

SUPREME COURT OF COLORADO
101 West Colfax Avenue, Suite 800
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. S.1-40-107(2)
Appeal from the Ballot Title Board

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

Petitioners: LESLIE DURGIN, CATHY
ALDERMAN, and AMY PITLIK

v.

Respondents: ROSALINDA LOZANO and
KEVIN SWANSON

and

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

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Supreme Court Case
No. 2012SA10

OPENING BRIEF OF RESPONDENT KEVIN SWANSON

CERTIFICATE OF COMPLIANCE

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Donna Ballentine

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ISSUES PRESENTED

1. Does proposed Initiative 2011-2012 #46 violate the single subject requirements of Colo. Const. art. 5, §. 1 (5.5) and C.R.S. §. 1-40-106.5 by having multiple, unrelated purposes?
2. Does proposed Initiative 2011-2012 #46 violate the single subject requirements of Colo. Const. art. 5, §. 1 (5.5) and C.R.S. §. 1-40-106.5 by logrolling and including multiple new rights?
3. Does proposed Initiative 2011-2012 #46 have a hidden purpose unrelated to its central theme because it does not expressly mention abortion?
4. Is proposed Initiative 2011-2012 #46's Title clear and accurate for Colorado voters?
5. Is proposed Initiative 2011-2012 #46's Title misleading because it does not define the word "innocent" in connection with the term "innocent persons"?

STATEMENT OF THE FACTS

Kevin Swanson ("Respondent") is a Proponent of proposed Initiative 2011-2012 #46 ("Initiative #46") which would provide a new Amendment to the Colorado Constitution. The text of Initiative #46 is attached as Exhibit A.

The title set by the Ballot Title Board is 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.

Petitioners object to Initiative #46 claiming that it violates the single subject requirements of Colo. Const. art. 5, §. 1 (5.5) and C.R.S. §. 1-40-106.5 by having multiple, indistinct, and unrelated purposes and by engaging in logrolling.

Petitioners also base their appeal in their claim that the set title of the initiative is misleading because it does not fully advise voters of the effect of the new legal standard. Furthermore, Petitioners claim that Initiative #46's title is inaccurate.

STATEMENT OF THE CASE

Respondent proposed Initiative #46 along with Rosalinda Lozano, the other proponent. After the hearing at the Offices of Legislative Council and Legislative Legal Services, Respondent rendered his final version of Initiative #46 to the Secretary of State for the Title Board's review.

The first Title Board hearing was held on December 21, 2011. At this hearing, the Title Board voted unanimously that the single subject requirement was met and that a title could be set. Title was set, but Petitioners filed a Motion for Rehearing.

On January 4, 2012, the Rehearing was held. The Title Board reconsidered the matters of a single subject and setting a title. The Title Board voted 2-1 that Initiative #46 met the single subject requirements. It also voted to amend the title.

Following the rejection of the major issues claimed in their Motion for Rehearing, Petitioners filed a timely Petition for Review of the final action of the Title Board with this Court on January 9, 2012. Respondent hereby files his opening brief.

SUMMARY OF ARGUMENT

Initiative #46 addresses only one subject: it prohibits the intentional killing of any innocent person. This single subject has one distinct purpose and one clear effect:

to protect all innocent life at any stage of human development. In order to include all human beings as persons under this initiative, Initiative #46 has defined “person” as “every human being regardless of the method of creation” and “human being” as “a member of the species homo sapiens at any stage of development”. These definitions clarify Initiative #46’s purpose of equally protecting all innocent life at any stage of human development under the Colorado Constitution.

Prohibiting the intentional killing of any innocent person, no matter what stage of life he or she may be in, has the distinctly singular purpose of protecting all innocent human life at any stage of development. The fact that different classes of people including pre-born children and the elderly are protected by Initiative #46 does not create logrolling. It is the express intent of the Respondent that every person at every stage of development be protected equally under the Colorado Constitution. Therefore, rather than logrolling, including several classes of people goes to the single purpose and the very heart of Initiative #46. The single subject requirements have not been violated.

The title set by the Title Board for Initiative #46 very clearly states the initiative’s purpose and is not surreptitious or misleading. Initiative #46 sets out a new constitutional principle which protects all innocent humans at every stage of development and prohibits their intentional killing.

