

SUPREME COURT
STATE OF COLORADO

101 West Colfax Avenue, Suite 800
Denver, CO 80202

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

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR
PROPOSED INITIATIVE 2011-2012, #46

LESLIE DURGIN, CATHY ALDERMAN, AND
AMY PITLIK,

Petitioners,

v.

ROSALINDA AND KEVIN SWANSON,

and

WILLIAM A. HOBBS; DANIEL DOMENICO; and
JASON GELENDER
Title Board

Respondents.

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Case No. 12SA10

ANSWER BRIEF OF TITLE BOARD

CERTIFICATE OF COMPLIANCE

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

The brief complies with C.A.R. 28(g).

Choose one:

It contains 1393 words.

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The brief complies with C.A.R. 28(k).

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.



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William A. Hobbs, Daniel Domenico, and Jason Gelender, as members of the Ballot Title Board (hereinafter “Board”), hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

The Board adopts the Statement of the Issues as set forth in the Petitioners’ Opening Brief.

STATEMENT OF THE CASE

The Board adopts the Statement of the Case as set forth in the Petitioners’ Opening Brief.

SUMMARY OF THE ARGUMENT

In deciding whether to set a title, the Board must determine whether it understands the measure. Undefined, or partially undefined, terms in a measure do not necessarily disqualify. The question is whether the Board understands the measure so that it can set a title. If the Board understands the meaning and substance of a measure, then it must proceed to set titles. In this case, the Board concluded that it understood the meaning of the term “innocent

persons” even though the word “innocent” is not defined. Therefore, it could proceed to set titles.

The measure does not contain multiple subjects. The measure’s single subject prohibits the intentional killing of any innocent person. The subsections of the measure directly relate to this subject. One subsection defines “person”, “human being” and “child.” Another subsection sets parameters on the scope of the subject.

The titles accurately and fairly represent the subject matter.

ARGUMENT

I. Standard of Review

The standard of review was set forth in the Board’s Opening Brief.

II. The measure has a single subject.

Petitioners’ single subject argument is divided into three parts: (1) the term “innocent person” is so ill-defined that it encompasses multiple subjects; (2) the measure prohibits the killing of all persons who have not been convicted of a crime and limits or prohibits certain reproductive rights; and (3) the measure combines incompatible and incongruous subjects, including a prohibition against killing innocent

persons, a definition of a fertilized egg as a person, and a prohibition on certain reproductive procedures. (Petitioners’ Opening Brief, pp. 8-16)

The connecting thread throughout each of Petitioners’ single subject arguments is their failure to analyze or even acknowledge the definition of “person” within the measure. The measure defines “person” as applying “to every human being regardless of the method of creation.” A “human being” is defined as “a member of the species homo sapiens at any stage of development.” A “child” includes a human being prior to and during birth.” The measure does not define the term “innocent.” However, in context, the meaning of the phrase is clear. It means “free from legal guilt or fault.” *Webster’s Third New International Dictionary Unabridged*, 1166 (3d ed. 2002).¹

¹ Even without the definitions of “person” and “human being” the term “innocent person” is sufficiently clear. Contrary to Objectors argument that the term “has no ordinary or intuitive meaning,” (Objectors’ Opening Brief, p. 11), the General Assembly has used the term in criminal statutes without supplying a definition. Section 18-1-707(3), C.R.S. (2011)(“Nothing in subsection (2)(b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody”); Section 18-3-102(1), C.R.S. (2011) (“A person commits the

The measure expands the definition of “person” to include fetuses and fertilized eggs. The measure includes every “member of the species homo sapiens at any stage of development,” including children “prior to and during birth” who are innocent. Thus, the language in the measure is sufficiently clear to allow the Board to discern the subject of the measure and the single subject.

