

**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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**FILED IN THE
SUPREME COURT.**

JAN 30 2012

**OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk**

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Case No. 12SA10

OPENING 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 2329 words.

It does not exceed 30 pages.

The brief does not comply with CAR 28(g) because it exceeds the word and/or page limit. A motion to accept the over length brief has been filed contemporaneously with the brief.

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

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. , p.), not to an entire document, where the issue was raised and ruled on.

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.

Or

The opponent did not address standard of review or preservation. The brief contains statements concerning both the standard of review and preservation of the issue for appeal.

Maurice Kuo

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

STATEMENT OF THE ISSUES

The Board adopts the Statement of the Issues as set forth in the Petition for Review

STATEMENT OF THE CASE

The Board adopts the Statement of the Case as set forth in the Petition for Review.

SUMMARY OF THE ARGUMENT

Proponents seek to circulate Proposed Initiative 2011-2012 #46 (#46). (Exhibit A) The measure and the proposed ballot titles (Exhibit B) meet applicable constitutional and statutory requirements. #46 contains a single subject. It declares that "the right to life" in the Colorado Constitution "applies equally to all innocent persons." It effectuates this goal by prohibiting the killing of any innocent person. The measure establishes definitions and describes the types of actions

that may be considered to constitute “the intentional killing of any innocent person.”

The titles are fair, clear and accurate. The titles accurately state the legal standard in the measure and succinctly reflect the content of #46. The measure extends “the right to life to persons at any stage of development.”

ARGUMENT

I. The single subject challenge

A. Standard of Review

The Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause and Summary Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

B. The measure contains a single subject

Objectors contend that the Board should not have set titles because #46 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

The Colorado General Assembly enacted legislation to implement the constitutional amendment. § 1-40-106.5, C.R.S. (2011). The General Assembly's stated intent is "to forbid the treatment of incongruous subjects in the same measure, especially the practiced of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure" and "[t]o prevent surreptitious measures and to apprise the people of the subject of each measure by the title,

that is, to prevent surprise and fraud from being practiced on the voters.” Section 1-40-106.5(1)(e)(1) and (II), C.R.S. (2011).

An initiative, consistent with the single subject requirement, may contain several purposes that are interrelated. #91, 235 P.3d at 1076. Conversely, “[a] proposed initiative that has two or more distinct and separate purposes which are not dependent or connected with each other violates” the single subject rule. *Id.* The mere assertion of a general theme will not save the initiative if it contains multiple subjects. *Id.* A comprehensive proposal within a measure “contains a single subject if all of its provisions relate directly to its single subject.” *Id.*

The Court will not address the merits of a proposed initiative, interpret it, or construe its future legal effects. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002). The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *In re*

Title, Ballot Title and Submission Clause and Summary for 2009-2010,
#24, 218 P.3d 350, 353 (Colo. 2009).

#46 is divided into three sections. The first section sets forth the purpose, which is the affirmation of “basic human dignity.” #46 resolves “that the right to life in this constitution applies equally to all innocent persons.”

The next section describes the effect of #46. It states that “[t]he intentional killing of any innocent person is prohibited.” It clarifies that that only birth control, in vitro fertilization and assisted reproduction “that kills a person shall be affected by this section.” It also states that “[n]o innocent child created through rape or incest shall be killed for the crime of his or her father.” It also provides that medical treatment for life threatening physical conditions intended to preserve life” and “spontaneous miscarriages” are not affected by the measure.

The third section defines terms. A “person” includes “every human being regardless of the method of creation.” “A ‘human being’ is a member of the species homo sapiens at any state of development.” A “child’ includes a human being prior to and during birth.”

#46 extends the “right to life” to “persons” “at any stage of development” by prohibiting the intentional killing of any person. Each section of the measure relates to this subject. The definitions and their applications do not violate the single subject.