The initiative's new definition of person is listed out clearly for the voters near the beginning of the title. The effect of this new definition—protecting all innocent humans at every stage of development equally by prohibiting the intentional killing of the innocent—is also set out in clear language for the voters. The voters are put on notice of several obvious applications such as limiting only birth control and assisted reproduction that takes a human life. All of the applications listed in the title make Initiative #46's most obvious applications clear to voters. Other applications, as with any other constitutional amendment, can be further spelled out by the legislature and courts and, until then, is speculation and conjecture on the part of Petitioners.

LEGAL ARGUMENT

I. The Initiative Unequivocally Adheres to the Single Subject Requirement

A. The Initiative Has One Distinct, Clear Purpose

The law is very clear that neither the secretary of state nor any reviewing court should be concerned with the merit or lack of merit of a proposed constitutional amendment. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958). Thus, as long as Initiative #46 does not include two distinct, unrelated purposes, the merit of the initiative cannot be debated.

To run afoul of the single-subject requirement, the proposed initiative must have at least two distinct and separate purposes that are not dependent upon or connected with each other. *In re #24*, 218 P.3d 350, 352 (Colo. 2009). That is not the case here. The only purpose of Initiative #46 is to prohibit the intentional killing of any innocent person.

While attempting to determine whether Initiative #46 contains more than a single subject, the Court “may not interpret its [the measure’s] language or predict its application if it is adopted.” *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485, 495 (Colo. 2000).

Petitioners attempt to create multiple purposes by interpreting into Initiative #46 scenarios that are not referenced within the four corners of the text. The interpretation and application of Initiative #46’s distinct purpose to hypothetical legal scenarios is beyond the proper role of the Title Board, and the Board was correct to refuse the Petitioners’ repeated entreaties to do so. The Petitioners admit in their Motion for Rehearing that nowhere within the four corners of Initiative #46 is there any mention of any of the following: prohibiting certain reproductive rights, euthanasia, stem cell research, vigilantism, make-my-day homeowner

defense, etc. Yet the Petitioners specifically mention these completely hypothetical legal extrapolations as the basis for their belief that the single subject rule has been violated:

“... the proponents have indicated that the measure also covers a wide range of legal and illegal conduct nowhere expressly referred to in the measure. A prohibition on certain reproductive rights is a distinct and separate subject from the included prohibition on all forms of euthanasia, stem cell research, vigilantism, make-my-day homeowner defense, or actions taken by federal law enforcement officers in the line of duty, to name a few.” Petitioners’ Motion for Rehearing, §.I, Para.1.

Not only has the Respondent never made the claim that Initiative #46 would affect vigilantism or self-defense, a claim as false as it is outrageous, but this entire line of argument also shows a clear misunderstanding of the proper role of the Title Board. The single subject determination must be made on the face of the language being proposed, and not as the Petitioners suggest, through a discussion of the merits, and the interpretation and application of Initiative #46 to recondite legal scenarios.

The single distinct purpose of Initiative #46 is to protect all innocent life at any stage of human development. The title set by the Title Board has accurately and succinctly captured this distinctly clear purpose for the voters. Additionally, the title board has been entrusted with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, this Court must liberally construe the single-subject and title requirements for ballot initiatives.

Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); *Matter of Title, Ballot Title, Submission Clause*, 917 P.2d 1277 (Colo. 1996). The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process. *In re Title for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo.1998).

The presence of a series of clarifying intended effects do not create a separate and distinct purpose. On the contrary, they flow directly from the single purpose and are intrinsically and functionally related. “The fact that the provisions of a measure may affect more than one statutory provision does not itself mean that the measure contains multiple

subjects.” *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485, 496 (Colo. 2000).

Petitioners in this appeal represent the abortion industry. Leslie Durgin is the Senior Vice President of Planned Parenthood of the Rocky Mountains; Cathy Alderman is the Vice President of Public Affairs of Planned Parenthood of the Rocky Mountains; Amy Pitlik is the Director of Government Affairs of Planned Parenthood of the Rocky Mountains. Respondent understands that Planned Parenthood would be opposed to the protecting all innocent human life equally, at all stages of development, but the proper forum for the expression of their disagreement is before the voters, not before the Title Board or the Supreme Court in a pre-election challenge.

