2 MR. DOMENICO: And, Mr. Hobbs, I agree with you

3 that Section 2, the first sentence is material and

4 important. If you didn't have Section 2, my reading of

5 this would be that abortion and these things might still

6 be legal, but it would establish that because you don't

7 have a state action issue with private action that takes a

8 life.

9 So this, I think, would, in fact, make illegal

10 things that otherwise aren't illegal, and I don't think

11 it's not material, but I also don't think it's the single

12 subject of the measure, which is how the title is written

13 now -- that that's the single subject.

14 I think the subject is something more akin to

15 extending rights to all persons or to all humans

16 regardless of this stage of development.

17 And then I think you could write the rest of the

18 title after the "in connection therewith" language to

19 include this material term to a -- or to the first

20 sentence of Section 2 to be included in the title but not

21 to be a single subject, which is what is used as now.

22 MR. HOBBS: Let me just ask -- it may be a

23 related question. The Subsection 1 says, "The right to

24 life in this constitution applies equally to all innocent

25 persons." The previous versions reference specifically in

1 the Bill of Rights, Article 2, Sections 3, 6 and 25.
2 This doesn't reference specific sections of the
3 Constitution. Does it mean the same, or is it intended to
4 be broader?

5 MR. JONES: Basically it's a question of
6 communication. We felt when we were circulating the
7 petition -- and I think I got like 2,000, 2500 signatures.
8 I probably talked to like 20,000 people or something.
9 People were confused. They said, well, what's Section 3?
10 I don't know whether it sounded legalistic and it made
11 them defensive. And so those sections deal with the right
12 to life.

13 And so I think the application is basically the
14 same thing. The right to life is mentioned specifically,
15 which is why I think it's not a catch phrase. But people
16 don't know it when you says Sections 3, 6 and 25. So
17 that's the reason.

18 To answer your question, I think it is
19 essentially the same -- has the same affect.

20 MR. HOBBS: Well, any other questions,
21 Mr. Gelender?

22 MR. GELENDER: No.

23 MR. HOBBS: Thank you, very much.

24 Before I return to Ms. Bateman, I'd like to find
25 out if there is anybody else who wishes to testify on the

1 get voters to support this measure who may not otherwise
2 based on a different subject.

3 So that would be my response. Do you have any
4 questions?

5 MR. DOMENICO: Who exactly do you think it would
6 -- who are the sort of groups that you think would be
7 logrolled into voting for this who otherwise -- because I
8 know we talked about fleeing suspects and those sorts of
9 things last time. I don't find any of that plausible.
10 But I do think it's true that this would affect
11 euthanasia, as well as in vitro, certain types of in vitro
12 fertilization and abortion, obviously.

13 And I assume you're right, that while there are
14 groups opposed to and in favor of those things are --
15 they're not all the same people. There are different
16 people among each of those groups. But just because
17 they're -- you could write a measure that only dealt with
18 abortion, or you could write one that only dealt with
19 euthanasia.

20 But that's not -- writing one in such a way that
21 it includes all that is not necessarily logrolling, is it,
22 just because some people might care more or less about one
23 part of it.

24 MS. BATEMAN: I think that's the intent though.
25 It needs this omnibus type effort in order to get more

1 single subject question regarding #46?

2 If not, then if you would like to come back and
3 let's see if you would like to respond to the arguments of
4 the proponents, and I'll see if the Title Board has any
5 additional questions for Ms. Bateman.

6 MS. BATEMAN: You know, it was interesting, and I
7 may stand corrected, but I do believe that they have now
8 changed the subject, that it was set out in the title to
9 be the "prohibition on the intentional killing of innocent
10 person." (Inaudible) right to life, with the effect being
11 -- I believe at the previous hearing they made it clear
12 that they intended the single subject to be the
13 prohibition on intentional killing of an innocent person.
14 So it seems to me a little bit of a flip-flop from prior
15 hearing to today.

16 I'd also mention that in terms of a logrolling
17 agenda, I think that it a fundamental concern that we
18 have. They say that it's prohibiting all killing. And I
19 think people would be very surprised to see when there is
20 only reference to certain forms of -- or not even -- to
21 methods of birth control and to in vitro fertilization
22 that it would apply again to euthanasia, to "do not
23 resuscitate" orders, to police officers chasing suspects.

24 I think that's absolutely something that would
25 surprise folks, but I also think again it's intended to

1 support from perhaps other voters who would not be so
2 inclined. I think euthanasia is a very good example of
3 that.

4 MR. DOMENICO: But they are connected to each
5 other, right, in that they want to define "person" broadly
6 in such a way that it covers those things.

7 MS. BATEMAN: They have very political feelings,
8 very different political beliefs.

9 MR. DOMENICO: I agree with that.

10 MS. BATEMAN: Such as euthanasia. So again,
11 maybe vote for one, yet you're creating multiple subjects
12 within that because you have to vote for one.

13 MR. DOMENICO: But they have to be -- for it to
14 be an impermissible single -- violation of the single
15 subject, it can't just be that some people would prefer
16 one or the other or that you could split it up into
17 multiple measures. Because that's true about pretty much
18 every measure we get, almost. Maybe the first one we
19 heard today, maybe not. Even that one, though, perhaps.

20 But in most of these, you're going to be able to
21 split it up. And what we've been told is they have to be
22 unconnected to one another, these effects or purposes.
23 And these seem connected to each other, even if not in
24 everyone's mind.

