

SUPREME COURT, STATE OF COLORADO

Court Address: 2 East 14th Avenue
Denver, Colorado 80203

FILED IN THE
SUPREME COURT

SEP 10 2007

OF THE STATE OF COLORADO
SUSAN J. FESTAQ, CLERK

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)

Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE,
AND SUBMISSION CLAUSE AND SUMMARY
FOR 2007-2008, #36

Petitioners: ELIZABETH ANNISON, ELLEN
BRILLIANT, TRUDY B. BROWN, VICKI J.
COWART, CATHRYN L. HAZOURI, JACINTA
MONTROYA, and TONI PANETTA, Objectors,

v.

Respondents: KRISTINE BURTON and MARK
MEUSER, Proponents,

and

Title Board: WILLIAM A. HOBBS, DANIEL L.
CARTIN, and DANIEL DOMENICO

▲ COURT USE ONLY ▲

Attorneys for Petitioners:

Kara Veitch, #32227

Edward T. Ramey, #6748

Isaacson Rosenbaum P.C.

633 17th Street, Suite 2200

Denver, Colorado 80202

Phone Number: (303) 292-5656

Fax Number: (303) 292-3152

E-mail: kveitch@ir-law.com; eramey@ir-law.com

Case No. 07SA245

OPENING BRIEF OF PETITIONERS

TABLE OF CONTENTS

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW 1

II. STATEMENT OF THE CASE..... 1

 A. Nature of the Case, Course of Proceedings, and Disposition
 Before the Title Board. 1

 B. Statement of Facts..... 2

III. SUMMARY OF THE ARGUMENT 2

IV. ARGUMENT 3

 A. Standard of Review..... 3

 B. Single Subject. 4

 C. Unfair and Misleading Nature of the Title. 12

V. CONCLUSION 14

Attachments:

1. Text of Proposed Initiative for 2007-2008 #36
2. Title Set for Proposed Initiative for 2007-2008 #36
3. Transcript of Title Board Hearing, July 18, 2007, on Proposed Initiative for 2007-2008 #36

TABLE OF AUTHORITIES

Cases

<u>City and County of Denver v. Eggert,</u> 647 P.2d 216 (Colo. 1982).....	9
<u>Colorado Anti-Discrimination Comm'n v. Case,</u> 380 P.2d 34 (Colo. 1962).....	6
<u>Firelock, Inc. v. District Court,</u> 776 P.2d 1090 (Colo. 1989).....	7
<u>In re Hartley,</u> 886 P.2d 665 (Colo. 1994).....	7
<u>In re Initiative for 1997-1998 #30,</u> 959 P.2d 822 (Colo. 1998).....	3
<u>In re Initiative for 1999-2000 #235(A),</u> 3 P.3d 1219 (Colo. 2000).....	3
<u>In re Initiative for 1999-2000 #258(A),</u> 4 P.3d 1094 (Colo. 2000).....	3
<u>In re Proposed Initiative for 1997-1998 #74,</u> 962 P.2d 927 (Colo. 1998).....	4
<u>In re Proposed Initiative for 1999-2000 #29,</u> 972 P.2d 257 (Colo. 1999).....	12
<u>In re Proposed Initiative for 1999-2000 #37,</u> 977 P.2d 845 (Colo. 1999).....	12
<u>In re Proposed Initiative for 2005-2006 #55,</u> 138 P.3d 273 (Colo. 2006).....	5
<u>In re Proposed Initiative on Parental Notification of Abortions for Minors,</u> 794 P.2d 238 (Colo. 1990).....	14
<u>In re Proposed Initiative on Parental Rights,</u> 913 P.2d 1127 (Colo. 1996).....	11
<u>In re "Public Rights in Waters II,"</u> 898 P.2d 1076 (Colo. 1995).....	5, 11
<u>Martinez v. Southern Ute Tribe,</u> 374 P.2d 691 (Colo. 1962).....	7
<u>Mills v. Bd. of County Comm'rs,</u> 626 P.2d 652 (Colo. 1981).....	9