Petitioners would use the Title Board process to interpret the legal repercussions of Initiative #46 and delve into the merits as they see them, when the process is merely meant to help the Proponents inform the voters of the content of the proposed initiative. At the end of the day, the “Board was created by statute to assist in the implementation” of “[t]he right of the People to initiate laws,” *In re Proposed Initiative*

Concerning Drinking Age, 691 P.2d 1127, 1130 (Colo. 1984) and not as a way for opponents to launch pre-election hypothetical challenges. The single purpose of Initiative #46 is clear, both in the actual wording of Initiative #46 and in the Title.

B. The Initiative Has a Single Effect

The single effect of the amendment will be to protect all innocent life at any stage of human development. This effect is spelled out in clear language, both in the actual wording and in the title set for Initiative #46. §.2 (a)-(e) of Initiative #46 spells out specific applications for the purpose of brining clarity to the voters.

“An initiative with a single, distinct purpose does not violate the single subject requirement simply because it spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject.” *In re 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998). *See also In Re Proposed Initiative 1996-6*, 917 P.2d 1277, 1279-80 (Colo.1996); *In Re Proposed Ballot Initiative For Parental Rights*, 913 P.2d 1127, 1130-31 (Colo.1996).

In prior litigation brought by Petitioners' coalition members dealing with the definition of the word person, they accused a similar initiative (Amendment 48 in 2008) of vagueness. In the general election, Petitioners' coalition spent hundreds of thousands of dollars raising scenarios in which the law could be applied in outlandish ways that might shock people. To remedy this attack, and to provide the voters with the clear applications of Initiative #46, several of these scenarios have been included in an application section (§.2(a)-(e) of Initiative #46). Spelling out the applications of an initiative's effect does not violate the single subject requirements. It is disingenuous of Petitioners to first accuse a similar initiative of vagueness, and then, when those abstruse applications are explicitly clarified within the text of Initiative #46, to claim that the very explanations they desired constitute multiple subjects.

An initiative is not suddenly transformed into a multi-subject proposal simply because it specifies how certain issues, clearly related to its substantive subject matter, will be resolved. Rather than presenting multiple subjects, the application section of Initiative #46 brings a heightened level of clarity and resolution to Colorado voters. This is

consistent with the single subject requirements and does not take away from Initiative #46's single effect of prohibiting the killing of innocent persons.

C. All Conduct Prohibited Under the Initiative is Unquestionably Related and Not Logrolling

Petitioners claim that abortion and euthanasia will become illegal if Initiative #46 passes. They claim that any form of birth control or assisted reproduction that kills a person will become illegal. In accordance with the intent of the Respondent to prohibit the intentional killing of any innocent person, these claims are true. However, the desired effect of the Amendment—whether correct or not—is not the proper subject for review. The proper standard is whether or not the desired effects are related into a single subject.

When the Petitioners claim that these killings are somehow unrelated and separate subjects and, in effect, logrolling, they are making an inaccurate claim. Since the basic purpose of Initiative #46 is to prohibit the killing of innocent persons, prohibiting the killing of innocent persons at any stage of life is inseparably linked with this. The very heart of Initiative

#46 is to present voters with the opportunity to stop the intentional killings of all innocent persons, no matter what age or stage of development they are in. The fact that Petitioners do not want to relate the issue of euthanasia with the issue of abortion, for example, does not take away Respondent's right to relate these issues together with the core purpose and single subject of prohibiting any intentional killing of any innocent person. Petitioners are involving their own ideological views with their objection to Initiative #46, and this is not a valid objection.

The single-subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other." *In re Ballot Title 2005-2006 No. 73*, 135 P.3d 736 (Colo. 2006); *In re Ballot Title 2005-2006 No. 74*, 136 P.3d 237 (Colo. 2006).

Because the conduct affected by Initiative #46 is undeniably related to the purpose of the initiative, the initiative does not engage in logrolling. Petitioners make the very tenuous argument that this measure will enlist the support of voters who may favor one prohibition, but not desire to favor another prohibition. However, if one looks at the four corners of the measure and not at the imagination of the Petitioners' minds, Initiative #46 deals only with those areas relating to its implementation, and those which are in a necessary and proper relationship to the substance of the initiative.

One need look no further than the Petitioners' coalition's campaign propaganda from previous related campaigns to see that even they know full well that all of the effects mentioned are related. When no mention was made of these issues in previous Personhood Amendments (Amendment 48 in 2008 and Amendment 62 in 2010), Petitioners' coalition logically grouped all of these effects together anyway. *See* <http://www.protectfamiliesprotectchoices.org/getthefacts/factsheet.html>.