25 MS. BATEMAN: Certainly not in the majority of

1 peoples' minds.
 2 But the point is, again, the effort is to create
 3 a right to life based on innocent persons, this
 4 (inaudible) abortion, without mentioning that word. But
 5 the point is, it's creating a new category of person, also
 6 creating a right to life. And the problem you have, for
 7 example, euthanasia, is, you have all of a sudden a
 8 prohibition on what was otherwise very legal behavior --
 9 for example, an advanced medical directive or a DNR. Now
 10 this is a prohibition.

11 That's not stated in here. And folks who may be
 12 opposed to euthanasia may support abortion. I mean, this
 13 is the fundamental problem, which this is not connected
 14 if you're putting these very different subjects together
 15 under what they say is a right to life.

16 MR. HOBBS: Well, let me try to get your opinion
 17 about focusing on the word "incongruent." And I'm looking
 18 at the Single Subject Statute I-40-106.5, which talks
 19 about how to apply the single subject rule. And it says
 20 that one of the purposes of it is to forbid the treatment
 21 of incongruous subjects in the same measure, especially
 22 the practice of putting together in one measure subjects
 23 having no necessary or proper connection for the purpose
 24 of enlisting support of the measure, et cetera, and thus
 25 securing an adding of measures that could not be carried

1 on their own merit.

2 Well, I'm fine on this part of it, but I have a
 3 question coming. I sort of see this as a potential
 4 logrolling situation that's described there because there
 5 is two broad principles here that seems to me everybody
 6 could agree on the way the measure is drafted now -- that
 7 the right to life in this constitution applies equally to
 8 all innocent persons and the intentional killing of any
 9 innocent person is prohibited.

10 Everybody can get behind that. But what they
 11 can't get behind is probably something much more
 12 controversial in the details buried in the measure.

13 My difficulty in finding a single subject
 14 violation, though, even if that's true is, are those
 15 incongruous? That's the difficulty. I can see the point
 16 of view of the proponents, I think, that this is all
 17 quite, you know, harmonious. It really is all one thing,
 18 even though I'm sort of seeing how we can enlist support
 19 for broad feel-good principles to enact something that is
 20 very controversial.

21 So I'm hung up on the word "incongruous" right
 22 now. So can you convince me that there really are
 23 incongruous subjects, separate subjects, not properly
 24 connected to each other?

25 MS. BATEMAN: I guess our argument would be that

1 was that it was somebody who hadn't been adjudged guilty
2 in a court of law. And I think that's where that comes
3 from.

4 That was obviously sort of something that we made
5 up during our last hearing and not necessarily part of the
6 measure. So I think that's where it came from. I'm not,
7 as I said, that concerned that all those scenarios would
8 exactly fall within it.

9 I do agree that this would seem to cover
10 euthanasia and certain -- a number of things that it would
11 make illegal things that are constitutionally illegal,
12 things that are currently only statutorily prohibited, and
13 certain other things that aren't even -- like euthanasia
14 and some instances, that aren't even statutorily
15 prohibited.

16 That I think would happen even without Section
17 3. And so I do understand that part of it. But I think
18 that just to explain where I think that language -- that
19 discussion came from.

20 MR. JONES: I guess it's just I would say, you
21 know, something as simple as "innocent," which Christy
22 mentioned and you have in your little brief there that the
23 legislature itself doesn't define it. I think, you know,
24 if you look across dictionaries, "innocent" means not
25 guilty of a crime, and that's certainly what we intended

1 for it.

2 So I think in terms of possible confusion in
3 people's minds, the application of the word "innocent" to
4 "make my day" rules is just going to be absolutely
5 insignificant when you look at creating confusion.

6 MR. HOBBS: I'm going to ask maybe one last
7 question.

8 So stepping back away from it, I think what I
9 hear proponents saying is that in effect this measure
10 means the same as the two previous versions. It's drafted
11 a little differently, you know, but that's more
12 structural. It's a drafting approach -- the drafting
13 approach is different. But you don't view the intent or
14 the effect as being any different than the two previous
15 versions.

16 In fact, you actually believe that the detail in
17 Subsection 3 is really the only difference, and it's only
18 a matter of detail.

19 MR. JONES: That's correct. I think the same
20 parties will align on the same sides. You'll have the
21 pro-lifers for this, for the most part, and you'll have
22 the abortion industry on the other side funding the other
23 side. And so I don't think there is going to be
24 confusion.

25 I think we've tried -- we have tried to gain an

1 respect that.

2 As I've said, I'm not even sure that that gets
3 you all the way home with a single subject violation
4 anyway because they have to be incongruent subjects. And
5 I'm not entirely sure how to describe that, other than the
6 fact that maybe there is one or two very broad,
7 substantive provisions, and then there is some specific
8 provisions that deal with the application of the measure
9 to abortions basically.

10 So I think I would probably vote in favor of
11 denying title setting on the basis of single subject, but
12 I'm probably alone on that. I'll make a motion if it's
13 helpful, but I just want to hear further discussion from
14 the Board.

15 MR. GELENDER: I'm basically where Mr. Domenico
16 is and would find that there is a single subject, and I
17 could explain that, but I don't know that I will at this
18 point.

19 MR. HOBBS: Okay. Mr. Domenico, do you have
20 anything further?

21 MR. DOMENICO: I think I sort of explained my
22 understanding of this a couple times, at least, so it's
23 probably not worth repeating it. I mean, to me the only
24 real difference in this one from the last two that have
25 been approved is -- when I say "real," the only difference

1 between this measure and the others that's relevant to
2 this single subject and can we set a title question is the
3 effect of Section 2.