<u>Rochin v. California,</u> 342 U.S. 165 (1952).....	9
<u>Sealock v. State of Colorado,</u> 218 F.3d 1205 (10th Cir. 2000).....	7
<u>Toland v. Strohl,</u> 364 P.2d 588 (Colo. 1961).....	9
<u>Watso v. Dept. of Social Services,</u> 841 P.2d 299 (Colo. 1992).....	9
<u>Western Income Properties, Inc. v. City and County of Denver,</u> 485 P.2d. 120 (Colo. 1971).....	9
<u>Willison v. Cooke,</u> 130 P. 828 (Colo. 1913).....	6
<u>Wright v. City of Littleton,</u> 483 P.2d 953 (Colo. 1971).....	6

Constitutional Provisions

Colorado Constitution, Article II.....	2
Colorado Constitution, Article II, § 3	2, 5, 6, 7, 11
Colorado Constitution, Article II, § 6	2, 7
Colorado Constitution, Article II, § 7	11
Colorado Constitution, Article II, § 13	11
Colorado Constitution, Article II, § 16a.....	11
Colorado Constitution, Article II, § 25	2, 8, 9
Colorado Constitution, Article V, § 1(5.5).....	1, 2, 4

Statutes

Colorado Revised Statutes § 1-40-106 (2007).....	1, 3
Colorado Revised Statutes § 1-40-106(3)(b) (2006).....	12, 13
Colorado Revised Statutes § 1-40-106.5 (2007).....	1, 2
Colorado Revised Statutes § 1-40-106.5(e) (2007).....	4
Colorado Revised Statutes § 1-40-107(1) (2007)	2
Colorado Revised Statutes § 1-40-107(2) (2007)	1

Elizabeth Annison, Ellen Brilliant, Trudy B. Brown, Vicki J. Cowart, Cathryn L. Hazouri, Jacinta Montoya, and Toni Panetta ("Petitioners"), through their undersigned counsel, respectfully submit the following Opening Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2007-2008 #36 ("Definition of Person"):

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The proposed initiative violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2007), by asking the voters, in a single measure, to alter a material term in three selected constitutional provisions addressing three separate and distinct subjects.

2. The title set for the proposed initiative is unfair and misleading in contravention of § 1-40-106, C.R.S. (2007), by not disclosing that the true intent and meaning of the initiative is to make it illegal to terminate a pregnancy.

II. STATEMENT OF THE CASE

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

This Original Proceeding is brought pursuant to § 1-40-107(2), C.R.S. (2007), seeking review of the actions of the Ballot Title Setting Board regarding proposed Initiative for 2007-2008 #36. Petitioners are registered electors who

timely submitted a Motion for Rehearing before the Title Board raising the objections presented herein pursuant to § 1-40-107(1), C.R.S. (2007).

The Title Board conducted its initial public meeting and set titles for proposed Initiative for 2007-2008 #36 on July 18, 2007. Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2007), on July 25, 2007. The Motion for Rehearing was heard at the next meeting of the Title Board on August 1, 2007. At the rehearing, the Board denied Petitioners' Motion. Petitioners filed their Petition for Review with this Court on August 8, 2007.

B. Statement of Facts.

Proposed Initiative for 2007-2008 #36 seeks to add a new section 31 to Article II of the Colorado Constitution that will alter the definition of a material term – "person" – as it is used in three other selected sections of Article II of the Colorado Constitution. The targeted sections are 3 ("Inalienable Rights"), 6 ("Equality of Justice"), and 25 ("Due Process of Law"). The alteration would expand the definition of "person" or "persons" in each of those three selected sections to "include any human being from the moment of fertilization."

III. SUMMARY OF THE ARGUMENT

1. The proposed initiative violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2007), by asking the voters,

in a single measure, to alter a material term in three separate selected constitutional provisions addressing three separate and distinct subjects. The voters would be denied the opportunity to consider the merits of the proposal independently in the context of each of the distinct subject areas at issue.