This Court has recognized an even broader application of the extension of constitutional protections from conception through birth. *Metzger v. People*, 98 Colo. 133, 53 P.2d 1189 (1936). The Colorado General Assembly extended the definition of “children” to include all children “from the time of their conception and during the months before birth.” The law was challenged on the ground it violated the “clear title” requirement. The Court rejected the challenge, noting:

No violence is done to the orderly process of the rational mind by letting the word “child” include a human being immediately upon conception and during the period of pregnancy, as well as one actually born. It is no longer doubted that the months of prenatal existence are tremendously important ones from the standpoint of human welfare. The physical and mental conditions surrounding the expectant mother are vital factors in the unfolding life of the child itself.

Id. 98 Colo. at 137; 53 P.2d at 1191. The statute expanded the definition of “child” and then afforded legal protections to children who fell within the expanded definition.

A Nevada District Court recently rejected an argument that the extension of constitutional rights to “prenatal persons” violated Nevada’s single subject requirement. *Chen v. Nevada Pro-life Coalition PAC*, slip op. 11 OC 00328 1B (December 19, 2011) (Exhibit C).

Proponents introduced an initiative that stated:

Unalienable right to life of every prenatal person is protected.

The intentional taking of a prenatal person’s life shall never be allowed in this State. For the purpose of this section only, the term “prenatal person” includes every human being at all stages of biological development before birth.

Id., slip op. at 1.

The court concluded:

Prolife’s initiative may have effects in various areas including common birth control methods, the treatment of ectopic pregnancy, in vitro fertilization treatment, and stem cell research. But those effects flow from a single subject and

purpose, prohibiting the taking of prenatal.
Prolife's initiative does not contain separate
subjects or seek diverse objectives....

Id. slip op. at 9.

Interestingly, the Objectors' Petition for Review implicitly acknowledges the single subject. The Petition states that "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"

When read as a whole, #46 expands the definition of "person" and then affords those who fall within the expanded definition protection against "intentional killing." Extending the prohibition against killing to persons prior to birth does not violate the single subject requirement. All provisions within the measure relate directly to extension of these rights to "persons" as that term is defined in the measure.

II. The Titles are clear, fair and accurate.

A. Standard of Review

The Court will "employ all legitimate presumptions in favor of the propriety of the Board's actions." *In re Title, Ballot Title and*

Submission Clause for 2009-2010 #91, 235 P.3d 1071, 1076 (Colo. 2010).

Only in a clear case should the court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause and Summary Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

B. The titles are fair, clear and accurate

Section § 1-40-106(3), C.R.S. (2006) establishes the standard for setting titles. It provides:

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 effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment and which shall unambiguously state

the principle of the provision sought to be amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). However, the Board is not required to set out every detail. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 222 (2002). In setting titles, the Board may not ascertain the measure's efficacy, construction or future application. *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645, 649 (Colo 2010) (#45). The Court does not demand that the Board draft the best possible title. *Id.* at 648. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the titles as a whole to determine whether the titles properly reflect the intent of the initiative. *Id.* at 649, n.3; *In re Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *Id.*

The titles carefully track the key components of #46. The titles set forth the new standard, "the extension of rights to all human beings at any stage of development." The titles then explain the extent of the new standard. They state that the measure extends the definition of person to "every member of the species homo sapiens at any stage of development," and "prohibit[s] the intentional killing of any innocent person." They inform the public 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 prohibit[s] the killing of a person through rape or incest committed by the father."

CONCLUSION

For the reasons stated in this brief, the Court must approve the action of the Title Board.

JOHN W. SUTHERS
Attorney General



/s/Maurice G. Knaizer

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AG ALPHA:
AG File:

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CERTIFICATE OF SERVICE

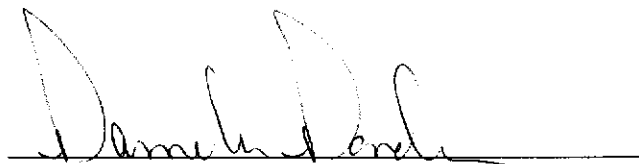
This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same by FedEx or Express Mail Overnight at Denver, Colorado, this 30th day of January 2012 addressed as follows:

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

FINAL

2011-2012 #46

RECEIVED

DEC 07 2011

Be it Enacted by the People of the State of Colorado

ELECTIONS
SECRETARY OF STATE

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.