When an initiative is presented that fails to mention birth control, assisted reproduction, and women's medical conditions, Petitioners' coalition claims the initiative is too vague and unclear. When Initiative #46 is presented and does mention these issues, Petitioners claim it is too broad

and unrelated. They cannot have it both ways. They cannot claim that the explanation they wanted voters to have is now logrolling simply because they do not like the ideological framework behind Initiative #46. The claim of logrolling is an invalid claim on the part of Petitioners.

The Colorado Constitution creates the initiative process and provides that voters should have a choice. Colorado Constitution, art. V, §. 1.

Petitioners would deny Colorado voters this choice. Absent compelling reasons—none of which have been presented so far—Colorado's voters should have their choice on how to extend the equal right to life to all persons.

D. The Initiative Does Not Have a Hidden Purpose

Initiative #46 is very clear in its purpose. In order to promote human dignity, Initiative #46 is presented by Respondent with the purpose of extending prohibiting the intentional killing of innocent persons. The single, clear effect of Initiative #46 is to protect all innocent persons at any stage of human development. “Person” is specifically defined by Initiative #46 to include human beings “at any stage of development.”

It is an undisputed scientific and public fact (as discussed in point E. below) that human beings begin their development at the moment of

fertilization and continue developing throughout their time in their mothers' wombs. Therefore, the plain language of Initiative #46 advises voters that abortion will be prohibited as an intentional killing of an innocent person. This is obvious on the face of Initiative #46, and there is no need for Initiative #46 to advise voters of an obvious fact. Respondent desires both brevity and clarity, and has reached this in Initiative #46's current wording.

Petitioners' coalition members and the media have been referring to Initiative #46 as an abortion ban. Clearly, there is no doubt in Petitioners' minds that the public will be fully aware that Initiative #46 will attempt to ban abortion in Colorado by virtue of its plain wording and lack of a hidden purpose.

E. The Definition of "Person" and "Human Being" Set Out in Initiative #46 is a Legally Recognized Definition.

Initiative #46 defines "person" as "every human being regardless of the method of creation" and "human being" as "a member of the species homo sapiens at any stage of development". The writers of Initiative #46

used the definition of “human being” set out in the federal Unborn Victims of Violence Act of 2004 (Public Law 108-212) as their guide.

Congressional Records, specifically House Reports, show that the definition used in the Federal Unborn Victims of Violence Act is an established federal and state definition. The United States Congress used this definition based on the fact that multiple states had already used the same or a very similar definition in their own fetal homicide laws.

(HOUSE Hearing, 108th Congress - UNBORN VICTIMS OF VIOLENCE ACT OF 2003 OR LACI AND CONNER'S LAW

Congressional Hearings. General. Judiciary, Subcommittee on the Constitution. Tuesday, July 8, 2003. pp. 12, 14, 51-52, 60).

Furthermore, every time these laws were challenged in court, they were upheld. Therefore, there is a legal precedent upholding these laws in courts throughout the nation. In fact, 27 states and the federal government currently cover unborn children at every stage of development under their fetal homicide laws. At least ten court challenges have been brought against these laws, and all have failed. *See Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987), *U.S. ex rel. Ford v.*

Ahitow, 888 F.Supp. 909 (C.D.Ill. 1995), *State v. Smith*, 676 So.2d 1068 (La. 1996), and *State of Utah v. Roger Martin MacGuire* (Utah Supreme Court, No. 20020071, Jan. 23, 2004).

In *State of Utah v. Roger Martin MacGuire*, the defendant argued that the state's fetal homicide law was unconstitutional because "unborn child" was not defined. The Utah Supreme Court upheld the law and ruled that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . .". Utah Supreme Court, No. 20020071, Jan. 23, 2004.

Even the 1989 U.S. Supreme Court case, *Webster v. Reproductive Health Services* (492 U.S. 490), found that a state law which included unborn children "at every stage of development" was allowable. The U.S. Supreme Court did not find this to be an unclear definition.