4 The details of how a person is defined is
5 different, the details of how this relates to
6 constitutional provisions is different, but not in any way
7 that's material to the single subject question, and I
8 think you're pointing to the word "incongruous."

9 Obviously, you could write this without Section
10 2, and I think it would have a different effect. As I
11 said, I think a measure that way -- and I actually thought
12 that the prior measures would not actually themselves, if
13 I remember right, have made abortion illegal. Without
14 Section 2 I don't think this would necessarily make
15 abortion illegal.

16 To me, Section 2 just sort of takes that extra
17 step that the previous ones didn't. That to me is not a
18 separate subject. Although I agree it would impact
19 certain things that without Section 2, like euthanasia,
20 might not be impacted at all.

21 But I don't think those are separate subjects. I
22 don't think it's so confusing that we can't set a title.

23 MR. HOBBS: If there is no other discussion, just
24 for the sake of closing out the issue, I'll go ahead and
25 move that the Board grant the Motion for Rehearing to the

1 extent that it objects to the measure on the basis of
2 single subject.

3 Is there a second?

4 Hearing none, that motion dies for lack of a
5 second.

6 And let's move to the portion of the Motion for
7 Rehearing that deals with the titles. Ms. Bateman, I
8 can't remember to what extent we got into that, but why
9 don't we hear from you first. You may have already
10 adequately presented things.

11 MS. BATEMAN: I did present that to the Board.

12 MR. HOBBS: Okay. No, that's fine. If you
13 covered it, then let's hear from the proponents of the
14 measure with regard to those issues that you raised
15 regarding the catch phrases and so forth.

16 MR. JONES: I'll be brief. My apologies to the
17 other measures here. Let's see here.

18 Okay. So dealing with the catch phrase, the law
19 from the case of In The Matter of Title, Ballot and
20 Submission Clause for 2009-10, on the second page it
21 states that the petitioners must prove, rather than
22 describing the initiative, the phrase provokes emotions
23 such that it impermissibly distracts voters from
24 consideration of the initiative's merits.

25 The language that was used in the right to life

1 and innocent person is language that's in the amendment
2 and the measure itself and it's material to the measure
3 itself. I think it definitely describes the initiative.

4 Now, it may cause emotion in the opposition in
5 that they ideologically are opposed to this, but I don't
6 think that's a standard for whether it's a catch phrase or
7 not, I would stipulate. It has to be impermissible and
8 impermissibly distract, and I think it actually focuses
9 people on what we're trying to do.

10 Again, the term "the right to life" is not only
11 well-known, but it's also part of all of our major legal
12 documents from the Declaration of Independence to the
13 federal constitution and state constitutions, and so it's
14 not akin to other findings.

15 I think there is one that was -- the court found
16 it was a catch phrase and it was "as quickly as
17 possible" -- was written into the amendment. That's sort
18 of not measurable, it wasn't part of the actual language.
19 It's clearly not as material as what we're including -- or
20 you included in the title.

21 So things like "preserve the social institution
22 of marriage" has been found -- that has been found to not
23 be a catch phrase. And I would imagine that people that
24 support homosexual marriages would be -- would have strong
25 emotions about that, in that they disagree that, you know,

1 a marriage between one man and one woman preserves the
2 social institution of marriage.

3 But that's not the question. I think it's pretty
4 explanatory.

5 Chris, if you want to mention anything.

6 MS. BROWN: Sure. The only thing I would mention
7 is that the reason also we would like the "right to life"
8 phrase to be in there, we don't think it's a catch
9 phrase. And just like you mentioned, we didn't number the
10 sections of the constitution in this amendment that were
11 going to be affected by this. And the only way we
12 describe what section of the constitution is affected is
13 by saying "the right to life."

14 I mean, without using that phrase the voters will
15 have no way to know what part of the constitution is being
16 affected -- yeah -- for the reason that we don't believe
17 that's a catch phrase.

18 MR. JONES: And I think that the same argument is
19 based upon the "innocent person," as well.

20 MR. HOBBS: Questions for the proponents?

21 MR. DOMENICO: I'm at some point going to have
22 questions, but I think only after we sort of get over this
23 threshold issue, I think.

24 MR. HOBBS: One of the things Mr. Domenico
25 raised -- and I'm looking forward to working on the

1 beginning of the title.

2 MR. DOMENICO: Same subject.

3 MR. HOBBS: But I have a question about the very
4 end. Because it seems like there is some merit to the
5 Motion for Rehearing with respect to the last line of the
6 title where we say, "It's specifically related to the
7 killing of a person created through rape or incest."

8 And I think the Motion for Rehearing says that's
9 really limited to rape or incest committed by the father.

10 MS. BROWN: Well, I mean, that's the only way
11 another innocent person would be created.

12 MR. GELENDER: That's what I'm trying to --

13 MS. BROWN: That's sort of a --

14 MR. HOBBS: Is that true, that incest has to be
15 committed by fathers?

16 MS. BROWN: Well, I'm saying for the mother -- I
17 mean, if the mother -- we're not talking about if the
18 mother commits rape and incest and she gets pregnant.
19 That's not what anyone talks about. I mean, that's a
20 completely different situation.

21 MR. HOBBS: I'm confused.

22 MS. BROWN: Like we're talking about if a child
23 is created by a father who admits rape or incest, then the
24 child shouldn't be punished for the crimes of his father.
25 That's what we're talking about.

1 MR. HOBBS: Okay. I think that's probably
2 unrefuted. But to the extent that the measure -- if it's
3 the killing of a person created through incest, in the
4 case of the mother's incest, she could terminate the
5 pregnancy because this measure does not apply to that.