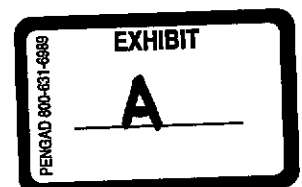
(d) "CHILD" INCLUDES A HUMAN BEING PRIOR TO AND DURING BIRTH.

(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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Ballot Title Setting Board

Proposed Initiative Number 2011-2012 #46¹

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.

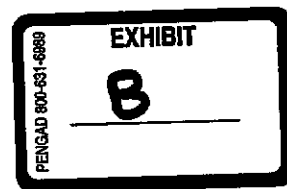
The ballot title and submission clause as designated and fixed by the Board is as follows:

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.

¹ 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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REC'D & FILED

DEC 19 AM 8:53

ALAN GLOVER
CLERK
BY *[Signature]*
REALTY

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CHELSEA CHEN; an individual; CASE NO. 11 OC 00328 1B
MINDY HSU, an individual; DEPT. 2
CHRISTINA ANN LYDON, an individual; WESLEY RICHARD LYDON, an individual; KEITH REISINGER, an individual; and AMY GALLACHER, an individual: JUDGEMENT

Plaintiffs,
vs.

NEVADA PROLIFE COALITION PAC, a Nevada ballot advocacy group; ROSS MILLER, in his official Capacity as the Nevada Secretary of State:

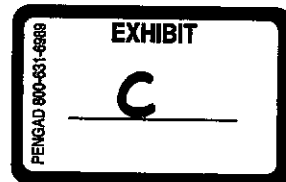
Defendants.

BACKGROUND

Nevada Prolife Coalition PAC, a ballot advocacy group, filed an initiative petition with the Nevada Secretary of State. The initiative seeks to amend Article 1 of the Nevada Constitution by adding the following as Section 23:

Article 1. Sec. 23. Unalienable right to life of every prenatal person is protected.
The intentional taking of a prenatal person's life shall never be allowed in this State. For the purpose of this section only, the term "prenatal person" includes every human being at all stages of biological development before birth.

The initiative includes the following Description of Effect:



1 All persons are endowed by their creator with certain unalienable
2 rights and among these is the right to life. Guaranteeing personhood for
3 the prenatal human being has the effect of making illegal intentional acts
4 which kill such persons, including elective, surgical and/or chemical
5 abortion and fetal homicide.

6 The United States Supreme Court stated in *Roe vs. Wade*, "If this
7 suggestion of personhood is established, the appellant's case, of course,
8 collapses, for the fetus' right to life would be guaranteed specifically by
9 the [14th] amendment." Therefore, establishing personhood for every
10 prenatal, human being in Nevada constitutionally protects that person's
11 unalienable right to life irrespective of race, sex, age, size, location,
12 viability, dependency, perceived handicap/disability, physical, mental
13 level of function or biological development.

14 *Roe vs Wade* also stated no laws existed in 1973 which defined the
15 prenatal human being as a person. No longer true today, thirty-eight
16 states, including Nevada, have enacted fetal homicide laws, with
17 abortion being the only required exception. The majority of states' fetal
18 homicide laws protect prenatal persons from earliest stages of
19 pregnancy. Endowing personhood prohibits fetal homicide during all
20 stages of every prenatal person's biological development and ends
21 intentional abortion.

22 Petitioners, Chelsea Chen, Mindy Hsu, Christina Ann Lydon, Wesley
23 Richard Lydon, Keith Reisinger, and Amy Gallacher, Nevada residents and
24 voters, filed this lawsuit which asks the court to declare the initiative invalid
25 and to enjoin the Secretary of State from including the initiative on the 2012
26 general election ballot. Petitioners assert the initiative violates the single-
27 subject requirement of NRS 295.009(1)(a) and (2), and the Description of
28 Effect is inaccurate and misleading in violation of NRS 295.009(1)(b).