In addition, the Congressional Records show that another legal basis for this definition is found in the Innocent Child Protection Act, unanimously passed by the House of Representatives on July 25, 2000, which prohibited the execution of pregnant women until after their unborn child

was born. (150 Cong. Rec. H637 - UNBORN VICTIMS OF VIOLENCE ACT OF 2003 Congressional Record. Regarding H.R. 1997. Mr. SENSENBRENNER, Mr. NADLER, and others. Thursday, February 26, 2004. *See* H639, H643.) The Innocent Child Protection Act uses the exact same definition as the federal Unborn Victims of Violence Act of 2004: "a member of the species homo sapien, at every stage of development, who is in the womb."

The only part of the definition not utilized in Initiative #46 is "in the womb." It is inapplicable for Respondent's purpose since Initiative #46 would protect the life of all innocent human beings, not just those in the womb.

It is clear from Congressional debate from individuals on both sides of the abortion issue that this definition is known to legally include an unborn child during all stages of prenatal development, including fertilization and the embryonic stage. (HOUSE Hearing, 108th Congress - UNBORN VICTIMS OF VIOLENCE ACT OF 2003 OR LACI AND CONNER'S LAW Congressional Hearings. General. Judiciary, Subcommittee on the Constitution. Tuesday, July 8, 2003. pp. 3, 60 and

150 Cong. Rec. H637 - UNBORN VICTIMS OF VIOLENCE ACT OF
2003 Congressional Record. Regarding H.R. 1997. Mr.

SENSENBRENNER, Mr. NADLER, and others. Thursday, February 26,
2004. *See* H641.) Therefore, Respondent believes the clear weight of
evidence shows that this definition is not debatable, and has already been
established in both federal and state law.

II. The Title Fairly and Correctly Expresses the True Meaning of the Initiative

A. The Title is Not Misleading as it Unambiguously States the Principles and Provisions to be Added to the Constitution and Puts Voters on Notice of the New Legal Standard.

During the second Title Board hearing, in which the Title Board heard
the Motion for Rehearing submitted by Petitioners, the Title Board
amended the first title of Initiative #46. While Respondent does not
believe that the original title was in any way misleading, the amended
title certainly is not either.

The Title Board reworded the title so that the most significant change in
law set out in Initiative #46 is presented to the voters first. Voters are

advised immediately of the new standard that human beings at all stages of development will be protected equally by Initiative #46. This is the new legal standard set out in Initiative #46, and voters are put on notice of this standard at first reading of the title. The title also explicitly sets out Initiative #46's definition of "person" for voters.

Voters are also put on notice of the single subject of Initiative #46: that the intentional killing of innocent persons will be prohibited. All of the applications of this provision outlined in Initiative #46 are also clearly spelled out for voters. There can be no doubt that the title puts voters on clear notice of the purpose, effect, and the most obvious applications of Initiative #46. The title unambiguously advises voters, in clear language, of the principles and provisions to be added to the Colorado Constitution.

While Petitioners may claim that there are further applications of Initiative #46 not mentioned in the title, it is not the function of the Board to disclose every possible interpretation of the language of the initiative.

In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

First, every application listed in Initiative #46 is listed in the title.

Second, if Initiative #46 were a free speech measure instead of a right to

life measure, it may well be impossible to list out every possible way that the legislature or courts may apply such a broad constitutional amendment. The breadth of possible future application, however, does not make a title misleading because it does not advise voters of every change in law that may possibly take place one day. There is no requirement that every possible effect be included within the title or the ballot title and submission clause. *In re Title Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 916 (Colo. 1982); *Spelts v. Klausung*, 649 P.2d 303 (Colo. 1982).

It is impossible for the Title Board or a title to foresee and advise voters of the exact ways in which the legislature and courts may interpret a broad constitutional right. The fact that Initiative #46's power and effect may sweep broadly does not make its title misleading. The board need not and cannot describe every feature of a proposed measure in the titles and submission clause. *In re Proposed Initiative Concerning State Pers. Systems*, 691 P.2d 1121 (Colo. 1984); *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000).

B. The Two Rights Extended to the People in the Initiative are Bound Together as a Principle of Law; Therefore the Title Language of “Extending Rights” is Accurate.

Petitioners have objected to the title language which states that Initiative #46 concerns the “extension of rights to all human beings at any stage of development.” Petitioners claim that, instead of an extension of more than one right, Initiative #46 extends only the right to life to innocent persons.