2. The title set for the proposed initiative is unfair and misleading in contravention of § 1-40-106, C.R.S. (2007), by not disclosing that the acknowledged true intent and meaning of the initiative is to make it illegal to terminate a pregnancy.

IV. ARGUMENT

A. Standard of Review.

Beginning with the presumption that the actions of the Title Board are valid, the Court generally declines to address the merits of a proposed initiative, interpret its language, or predict its application. In re Initiative for 1999-2000 #235(A), 3 P.3d 1219, 1222 (Colo. 2000). "When necessary, however, we will characterize the proposal sufficiently to enable review of the Title Board's action." In re Initiative for 1999-2000 #258(A), 4 P.3d 1094, 1098 (Colo. 2000). "[W]e must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated." In re Initiative for 1997-1998 #30, 959 P.2d 822, 825 (Colo. 1998).

Similarly, the Court conducts a sufficient review of the title to determine whether it is fair and accurate.

B. Single Subject.

Colo. Const. art. V, § 1(5.5), states that "[n]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title." The General Assembly has described this requirement as intended to inhibit two principal practices: "(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice 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 thus securing the enactment of measures that could not be carried upon their own merits;" and "(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters." § 1-40-106.5(e), C.R.S. (2007).

This Court has recognized the single-subject requirement to be "intended to prevent voters from being confused or misled and to ensure that each proposal for change is considered on its own merits." In re Proposed Initiative for 1997-1998 #74, 962 P.2d 927, 928 (Colo. 1998). An initiative may neither hide purposes unrelated to its central theme nor group distinct purposes or subjects under a broad

theme. In re Proposed Initiative for 2005-2006 #55, 138 P.3d 273, 277-78 (Colo. 2006); In re "Public Rights in Waters II," 898 P.2d 1076, 1080 (Colo. 1995).

One may debate the purposes, goals, and potential effects of this initiative. Indeed, as discussed below, the proponents acknowledge that their primary *purpose* (albeit undisclosed in text or title) is to stop abortions. But what they have crafted in Proposed Initiative for 2007-2008 #36 is something far broader and quite different. They have selected three separate and distinct sections of the Colorado Constitution's Bill of Rights and have proposed a significant refinement of a material term in each of these selected sections – and only these selected sections. They are asking the voters, in a single measure, to alter the sweep of three separate and distinct categories of individual rights. The voters cannot do this without simultaneously addressing the three separate and distinct *subjects* defined by those rights.

The first section – and subject – addressed by the measure is Colo. Const. art. II, § 3:

Inalienable rights. All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

The subject of this section is the recognition of a body of substantive "fundamental and inherent rights with which all humans are endowed even though no specific mention is made of them in either the national or state constitutions." Colorado Anti-Discrimination Comm'n v. Case, 380 P.2d 34, 39 (Colo. 1962). These "natural rights" – Id. at 40 – are not unrestricted, but "are subject to regulation by a proper exercise of the police power of the state" – Id. at 41 – though such regulation may not extend "beyond what is necessary to provide for the welfare and general security of the public." Wright v. City of Littleton, 483 P.2d 953, 955 (Colo. 1971), quoting Willison v. Cooke, 130 P. 828, 832 (Colo. 1913).

As noted in Case, *supra* at 39, the term "persons" in the context of Colo. Const. art. II, § 3, refers exclusively to natural persons, to "humans." The present initiative would specify the moment of endowment of these "natural, essential and inalienable," albeit limitable, substantive rights as "the moment of fertilization."

The question for the voters, of course, is what would this mean? Would it change very little in the grand scheme, or would it change quite a lot? Would it accomplish the proponents' purposes – or not? Would it have other practical effects? Would it make sense in application? Would it offend the Constitution of the United States? We need not answer these questions today, but the proponents

would hand precisely these questions to the voters. The *subject* of this piece of the initiative is this loosely defined and generally delimited package of "natural, essential and inalienable" rights and a proposed specification of the moment at which we will recognize those rights to have been endowed.