The parties submitted briefs and the court heard oral argument.

STANDARD OF REVIEW

Nevada Constitution, Article 19, Section 2(1) reserves to "the people ...
themselves" the power to propose constitutional amendments by initiative. The
legislature enacted laws,¹ including NRS 295.009, to facilitate the initiative
process. Because the right to initiate change in our state constitution through
initiatives is one of the basic powers enumerated in the constitution, Nevada

¹Nev. Const. Art. 19 §5.

1 has a strong public policy of upholding the initiative power whenever possible.²
2 “[I]n interpreting and applying such [facilitative] laws [a court] must make
3 every effort to sustain and preserve the people’s constitutional right to amend
4 their constitution through the initiative process.”³ The party seeking to stop an
5 initiative bears the burden of demonstrating that the measure is clearly invalid.⁴

6 It is not the function of the court to judge the wisdom of the initiative.⁵
7

8 SINGLE-SUBJECT REQUIREMENT

9 NRS 295.009(1)(a) requires an initiative “embrace but one subject and
10 matters necessarily connected therewith and pertaining thereto.” NRS
11 295.009(2) states an initiative “embraces but one subject and matters
12 necessarily connected therewith and pertaining thereto if the parts of the
13 proposed initiative ... are functionally related and germane to each other in a
14 way that provides sufficient notice of the general subject of, and of the interests
15 likely to be affected by, the proposed initiative....”

16 Petitioners allege the initiative violates the single-subject requirement⁶
17 because the initiative embraces a number of subjects that are neither
18 functionally related nor germane to each other or to any single purpose.
19 Specifically, the petitioners allege the proposed amendment would ban every
20 intentional act that results in death of a fertilized human egg, or zygote.
21 Petitioners argue such a broad and far reaching proposal does not give notice of
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23 ²*Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 898, 141
24 P.3d 1235 (2006).

25 ³*Id.* 912.

26 ⁴*Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev.
27 A.O. 17, 208 P.3d 429, 436 (2009).

28 ⁵*Nevada Judges Assn. v. Lau*, 112 Nev. 51, 57, 910 P.2d 898 (1996).

⁶NRS 295.009(1)(a) and (2) .

1 the subjects and interests likely to be affected, and therefore violates the single-
2 subject requirement.

3 Prolife alleges the initiative protects prenatal life in Nevada. Prolife argues
4 the text of the initiative addresses that single subject and purpose.

5 To resolve the single-subject issue the court must determine the initiative's
6 overall subject⁷ or primary purpose.⁸ To determine the initiative's subject or
7 primary purpose courts look to the initiative's text and the proponent's
8 arguments.⁹

9 The title of the proposed amendment is "Unalienable right to life of every
10 prenatal person is protected." The text of the initiative prohibits the intentional
11 taking of a prenatal person's life and defines "prenatal person." Neither the
12 Description of Effect nor Prolife's arguments contradicts the initiative's text.
13 The subject or primary purpose of the initiative is to amend the Nevada
14 Constitution to prohibit the intentional taking of prenatal life.

15 Prohibiting the taking of prenatal life and defining "prenatal life," are
16 functionally related and germane to each other in a way that provides sufficient
17 notice of the general subject of, and of the interests likely to be affected.

18 Petitioners argue the initiative would make multiple changes to Nevada law
19 that are not functionally related nor germane to each other. Petitioners give
20 examples of how the initiative could affect use of some common birth control
21 methods, the treatment of ectopic pregnancy, in vitro fertilization treatment,
22 and stem cell research. The Affidavit of Anna Themis Contomitros, M.D.
23 provides factual support for the petitioners' argument. Prolife did not submit
24 any evidence to contradict Dr. Contomitros's affidavit. Prolife asked the court to
25

26 ⁷*Nevadans for the Prot. of Prop. Rights*, 122 Nev. at 907.