This is a non-issue. Initiative #46 actually does extend two rights to the people of Colorado, and, in the context of the initiative, the rights cannot exist without each other. The equal right to life and the right to not be intentionally killed are bound together as a principle of law. Initiative #46 has intentionally and clearly tied these two rights together in order to prohibit the intentional killing of innocent persons. Therefore, the Title Board’s language is accurate and not misleading.

Petitioners’ objection that “human beings at any stage of development” are not the ones being granted these two rights is inaccurate. Initiative #46 defines “persons” as “human beings at any stage of development”.

Therefore, the Title Board has used the correct and most clear language, found in the initiative itself, to advise voters of exactly what Initiative #46 will do.

C. The Title, and the Initiative Itself, Does Not Need to Define the Term “Innocent”

The titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative. *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000). And the board is not usually required to define a term that is undefined in the proposed measure. *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485 (Colo. 2000).

The use of the word “innocent” within Initiative #46 and within the title are not “new or controversial.” It is a word commonly used in Colorado law. The 2011 Colorado Revised Statutes mentions the word “innocent” 86 times. 31 of these times apply to the criminal code. While the terms “innocent owner” and “innocent seller” are defined, not once is the word “innocent” itself expressly defined in any definitions section. The closest Colorado law comes to defining “innocent” is found in C.R.S. 1963: §

40-1-702, which discusses one person's legal accountability for the behavior of another. However, this statute directly deals with the lack mens rea in criminal behavior, something that is not at issue in Initiative #46.

The Colorado Revised Statutes mention innocent purpose, innocent purchaser, innocent party, innocent cause, innocent victim, the presumption of innocence, and innocent persons all without a definition of "innocent". As an example, innocent people are mentioned without being defined in the following two sections of Colorado law:

C.R.S. §18-1-402. Presumption of innocence.

*Every person is presumed **innocent** until proved guilty. No person shall be convicted of any offense unless his guilt thereof is proved beyond a reasonable doubt.*

C.R.S. §18-3-102. Murder in the first degree.

*(1) A person commits the crime of murder in the first degree if
By perjury or subornation of perjury he procures the conviction and
execution of any **innocent** person...*

The Colorado legislature clearly believes that the word “innocent” is self-explanatory and does not need to be defined in law. Initiative #46 is following Colorado legal precedent by not defining this word in its definitions section. This Court reviews titles set by the Board with great deference and only reverses the Board's decision if the titles are insufficient, unfair, or misleading. *In re Ballot Title 2005-2006 No. 73*, 135 P.3d 736 (Colo. 2006).

Petitioners overreach in their claims that Initiative #46 would apply to police who chase down and shoot a suspect who is fleeing from arrest or to homeowners who are following the Make My Day Law. Not only are these interpretations of the proposed initiative improperly raised at this time in the initiative process, but even if they were proper questions at this time, they would be erroneous interpretations of the merits of the Initiative #46. In the case of the police shooting and chasing a suspect, if the fleeing suspect lived, he would be charged (and almost certainly found guilty) of resisting arrest. If the person who broke and entered the homeowner's house lived, he also would almost certainly be found guilty of burglary or a similar crime. Therefore, Petitioners are overreaching by bringing up scenarios that do not involve truly innocent people.

Moreover, even Petitioners appear to admit that they know exactly what Initiative #46 means by the term “innocent person”. First, in their Motion for Rehearing, they state, “The proposed initiative comprises a new and significant constitutional prohibition on intentionally killing an ‘innocent person’, but leaves this critical term undefined.” However, later, in §. II, Para. 4 of their Motion, they admit that Initiative #46 defines innocent child as “a human being prior to and during birth.” Apparently, Petitioners understand very well what Initiative #46 is intended to do.

CONCLUSION

Initiative #46 has both a single purpose and a single effect that have been captured for voters by the Title Board in its title. The title set is both easily understandable and accurate. Respondent respectfully requests that this Court dismiss Petitioners’ appeal and allow Initiative #46 to proceed to the next stage in the Colorado Ballot Initiative Process.

Date: January 30, 2012

Respectfully Submitted,



Robert J. Corry, Jr.

CERTIFICATE OF SERVICE

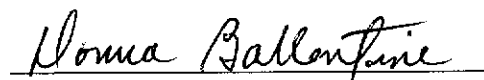
I hereby certify that on January 30, 2012 the original and ten copies of the foregoing **OPENING BRIEF OF RESPONDENT KEVIN SWANSON** were filed with:

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

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

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