6 MS. BROWN: No, she couldn't because -- okay.
7 Thank you. I'm sorry. I was a little confused. I'm
8 sorry. Okay. No, no, no. She couldn't because we
9 specifically say that any intentional killing of an
10 innocent person is prohibited, and so that child -- I mean
11 that's a very, very, very rare scenario, obviously. And
12 it does, I'm sure, happen, but that would be covered by
13 that.

14 The far more commonly discussed issue of incest
15 in all the stories I've ever heard put out there are a
16 father's rape and incest. And so that's why we chose
17 specifically to make a point about that -- not because it
18 makes any difference in our law whether or not we included
19 that provision, none of those children could be killed,
20 none of those abortions could happen.

21 It hasn't been talked about a lot and so we were
22 making a point.

23 MR. HOBBS: So to see if I'm clear, Subsection
24 2(e.) Paragraph (e) could be dropped and it wouldn't
25 change the meaning of the measure.

1 MS. BROWN: I think it's just clarifying the
2 measure specifically for people who have that question, is
3 what it's doing, but it wouldn't change the effect.
4 Either way those children are protected. We're trying to
5 clarify for the public who have questions about rape and
6 incest because those questions were brought up a lot in
7 '08 and '10.

8 MR. HOBBS: But to be faithful to the measure, we
9 should include the word "father" -- we should include the
10 reference to father in the last line of the title --
11 or maybe drop that clause all together because it doesn't
12 really add anything.

13 MS. BROWN: The last sentence of the title? I
14 see the last sentence in the title being "medical
15 treatment for a life-threatening physical conditions or
16 miscarriage" --

17 MR. DOMENICO: I think you've got the old staff
18 draft.

19 MS. BROWN: Oh, okay. Is there any copies? I'm
20 sorry.

21 MR. DOMENICO: This came up last time -- well, I
22 don't think we -- well, not quite specifically like this,
23 but this basic idea came up.

24 MR. JONES: Okay. We have the right one now.

25 MS. BROWN: Yeah. And I don't think we would

1 care if you wanted to add the words "of the father."

2 MR. HOBBS: Well, I guess one way to deal with it
3 -- well, one way would be just to drop that clause, that
4 last clause all together, Line 8 of what's on the screen
5 in the room now, and just to add at the end, "created
6 through rape or incest committed by the father."

7 MS. BROWN: I think either one you would be fine
8 with.

9 MR. GELENDER: I think what we're getting into
10 here was the "all or nothing" question. At the last
11 meeting Mr. Domenico suggested that maybe we don't need to
12 specify all the things, and I don't think either he or I
13 felt that strongly about it.

14 But I felt that it did add some value to specify
15 because these are issues that come up and they debate it,
16 and the voters probably like to see in one clear place
17 where it's written sort of neutrally and not in an effort
18 to sway them in one direction or the other.

19 But I also think I had the position that we
20 include all of those things or we include none of those
21 things. So if we're going to drop it, then I think we
22 have to reopen the issue of whether we drop all of this.

23 MR. DOMENICO: And I think the basic
24 understanding was that (a) through (e) are all just
25 clarifications of their intent of what -- how 2 would

1 interact with the rest of this, and so that was why we
 2 talked about getting rid of all of it or none.
 3 MS. BROWN: I think -- sorry to interrupt. If I
 4 remember right, we had talked about last time, that (c)
 5 could be important to include even if the rest were not
 6 included, because that would be seen as a possible
 7 exception.
 8 MR. DOMENICO: Right. I would be sort of the
 9 most unlikely one to be interpreted into the text of the
 10 language if it weren't in there and sort of the most
 11 surprising consequence of this. So I think I was most
 12 convinced that that one probably should stay.
 13 But I don't really find the possibility that a
 14 lot of voters might be concerned about the possibility of
 15 how this would affect mothers who get themselves pregnant
 16 through rape or incest as being very material in the sense
 17 of this sort of thing, that is likely to sway voters one
 18 way -- a significant number of voters that we typically
 19 include. But I also would -- it's not a big deal to me to
 20 include the language about the father either.
 21 MR. JONES: I think the purpose of (a) through
 22 (e) is they are all consistent with the effect and with
 23 the purpose as listed above, and what we're trying to do
 24 is give details related to the implementation, where it
 25 has said that it is permissible under single subject.

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1 And so we're not giving every possible detail,
 2 but we're giving the ones that actually the opponents
 3 mostly raised in the last public debate.
 4 MR. HOBBS: Any other questions? Thank you.
 5 Before I return to Ms. Bateman, is there anyone
 6 else who wishes to testify on the Motion for Rehearing
 7 with respect to the title set by the Board last time?
 8 All right. Ms. Bateman, would you like to
 9 respond to the proponents?
 10 I have at least one question for you, as well.
 11 MS. BATEMAN: I'll respond.
 12 MR. HOBBS: That's all right. Go ahead.
 13 MR. DOMENICO: I think I am persuaded, or at
 14 least close to being persuaded by your argument about
 15 right to life, but I also think we need to discuss the
 16 Section I's implications somehow. And I'm curious if you
 17 have thoughts about how that could be done in a way that
 18 doesn't make a mess of the whole thing without using -- I
 19 mean, the proponents are also right.
 20 While I think I agree with you that "right to
 21 life" is sort of a catch phrase, but it's also a
 22 constitutional term, a term used in the measure and that
 23 makes it a little bit difficult to avoid using it in a way
 24 that still captures what they're trying to do.
 25 I'm hoping that you might be able to help us out