27 ⁸*Las Vegas Taxpayer*, 208 P.3d at 439.

28 ⁹*Id.*

1 take judicial notice of facts that are contrary to Dr. Contomitros's affidavit. The
2 facts Prolife requests the court take judicial notice of do not meet the
3 requirements for judicial notice.¹⁰ Therefore the court cannot take judicial
4 notice of the facts. The facts set forth in Dr. Contomitros's affidavit are
5 uncontroverted. The court finds the initiative could affect use of some common
6 birth control methods including the "pill," the treatment of ectopic pregnancy,
7 in vitro fertilization treatment, and stem cell research; and that stem cell
8 research offers potential for treating diseases such as diabetes, Parkinson's
9 disease, heart disease, and others.

10 NRS 295.009(1)(a) and (2) require a single subject, not a single effect. In
11 *Nevadans for the Protection of Property*¹¹ the court considered an eminent
12 domain initiative petition. That initiative contained 14 different sections. The
13 court severed five of the sections out of the initiative and concluded the other
14 nine sections complied with the single-subject requirement. Each of the
15 remaining nine sections had different effects. For example, section two
16 prohibits using eminent domain to transfer property interests from one private
17 party to another private party. Section four requires the government provide a
18 property owner with a copy of all appraisals and entitles the property owner to a
19 jury trial as to whether the taking is for a public use. Section five establishes
20 how taken or damaged property will be valued. Although that initiative had
21 many different effects all of those effects fit within a single subject, eminent
22 domain.

23 Section 8 in the initiative in *Nevadans for the Protection of Property*¹²
24 addressed government actions that cause substantial economic loss to property
25

26 ¹⁰NRS 47.130.

27 ¹¹122 Nev. 894.

28 ¹²122 Nev. 894.

1 rights. Section 8 included examples of substantial economic loss: the down
2 zoning of private property, the elimination of any access to private property,
3 and limiting the use of private air space. The court concluded the provision
4 violated the single-subject requirement because it applied to myriad other
5 governmental actions that do not fit within the most broad definition of
6 eminent domain.

7 The test is whether the initiative provisions fit within a single subject.
8 Prolife's initiative if passed will have many different effects. But all of those
9 effects will fit within a single subject, prohibiting the intentional taking of
10 prenatal life.

11 There is a limit to how general a single subject can be. An excessively
12 general single subject can violate the single-subject requirement. In *Las Vegas*
13 *Taxpayer*¹³ the provisions of an initiative sought to require voter approval for
14 certain lease-purchase arrangements and to designate the voter of Las Vegas as
15 the City's legislative body. The initiative proponents argued the two provisions
16 embraced the single subject of "voter approval." The *Las Vegas Taxpayer* court
17 concluded the single subject "voter approval" was excessively general.

18 The *Las Vegas Taxpayer*¹⁴ court identified some other excessively general
19 "single subjects:" "government;" "public welfare;" "fiscal affairs;" "statutory
20 adjustments;" and "public disclosure, i.e., truth in advertising." The *Las Vegas*
21 *Taxpayer* court took these examples from three cases. The first, *Harbor v.*
22 *Deukmejian*,¹⁵ cited *Evans v. Superior Court*¹⁶ as the leading authority on the
23 construction of California's single-subject requirement. In *Evans* the
24

25 ¹³208 P.3d 429 (2009).

26 ¹⁴*Id.*

27 ¹⁵43 Cal. 3d 1078, 1082-1103, 240 Cal. Rptr. 569, 742 P.2d 1290 (Cal. 1987).

28 ¹⁶215 Cal. 58, 8 P.2d 467 (Cal. 1932).

1 Legislature adopted the entire Probate Code in one enactment. The *Evans* court
2 held that the act contained only one subject as described by the initiative's title,
3 an "act to revise and consolidate the law relating to probate . . . to repeal certain
4 provisions of law therein revised and consolidated and therein specified; and to
5 establish a Probate Code."