Petitioners contend that the measure “sweeps in a wide range of unrelated conduct.” (Petitioners’ Opening Brief, p. 12) In particular, they assert that the measure prohibits killing persons who are innocent and prohibits actions like abortion, birth control, assisted reproduction and stem cell research. (Petitioners’ Opening Brief, p. 13)

Contrary to Petitioners’ argument, the measure does not per se outlaw activities such as assisted reproduction or stem cell research. Instead, such activities would be illegal only if they result in the intentional killing of a “person” as that term is defined in the measure.

crime of murder in the first if...(c) By perjury or subornation of perjury he procures the conviction and execution of any innocent person.”); Section 18-17-105(6), C.R.S. (2011)(“The state shall dispose of all property or other interest seized under this section as soon as feasible, making due provision for the rights of innocent persons.”)

By its terms, the measure does not per se prohibit all birth control, in vitro fertilization and assisted reproduction. Instead, it prohibits these activities only when they kill a “person” as that term is defined in the measure. (#46, paragraph 2). Under these circumstances, the activities are directly related to the subject of the measure.

The prohibition in #46 is no different from the manner in which the law treats possession of potential weapons. For example, a knife can be a deadly weapon if it is used in a certain manner. Section § 18-1-901(3)(e), C.R.S. (2011). However, the mere possession of a knife without intent to produce death or bodily injury is not illegal or criminal. *Montez v. People*, 2012 CO 6, ¶ 15 (February 13, 2012). Thus, possession or use of a knife is not illegal or criminal except in the circumstance where it is used or intended to be used to produce death or bodily injury.

For these reasons, the Court must reject Petitioners’ argument that the measure combines disparate subjects (Petitioners’ Opening Brief, pp. 15-17). By extending the definitions of “person”, “human being” and “child” to include “a member of the species homo sapiens at

any stage of development”, the measure also expands the protections available to “homo sapiens” at stages of development not previously recognized by law. The protections, then, are integral to the persons encompassed under the expanded definition.

III. The titles are fair, clear and accurate.

Petitioners allege that the titles adopt the term “innocent person” with no guidance as to what the term means (Petitioners’ Opening Brief, p.19). This statement is incorrect. The titles include a definition of the word “person.”

Petitioners also contend that the statement of the subject in the first clause of the titles “muddies the waters more” because it does not clearly state the scope of the measure, the recipients of the rights and the persons who may lose existing rights. (Petitioners’ Opening Brief, p. 19) This argument ignores the remainder of the content of the titles. The titles clearly delineate the beneficiaries of the rights by specifically setting forth the definition of the word “person.”

Petitioners argue that the Board erred by using the term “extension” in the titles because the measure outlaws all forms of

abortion and criminalizes other actions that are currently legal.

(Petitioners' Opening Brief, p. 20) By expanding the definition of "person" to include homo sapiens who are not yet born, the measure gives them rights that they did not have previously. Thus, the measure does extend rights to persons who did not have those rights, and the titles accurately state this intent. The titles contain a full, accurate and complete description of the entire measure.

Petitioners also contend that the titles should include other forms of conduct that would be prohibited. (Petitioners' Opening Brief, p. 21) Petitioners' argument is concerned with the effect of the measure on actions that would no longer be legal due to the expansion of the definition of "person". This Court has consistently rejected the argument that the Board must include in the titles potential effects of the proposed measure. *In re Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1070 (Colo. 1994).

CONCLUSION

For the reasons stated, in this brief and in the Board's Opening Brief, the Court must approve the action of the Board.

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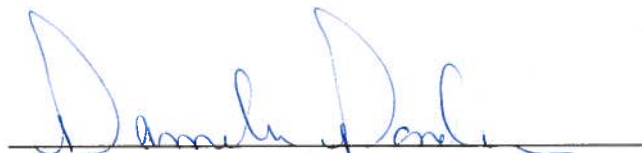
This is to certify that I have duly served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same by overnight FedEx or Express Mail, postage prepaid, at Denver, Colorado, this 21st day of February, 2012 addressed as follows:

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A handwritten signature in blue ink, appearing to read "Daniel De...", is written over a horizontal line.