1 here.
 2 MS. BATEMAN: I would like to be as most helpful
 3 as possible, but I certainly would not want to re-write
 4 the title. I would argue, though, that the catch phrase
 5 "right to life," that is -- that's (inaudible) it's your
 6 proposal to have language to help (inaudible). I think
 7 that it's one that, you know, creates a real difficulty to
 8 me (inaudible) particularly now it is a single purpose
 9 (inaudible).
 10 MR. DOMENICO: Well, I don't think we can -- I
 11 think we have to find a way to explain it. I don't think
 12 you can use the catch phrase problem to defeat the right
 13 to an initiative, and so I think we ought to figure out a
 14 way. So I appreciate that you don't have ideas for us,
 15 but maybe we'll come up with some and run them by you.
 16 MS. BATEMAN: I guess I don't want to put
 17 language into their title.
 18 MR. DOMENICO: Fair enough.
 19 MR. HOBBS: Let me run one idea by you. Would
 20 you feel better about it if we change Line 2 to be
 21 something like declaring that the "protections to life as
 22 provided for in the state constitution by all innocent
 23 persons"?
 24 MS. BATEMAN: I see problems with that. That
 25 eliminates (inaudible). Our point is, it said that this

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1 really just goes (inaudible) to sections already provided
 2 for in the state constitution as something different.
 3 MR. HOBBS: Yeah. I was trying to --
 4 MS. BATEMAN: No. And I -- certainly -- and I
 5 don't want to -- again this is their initiative. We
 6 certainly oppose it. I don't (inaudible).
 7 MR. HOBBS: All right. Board discussion, changes
 8 to the title set by the Board.
 9 Mr. Domenico.
 10 MR. DOMENICO: As I said in our -- again in our
 11 discussion, I think part of the problem -- as I understood
 12 part of the problem, the struggles we're having with
 13 Mr. Hobbs, had to do more with the way we characterize the
 14 single subject here than I think with the measure itself.
 15 And so I would start by trying to rewrite the "single
 16 subject" definition.
 17 And what I've come up with so far, and I'm
 18 certainly not committed to this, but would be something
 19 like an amendment to the Colorado Constitution concerning
 20 the extension of rights to human beings at all stages
 21 of development. Something along those lines that would
 22 capture what I think you accurately said is really the
 23 major effort. I think it is not misleading. It would
 24 tell people basically what they're reading about.
 25 And then I think your suggestion about this

1 change to a "right to life" would also be workable. We
2 made a change like that in the first one. I'm happy to
3 listen to other alternatives, so . . .

4 MR. GELENDER: We're thinking along the same
5 lines as Mr. Domenico. One area where I'm not thinking
6 along the same lines maybe is, I'm not sold on "right to
7 life" as necessarily a catch phrase, depending on how we
8 write it in this context.

9 Because I'm looking at Article 2, Section 3 and
10 it just says in the middle of it, "The right of enjoying
11 and defending their lives," talking about all persons'
12 inalienable rights.

13 So what we're really doing is extending that.
14 And I think if you use that phrase within the context of
15 extension and in the context of, you know, that it's
16 what's in the constitution already, I'm not sure it's as
17 much of a catch phrase as when it's looked at only in this
18 sort of limited abortion and reproductive rights context.

19 So the point being is, whether it makes sense to
20 start with something like "concerning the extension of the
21 right to life provided for in the state constitution to
22 every member of the species homo sapiens at any stage of
23 development."

24 And I really would like to actually make it
25 simpler and say something like "human being or person,"

1 but I know that opens a whole other can of worms, so I
2 think that they're in sort of a dry homo sapiens language
3 might have to be the way to go. But that would be sort of
4 an initial proposal.

5 MR. HOBBS: I would really like to avoid the
6 phrase "right to life" if we can. And I think you both
7 got an approach to improving the description of single
8 subject, but I would rather not say "right to life" if we
9 can avoid it without changing the meaning.

10 I think in this particular context "right to
11 life" takes on aspects of the catch phrase, I think, but I
12 agree that it can be defended. Section 25 of Article 2
13 says, "No person shall be deprived of life, liberty or
14 property without due process of law." It's not a right to
15 life exactly. It amounts to the same thing. It's a
16 protection, I think that's -- there may be a better word.

17 If we were in some other context, I wouldn't
18 mind -- be opposed to saying "right to life," but here I
19 think it's problematic.

20 MR. DOMENICO: Yeah. I mean, this is -- this is
21 always the problem when something that might be a catch
22 phrase is also part of the measure. And as you have
23 pointed out is also closely tied to existing language that
24 they're trying to enact.

25 And so I understand it is, in fact -- if it

1 hadn't already been adopted as essentially a slogan, the
2 name of major important groups, I think it would be the
3 most concise, straightforward, simple way to describe it.

4 But the fact of the matter is, it has been
5 adopted by -- I mean there are groups with that very
6 name. I see that the proponents are calling this the
7 Right To Life Amendment, which is certainly their right,
8 but it -- that is, in my view, very dangerous to then use
9 the name of the -- that the proponents are using as part
10 of their strategy in the title itself strikes me as
11 dangerous, right up against the line, if not over the line
12 of a catch phrase.

13 And so --

14 MR. GELENDER: Well, only to be a devil's
15 advocate -- well, I don't know if I feel strong about it
16 -- does it matter that -- I have note that if the other
17 side passes, it will be the exact same catch phrase to
18 rally their troops.

19 MR. DOMENICO: Right. I mean, there is something
20 in that -- I don't have the case in front of me -- the
21 catch phrase cases about that it misleads people into
22 thinking that the measure is about. They can use the
23 shorthand, and then people won't actually know what the
24 measure is about. That's the problem with the catch
25 phrase, and maybe it would be friendly if both sides

1 agrees.