6 A probate code includes many diverse provisions including wills, succession,
7 appointment of representatives, special administrators, powers and duties of
8 personal representatives, inventory and appraisal, different types of
9 administration, administration of trusts, escheats, and more. But all of those
10 provisions fit within the single subject, probate code.

11 The *Harbor* court also cited *Brosnahan v. Brown*.¹⁷ In *Brosnahan* a
12 proposition that dealt with "victims' rights" had multiple facets such as
13 restitution, safe schools, bail, and prior convictions. The *Brosnahan* court held
14 the proposition did not violate the single-subject requirement.

15 The court turns now to the three cases cited in *Las Vegas Taxpayer* as
16 examples of excessively general single subjects. The legislative bill at issue in
17 *Harbor*, Bill 1379, contained provisions with no apparent relationship. The
18 asserted single-subject of Bill 1379 was "fiscal affairs." The court cited a few
19 examples of the bill's provisions: one section amended a provision of the
20 Business and Professions Code to require agencies within the Department of
21 Consumer Affairs submit a fiscal impact report to the director of the
22 department before transmitting it to the Legislature. Another section amended
23 the same code to provide that the Contractors' State License Board may disclose
24 to the public general information regarding complaints filed against licensees.
25 Another section amended the Military and Veterans Code to provide that a
26 veterans' home may be appointed guardian of the estate of a veteran. Another
27 section permitted concession contracts for state parks to exceed 20 years. The

28 ¹⁷32 Cal.3d 236, 186 Cal. Rptr. 30, 651 P.2d 274 (Cal. 1982).

1 Harbor court found Bill 1379 attempted to join disparate provisions “which
2 appear germane only to topics of excessive generality.”¹⁸ The court held Bill
3 1379 violated the single-subject requirement because of excessive generality of
4 “fiscal affairs” as a single subject.

5 The second case cited by the *Las Vegas Taxpayer* court was *Chemical*
6 *Specialties Mfrs. v. Deukmejian*.¹⁹ In *Chemical Specialties* Proposition 105
7 sought to reduce toxic pollution, protect seniors from fraud and deceit in the
8 issuance of insurance policies, raise the health and safety standards in nursing
9 homes, preserve the integrity of the election process, and fight apartheid. The
10 court held the provisions of Proposition 105 were neither functionally related to
11 one another nor reasonably germane to one another. The asserted single
12 subject, “public’s right to know” or “truth in advertising,” was excessively
13 general. The court concluded Proposition 105 violated the single-subject
14 requirement.

15 The third case cited by *Las Vegas Taxpayer* was *Senate of the State of*
16 *California v. Jones*.²⁰ The *Senate* initiative involved provisions that would
17 transfer the power to reapportion state legislative, congressional, and Board of
18 Equalization districts from the Legislature to the California Supreme Court, and
19 revise provisions relating to the compensation of state legislators and other
20 state officers. The *Senate* court concluded these “separate subjects” and
21 “diverse objectives” violated the single-subject requirement and could not be
22 saved by the overbroad single subject “voter approval.”

23 Prolife’s initiative may have effects in various areas including common birth
24 control methods, the treatment of ectopic pregnancy, in vitro fertilization
25

26 ¹⁸*Harbor* at 1099.

27 ¹⁹227 Cal. App. 3d 663, 278 Cal. Rptr. 123 (Ct. App. 1991).

28 ²⁰21 Cal. 4th 1142, 90 Cal. Rptr. 2d 810, 988 P.2d 1089 (CA 1999).

1 treatment, and stem cell research. But those effects flow from a single subject
2 and purpose, prohibiting the taking of prenatal life. Prolife's initiative does not
3 contain separate subjects or seek diverse objectives as do the cases cited above
4 which resulted in a conclusion that the initiative violated the single-subject
5 requirement.

