

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

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

**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

Attorneys for Petitioners:

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FILED IN THE  
SUPREME COURT

JAN - 9 2012

OF THE STATE OF COLORADO  
Christopher T. Ryan, Clerk

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Supreme Court Case No.

12 SA 10

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012  
#46 ("APPLICATION OF THE TERM PERSON")**

Leslie Durgin, Cathy Alderman and Amy Pitlik (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to Colo. Rev. Stat. § 1-40-107(2), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2011-2012 #46 (“Application of the Term Person”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #46**

Rosalinda Lozano and Kevin Swanson (hereafter “Proponents”) proposed Initiative 2011-2012 #46 (the “Proposed Initiative”). A review and comment hearing was held before designated representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted a final version of the Proposed Initiative to the Secretary of State.

A Title Board hearing was held on December 21, 2011 to establish the initiative’s single subject and set a title. On December 28, 2011, Petitioners filed a Motion for Rehearing and alleged 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. The members of the Title Board were split on the single subject requirement, by a vote of two to one.

### **B. Jurisdiction**

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to Colo. Rev. Stat § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. §1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. *Id.* §1-40-107(2).

As required by Colo. Rev. Stat. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the initiative filed by the Proponents; (2) the title and the submission clause set by the Title Board; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing. Petitioners are not satisfied with the Title Board's ruling on the Motion for Rehearing. Consequently, this matter is properly before the Colorado Supreme Court.

### **GROUND FOR APPEAL**

In violation of Colo. Const., art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5, the measure violates the single subject requirement. In addition, the title set by the Board is misleading, does not fairly and correctly express the true meaning of the initiative, does not unambiguously state the principles of the provisions to be

added to the Constitution, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. Whether Proposed Initiative 2011-2012 #46 violates the single subject requirement by prohibiting a wide range of entirely distinct and unrelated conduct, resulting in impermissible logrolling through the inclusion of incongruous subjects?
2. Whether the ballot title is misleading when it creates a new operative legal standard – extending “rights to 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. Whether 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 measure purports to provide a constitutional “right to life” to “innocent persons” through the prohibition on intentional killing in manners not limited to the ends listed in § 2(a)-(e) of the Proposed Initiative?

**PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative comprises multiple subjects or that the Board lacked jurisdiction to set a title and, as such, that such title be remanded to the Board with instructions that the measure be returned to Proponents for failure to comply with the single subject requirement, or alternatively, that the title be corrected to accurately and fairly represent the text of the initiative.

Respectfully submitted this 9th day of January, 2012.



Lila M. Bateman, #32297  
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**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of January, 2012, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 #46 (“APPLICATION OF THE TERM PERSON”)** was served via U.S. mail, postage prepaid, to the following:

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

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

Gualberto Garcia Jones  
PO Box 486  
Arvada CO 80001  
Attorney for Proponents

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Deputy Attorney General  
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Denver, Colorado 80203

  
\_\_\_\_\_  
Amy Knight



**STATE OF COLORADO**

**DEPARTMENT OF  
STATE**

**CERTIFICATE**

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2011-2012 #46 'Application of the Term Person'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 5<sup>th</sup> day of January, 2012.

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

SECRETARY OF STATE

## Ballot Title Setting Board

### **Proposed Initiative Number 2011-2012 #46<sup>1</sup>**

The title as designated and fixed by the 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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

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

*Hearing December 21, 2011:*

*Single subject approved; staff draft amended; titles set.*

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<sup>1</sup> Unofficially captioned "Application of the Term Person" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



*Hearing adjourned 4:41 p.m.*

*Hearing January 4, 2012:*

*Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.*

*Hearing adjourned 3:03 p.m.*

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S.WARD

ELECTIONS  
BALLOT TELETYPE UNIT

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

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**MOTION FOR REHEARING**

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Petitioners Leslie Durgin, Cathy Alderman and Amy Pitlik ("Petitioners"), registered electors of the State of Colorado, respectfully submit the following Motion for Rehearing regarding Proposed Initiative 2011-2012 #46 ("Application of the Term Person"). In support of this Motion for Rehearing, Petitioners submit the following specific objections:

**I. Violation of Single Subject Requirement**

The Title Board lacks jurisdiction because the measure is comprised of multiple separate subjects. Colo. Const., art. V, §1(5.5).

1. The proposed initiative comprises a new and significant constitutional prohibition on intentionally killing an "innocent person," but leaves this critical term undefined. While the initiative expressly refers to such measures as birth control, 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 state or federal law enforcement officers in the line of duty, to name a few. This measure will enlist the support of voters who may favor one prohibition, in support of another prohibition which may be less likely to pass on its own merits. This is quintessential logrolling, a hallmark of multiple subjects.

**II. Title is Unfair, Misleading and Contains Catch Phrases**

The title violates C.R.S. § 1-40-106(3) because it is misleading, is likely to create confusion among voters, does not correctly and fairly express the true intent and meaning of the initiative, contains catch phrases that are intended to prejudice public consideration of the measure, and fails to state unambiguously the principle of the provision sought to be added to the Constitution.

1. The title contains impermissible catch phrases – "right to life" and "innocent persons"— that may not be used even if the terms are used in the measure itself. These are politically "loaded" phrases used in the nationwide abortion debate, while the substantive prohibitions in the measure will be far broader.

2. The title is misleading and does not fairly express the true intent and meaning of the measure. The measure provides a new operative legal standard – a prohibition on killing

“innocent persons” – yet nowhere defines “innocent persons.” The title does not adequately inform voters about that new legal standard. If an initiative adopts a new legal standard, particularly one that is likely to be controversial, the voters are entitled to be clearly apprised of this fact in the title. Anything less is unfair and misleading to the voters.

3. The title is misleading and does not fairly express the true intent and meaning of the measure. The purpose of the measure, as the Proponents admit, is to make euthanasia, stem cell research, and abortion illegal. The title says nothing about euthanasia, stem cell research, or abortion, nor any of the other disparate prohibitions raised here by Petitioners.

4. The title is inaccurate, as the measure does not “specifically prohibit[] the killing of a person created through rape or incest”; rather, it states that “no innocent child [the latter defined in the initiative as a human being prior to and during birth] created through rape or incest shall be killed for the crime of his or her father.” It does not span to all “persons” and it is limited to rape and incest committed by a father.

5. As at least one member of the Board expressed, the single subject of the measure is uncertain. When there is an incomprehensible subject, it necessarily follows that a single subject in the title cannot be stated. *In re Proposed Initiative for 1999-2000*, 977 P.2d 856, 858 (Colo. 1999) (“If the Board cannot comprehend the initiatives well enough to state their single subject in the titles . . . the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent.”) (internal citations omitted).

WHEREFORE, the Title Board should return Initiative 2011-2012 #46 to its sponsors to be corrected for jurisdictional defects before it is resubmitted for the Board’s consideration, or the Board should revise the title, if that is possible, in ways that are consistent with this Motion.

Respectfully submitted this 28<sup>th</sup> day of December, 2011.

**HEIZER PAUL GRUESKIN LLP**

By: 

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*Attorneys for Petitioners Leslie Durgin,  
Cathy Alderman and Amy Pitlik*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2011, a true and correct copy of the foregoing **MOTION FOR REHEARING** was mailed, postage prepaid, to:

Rosalinda Lozano  
8795 Ralston Rd., #1  
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Gualberto Garcia Jones  
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Attorney for Proponents

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ELECTIONS  
SECRETARY OF STATE

Be it Enacted by the People of the State of Colorado

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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