2 But I know that there is not much, frankly, that
3 the two sides in these debates agree on, including
4 nomenclature, and I would predict that Ms. Bateman would
5 tell us that they don't agree this is about a right to
6 life. That it's about reproductive rights or something
7 else.

8 So I think this would be likely struck down as a
9 catch phrase if we were to use it, especially in the
10 single subject.

11 MR. JONES: I think the "right to life," whether
12 it's used by groups, is beyond our control. Also I would
13 say that the catch phrase -- what I think would be a catch
14 phrase is pro-life, just like if they had the Pro Choice
15 Amendment. I think those are the sort of catch phrases
16 that rally movements. The right to life is what describes
17 what we're trying to do.

18 And so, you know, when you talk about a movement,
19 you talk about the pro-life movement, and so that is a
20 difference. And I think the "right to life" because it's
21 foundational in our country, in our jurisprudence, I think
22 is not a catch phrase. It may be a catch phrase to some
23 people, but I think the application of it is clearly a
24 description of what we're trying to fight for.

25 So I think that is a distinction, "pro-life"

1 versus "right to life."
 2 MR. HOBBS: And I think my suggestion to you --
 3 if it's okay with Mr. Gelender -- is to start with
 4 Mr. Domenico's approach and then massage it from there.
 5 MR. DOMENICO: Yeah. I would just say, I think I
 6 agree with essentially everything that the proponents just
 7 said, but I still think that it may be a catch phrase and
 8 we should avoid it, if we can.
 9 MR. HOBBS: I think we can. That's why I would
 10 like -- if we can, I'd like to avoid it. I don't want to
 11 change the meaning. And maybe to belabor the point a
 12 little bit, actually the proponents made a reference to
 13 the English Language Education Proposal in 2000 where the
 14 title set by the Board said "requiring all children to be
 15 part of the public schools to be taught English both as
 16 rapidly and effectively as possible."
 17 The Supreme Court found that was an impermissible
 18 catch phrase, even though that exact language was in the
 19 measure. And that to me as a Board member was exactly
 20 what was the key operative provision. I was surprised at
 21 the outcome of that one.
 22 But you've been using the exact language of the
 23 measure in what I wasn't sure was intended, and we were
 24 struck down on that.
 25 MR. JONES: Just as a comment I would say that

1 defining it.
 2 MR. HOBBS: Correct.
 3 MR. DOMENICO: The implications are what would be
 4 laid out elsewhere. I mean, I've suggested in the past
 5 that we are far too -- try to be far too specific in our
 6 description of single subjects, and that we could serve
 7 everyone a little bit better about -- by making our
 8 definition of -- our statement of single subjects just
 9 really generic so they know, Oh, this is the one about
 10 defining human beings. And that would be it. And then
 11 you lay out the specifics elsewhere.
 12 But we haven't ever quite gotten to my
 13 understanding of that, so this is the best I've come up
 14 with. What this really -- the main point of this, the
 15 main subject of this, is the extension of rights, and then
 16 the rest of it sort of clarifies what those rights are and
 17 how that works.
 18 MR. GELENDER: And as always, briefly arguing the
 19 other side since as a bill drafter by trade, we try to
 20 give as much notice as possible a lot of times.
 21 One thing I would say is I think we're only
 22 talking -- first of all, I think we're only talking about
 23 one right with this measure, and regardless of the catch
 24 phrase, "rights" doesn't tell people anything. I mean, it
 25 could be the right to -- obnoxious about it -- you know,

1 "as rapidly as possible" in terms of its legal weight is
 2 completely different from something that's embedded into
 3 the very fabric of our governing documents.
 4 MR. HOBBS: I think I searched the constitution
 5 for the phrase "right to life." I could not find it.
 6 MR. JONES: Well, you said "the right to enjoy
 7 your life." That's as close I think as you can get. You
 8 can look at -- I think the Declaration of Independence
 9 does say "right to life," and a lot of our constitutions
 10 were based on -- at least the Bill of Rights and, you
 11 know, that whole understanding of our inalienable rights.
 12 MR. HOBBS: Anything that you want to tell the
 13 staff?
 14 MR. DOMENICO: Yeah. I think my suggestion was
 15 that in Line 1 essentially after "concerning" to delete
 16 "the prohibition" all the way through "person." Change
 17 that to "concerning" -- either "extending" or "the
 18 extension of to all humans or human beings at any stage of
 19 development."
 20 And then your suggestion, I think, was what's now
 21 on Line 3 about change, I think the right --
 22 MR. GELENDER: Incorporate the definition of
 23 person into the single subject essentially.
 24 MR. DOMENICO: Right. But to me the subject of
 25 this is extending rights to human beings as you're

1 the right of an unborn person to free speech.
 2 I know that's an absurd way of putting it, but
 3 couldn't we say something like "concerning the extension
 4 of the protection" -- maybe this goes too far with it --
 5 "the protection of human life provided for in the
 6 constitution to" -- what we said -- "homo sapiens or human
 7 beings."
 8 MR. DOMENICO: I understand what you're saying,
 9 but I also think these titles are not statutes. They're
 10 not legalistic documents. They're meant to inform voters
 11 of what they're looking at and being asked to decide.
 12 And so maybe we're talking about one right, but
 13 you have both pointed out two sort of different
 14 applications even of the "right to life," and the right to
 15 sort of -- the right to not be killed is now sort of
 16 something that I would argue to my students in Con Law
 17 classes is not a right otherwise. It's the statutory
 18 protection necessarily.
 19 And so in Con Law you might say well that's not a
 20 right, but it's sort of creating a right to that here.
 21 And so I think -- I don't have a problem with the plural
 22 of "rights," because it is broader than just one thing.
 23 And I think you can get to the language you and
 24 Mr. Hobbs were suggesting about declaring that the
 25 protections for life as provided for in the state

1 constitution, et cetera, would avoid the catch phrase,
2 address that. Then I think we would add after that
3 language about intentional killing.