6 The court concludes Prolife's initiative contains a single subject.

8 DESCRIPTION OF EFFECT

9 Petitioners challenge Prolife's Description of Effect. The court has found the
10 petitioners have established that if the initiative passes it will affect various
11 areas including common birth control methods, the treatment of ectopic
12 pregnancy, in vitro fertilization treatment, and stem cell research. Prolife's
13 description does not include any information regarding these effects.

14 The State of Nevada has an important interest in "preventing the public
15 from being confronted with confusing or misleading initiatives"²¹ and
16 "promoting informed decisions and in preventing the enactment of unpopular
17 provisions by attaching them to more attractive proposals or concealing them in
18 lengthy, complex initiatives (i.e., logrolling)."²²

19 NRS 295.009 requires an initiative "set forth, in not more than 200 words, a
20 description of the effect of the initiative ... if the initiative ... is approved by the
21 voters." The description of effect is a significant tool to help "prevent voter
22 confusion and promote informed decisions."²³ An initiative's summary "need
23 not be the best possible statement of a proposed measure's intent," but it must
24 be "straightforward, succinct, and nonargumentative."

26 ²¹*Nevadans for the Prot. of Prop. Rights* at 906.

27 ²²*Las Vegas Taxpayer* at 437.

28 ²³*Nevadans for Nevada v. Beers*, 122 Nev. 930, 939, 142. P.3d 339 (2006).

1 Prolife's Description of Effect is inadequate. It is ordered the following
2 description be substituted into the initiative:

3 All persons are endowed by their creator with certain unalienable
4 rights including the right to life. This initiative proposes to add a
5 new section to the Nevada Constitution to protect a prenatal
6 person's right to life. The new section would make it unlawful to
7 intentionally kill a prenatal person by any means. The term
8 "prenatal person" includes every human being from the moment
9 an egg is fertilized by a sperm and at all stages of development
10 from that time until birth. The initiative would protect a prenatal
11 person regardless of whether or not the prenatal person would
12 live, grow, or develop in the womb or survive birth; prevent all
13 abortions even in the case of rape, incest, or serious threats to the
14 woman's health or life, or when a woman is suffering from a
15 miscarriage, or as an emergency treatment for an ectopic
16 pregnancy. The initiative will impact some rights Nevada women
17 currently have to utilize some forms of birth control, including the
18 "pill;" and to access certain fertility treatments such as in vitro
19 fertilization. The initiative will affect embryonic stem cell
20 research, which offers potential for treating diseases such as
21 diabetes, Parkinson's disease, heart disease, and others.

13
14 **STANDING**

15 Prolife withdrew their standing objection during oral argument.

16
17 **CORRECTION TO CONFORM INITIATIVE LANGUAGE**

18 Prolife requests the court order the Secretary of State to make page two of
19 the initiative's Description of Effect identical to the page one Description of
20 Effect. The court's order to substitute a description of effect moots this issue.

21
22 **CONCLUSION**

23 The petitioners' request to declare the initiative invalid because it violates
24 the single-subject requirement is denied. The request to declare the Description
25 of Effect inadequate is granted and substitute language is ordered. Prolife's

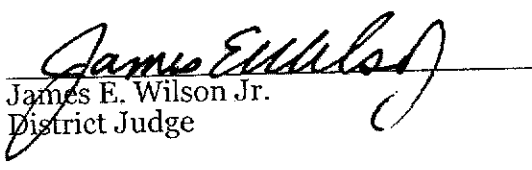
26 /////

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1 request to have the Secretary of State correct an error in the initiative's second
2 page Description of Effect is moot.

3
4 December 19, 2011

5 
6 James E. Wilson Jr.
7 District Judge
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CERTIFICATE OF SERVICE

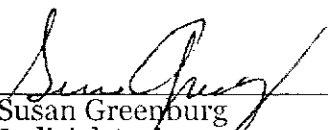
Pursuant to NRCP 5(b), I certify that I am an employee of The Honorable James E. Wilson, and I certify that on this 19 day of December, 2011, I deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing order and addressed to the following:

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