4 I mean, I guess you could change the word
5 "rights" to "protections for human beings" -- "the
6 extension of protections for all human beings."

7 MR. GELENDER: That's what I feel. I agree. You
8 know, given the trailer and everything, I think you've
9 actually convinced me of the value of your approach.

10 MR. DOMENICO: Terrific. So that if we're fine
11 with that, I think Mr. Hobbs' suggestion about getting rid
12 of "right to life" and changing it to "protections for
13 life" avoids the catch phrase, is accurate, is I
14 understand not as useful for the proponent's purposes as
15 the previous version, but I just think avoiding "right to
16 life" is necessary and so -- yeah.

17 MR. JONES: I have a comment. Just with the
18 "rights," I would say that the opponents have actually
19 made the arguments to the public and spent money in making
20 these arguments that, you know, our amendment would force
21 women who are pregnant and traveling to get a passport for
22 the baby and that, you know, they have to -- if we pass
23 this amendment, we'll have to get driver's licenses.

24 And so I think it is a ludicrous argument. It's
25 been made, so just leaving it just as "rights" in general,

1 I think could be confusing in light of the tactics that
2 have been employed.

3 But I think as you wrote it right now, I
4 personally don't think it makes it any clearer, but if you
5 are concerned about the catch phrase, it's definitely
6 avoiding using the "right to life." We would rather have
7 it in there, but I think we can work with it.

8 MR. DOMENICO: I mean, I agree it's not clear.
9 It's probably a little bit less clear, but it avoids the
10 catch phrase problem.

11 Now, we can always go back to Line 2 and use our
12 favorite -- one of our favorite weasel words, "certain,"
13 to describe rights. So the "extension of certain rights"
14 would address this potential issue.

15 We always have to find a way to put "certain" in
16 the sentence precisely to not confuse anybody about
17 which -- that we are talking about every right, and that
18 might be worthwhile here actually.

19 MR. HOBBS: Personally, I prefer it the way it's
20 written on the screen at this point, but -- well, I'll
21 move those changes.

22 MR. DOMENICO: Second.

23 MR. JONES: Excuse me. I'm really sorry about
24 this, but I was just looking at "extension" in terms of
25 what sort of founding principles of our movement. You

1 know, we would say, well, the government can't extend
2 these rights. It can only recognize them.

3 So would you mind changing "extension" to
4 "recognition"?

5 MR. DOMENICO: Well, it's always fun to have
6 natural rights, but I think we have to sort of accept the
7 legal. What we're talking about here is the legal rights
8 and the legal extension of rights that the government
9 recognizes.

10 And so, obviously, I appreciate your
11 philosophical underpinnings and they are certainly valid,
12 but I think for our purposes we have to sort of say what
13 we think would actually be going on legally.

14 MR. GELENDER: On that, I would also point out
15 that there is sort of a -- I don't know what you call it
16 -- a legal principle, unlike the federal constitution,
17 which sort of is a grant of limited powers to the federal
18 government. The state constitutions actually limits the
19 inherent complete power of the state government.

20 MR. DOMENICO: Well, now we do get to have our
21 natural rights argument, because I think what he's arguing
22 is that, in fact, whatever the state constitutions'
23 plenary powers are, they don't extend to certain natural
24 rights. The State can't interfere with natural rights
25 that they argue this simply recognizes.

1 MR. JONES: Right. And it is more than just a
2 philosophical argument, I would say, because one of the
3 approaches for the subsequent litigation, which I fully
4 perceive that this or any other personhood that amendment
5 passes, is how would the federal government and the
6 federal constitution be applied?

7 And the 14th Amendment specifically prevents a
8 state from discriminating and applying laws unequal to
9 people, and that's really at the heart of what we're
10 trying to do here, so . . .

11 MR. HOBBS: Well, I think there is a motion and a
12 second.

13 No other discussion?

14 All in favor say "Aye."

15 (Response.)

16 MR. HOBBS: All those opposed, "No."

17 (No response.)

18 MR. HOBBS: That motion (inaudible).

19 (Inaudible) further changes to titles?

20 MR. DOMENICO: Well, we didn't get to this very
21 unpleasant topic of maternal rape and incest. As I said,
22 I'm not -- I don't believe it's necessarily material in
23 the sense that it would sway any significant number of
24 voters, which is typically what we're trying to capture
25 here.

1 We also now don't have any language about killing
2 innocent persons.

3 MR. GELENDER: You think it should be included?

4 MR. DOMENICO: I do. As I said, I didn't think
5 that was a good description of the subject, but I do think
6 it's material. I think without Section 2, as I said, I
7 don't know that this would -- in fact, I don't think it
8 would make abortion illegal under current law as it's
9 interpreted. And that it would -- and I don't think it
10 would affect. I think part of the opponent's objection is
11 that that's -- Section 2 is the only place where you get
12 into euthanasia.

13 And so I think that just a quick -- I mean, it's
14 certainly at least as relevant as the (a) through (e) that
15 we've got listed there. I mean, it's at least as
16 material, I think.

17 MR. HOBBS: Then could we -- along this lines,
18 maybe at the end of Line 4, end of that clause before the
19 word "define" insert "potential killing of any innocent
20 person"?

21 MR. GELENDER: As an alternative -- maybe it's a
22 little too long -- you could also on Line 4 just put a
23 comma after "equally" and put in a clause -- or after
24 "to," excuse me -- "applies equally to and prohibiting the
25 killing of."

1 MR. DOMENICO: I would probably actually put it
2 on Line 5 because the clarifying is really clarifying
3 Section 2. All those things we've listed on 5 through 9
4 are clarifying what Section 2, which is what we're talking
5 about now, applies to.

6 So I think Mr. Hobbs' language is good, but I
7 would put it after the semicolon on Line 5, I think.

8 MR. HOBBS: "Prohibiting the intentional killing
9 of any innocent persons"?

10 MR. GELENDER: I'll move it.

11 MR. DOMENICO: Second.

12 MR. HOBBS: All those in favor say "Aye."

13 (Response.)

14 MR. HOBBS: All those opposed, "No."

15 (No response.)

16 MR. HOBBS: That motion carries three to zero.

17 I would like -- personally, I think for accuracy
18 Line 10 ought to -- I hate to lengthen it, but I think it
19 would just be about three or four words. I propose adding
20 "committed by the father" at the end of Line 10. So it
21 would be "prohibiting the killing of a person created
22 through rape or incest committed by the father."

23 And I'll move it, to see if there is a second.

24 MR. JONES: I think if we are identifying the
25 sex, then it would be good to say "his" or "her." That we

1 also include that because we're talking about the
2 perpetrator on the victim.

3 MR. HOBBS: And what would be -- how would you
4 word it?

5 MR. JONES: You said "rape or incest committed by
6 the" --

7 MR. HOBBS: "Committed by the father."

8 MR. JONES: Oh, okay.

9 MR. HOBBS: Is that okay?

10 MR. JONES: Yeah.

11 MR. HOBBS: There was a second -- it looks like,
12 Mr. Ward -- "committed by the father"?

13 Further discussion?

14 MR. DOMENICO: My only question, I can't remember
15 if I brought this up last time. Because the actual
16 language of that provision refers to a child. The way
17 "child" is defined, I think matches up with "person," and
18 so I don't think that's inaccurate, if I'm reading the way
19 the definitions work.

20 But Section 2(e) talks about prohibiting killing
21 of a child. "Child" though is defined as a human being
22 prior to and during birth, which is, I think --

23 MR. HOBBS: I think that's a good point.

24 MR. DOMENICO: -- it doesn't conflict with what
25 we've written, but it's just different language.

1 MR. JONES: We said it includes a human being, so
2 that we obviously wouldn't want to exclude one-year-olds
3 and two-year-olds.

4 MR. DOMENICO: I think it's easier to leave it
5 actually as it is, in that we haven't -- a child isn't
6 defined so far in the title. And as long as it's accurate
7 the way it is, I think it's easier to leave it. I just
8 wanted to raise that.

9 MR. HOBBS: All those in favor say, "Aye."
10 (Responses.)

11 MR. HOBBS: All those opposed, "No."
12 (No response.)

13 MR. HOBBS: That motion carries three to zero.
14 Are there changes to the titles?

15 MR. GELENDER: I just have a couple of minor
16 technical things.

17 Because we went from "right to life" on Line 3 to
18 "protections for life," I think we have to have both
19 singular and plural clean-up on Line 4.

20 First, I don't know if we need to have the "as"
21 on the end of Line 3, so I think. I move that we delete
22 that "as," and then I would have that say "apply." I
23 think that's it.

24 MR. HOBBS: Protection for life by (inaudible).
25 Second to your motion?

1 MR. DOMENICO: Yes.
 2 MR. HOBBS: All those in favor say, "Aye."
 3 (Responses.)
 4 MR. HOBBS: All those opposed, "No."
 5 (No response.)
 6 MR. HOBBS: The motion carries three to zero.
 7 Any further changes?
 8 MR. GELENDER: Well, I suppose -- I mean I don't
 9 want to skip any procedural motion here, but I think a
 10 proper motion may be that the Board grant the Motion for
 11 Rehearing to the extent that the Board has changed the
 12 title and deny the Motion for Rehearing in all other
 13 respects.
 14 MR. DOMENICO: So moved.
 15 MR. HOBBS: I'll be opposed to it because it's
 16 the single subject issue, although I think these are
 17 better titles, but I'd like a second.
 18 MR. GELENDER: Yes, second. Sorry.
 19 MR. HOBBS: So the motion is that the Board grant
 20 the Motion for Rehearing to the extent the Board has
 21 changed the titles and deny the Motion for Rehearing in
 22 all other respects.
 23 Any other discussion? If not, all those in favor
 24 say, "Aye."
 25 (Responses.)

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 3 COUNTY OF LARIMER)
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 14 actions herein mentioned.
 15 In witness whereof, I have affixed my
 16 signature this day of , 2012.
 17
 18
 19
 20
 21 _____
 22 Katherine Richmond
 23
 24
 25

1 MR. HOBBS: All those opposed, "No."
 2 (One response from Mr. Hobbs.)
 3 MR. HOBBS: That motion carries two to one.
 4 That concludes action on #51.
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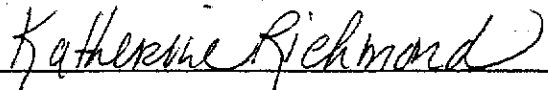
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17
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23
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