The second section – and subject – addressed by the measure is Colo. Const. art. II, § 6:

Equality of Justice: Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

Unlike Colo. Const. art. II, § 3, this section provides purely a *procedural* right to a judicial remedy whenever an independent substantive right otherwise exists under Colorado (or presumably federal) law. In re Hartley, 886 P.2d 665, 675 (Colo. 1994); *accord*, Sealock v. State of Colorado, 218 F.3d 1205, 1212-13 (10th Cir. 2000). Colo. Const. art. II, § 6, itself creates or recognizes no independent substantive rights. Hartley, *supra*, at 675-76. Also, unlike Colo. Const. art. II, § 3, the term "person" in this section is interpreted to apply to entities accorded the rights of "persons" under law as well as to natural persons. *See, e.g.*, Firelock, Inc. v. District Court, 776 P.2d 1090, 1096 (Colo. 1989); Martinez v. Southern Ute Tribe, 374 P.2d 691, 694 (Colo. 1962).

The initiative at issue would extend this purely procedural right for natural persons back all the way to "the moment of fertilization." Again, the question for the voters is what would this mean? Does it make sense? How would it operate? Quite unlike the section dealing with "inalienable rights," this section – and subject – is wholly dependent upon the independent recognition of a substantive right derived from another source. A voter could well conclude that this procedural right should naturally arise simultaneously with the creation of any substantive right to which it may be applicable. Or, a voter may conclude that providing judicial access to pre-embryonic fertilized eggs makes absolutely no sense irrespective of the substantive right invoked or the moment of its endowment. However the voter may approach this issue, it is a very different question – and a very different subject – from the delimitation or refinement of an independent substantive right.

The third section – and subject – addressed by the measure is Colo. Const. art. II, § 25:

Due process of law: No person shall be deprived of life, liberty or property, without due process of law.

This section of Colorado's Bill of Rights contains both a substantive and a procedural component and has been described broadly as "a summarized constitutional guarantee of respect for those personal immunities which ... are 'so

rooted in the traditions and conscience of our people as to be ranked as fundamental,' ... or are 'implicit in the concept of ordered liberty.'" Toland v. Strohl, 364 P.2d 588, 592 (Colo. 1961), quoting Rochin v. California, 342 U.S. 165, 169 (1952). It is both a protection from "arbitrary governmental restrictions on property and liberty interests," Watso v. Dept. of Social Services, 841 P.2d 299, 304 (Colo. 1992), and a guarantee of "adequate advance notice and an opportunity to be heard" prior, or in some cases subsequent, to state deprivation of a protected life, liberty, or property interest. See City and County of Denver v. Eggert, 647 P.2d 216, 224 (Colo. 1982). Incorporated within this right under Colo. Const. art. II, § 25, is the right to equal protection of the laws. See, e.g., Mills v. Bd. of County Comm'rs, 626 P.2d 652, 657 (Colo. 1981).

The sweep of Colo. Const. art. II, § 25, is broad, though the focus is upon freedom from arbitrary and procedurally unfair governmental deprivation of life, liberty, and property interests – great and small, naturally arising and statutorily created – recognized elsewhere under our laws. The protection applies both to natural persons and to other entities accorded the status of "persons" under the laws of this state. See, e.g., Western Income Properties, Inc. v. City and County of Denver, 485 P.2d. 120, 121 (Colo. 1971). The rights protected may be "natural, essential and inalienable" – though limitable in the interests of "the welfare and

general security of the public" – or wholly conferred and defined by statute, ordinance, or regulation.

Proposed Initiative for 2007-2008 #36 asks the voters to delve into yet another subject when it extends the right to "due process of law" back to "the moment of fertilization." Is a pre-embryonic fertilized egg to be accorded an independent right to advance notice and an opportunity to be heard in the context of a potential governmental deprivation of a substantive right recognized by another constitutional provision or statute? How is this to be accomplished? Does this make sense? What is the scope of underlying substantive rights to which such due process shall be applicable? Is this a change we wish to make? Might a voter feel quite comfortable recognizing a "natural" and "inalienable" substantive right as having been endowed at "the moment of fertilization," subject to reasonable regulation in the interests of the general welfare, while not simultaneously wishing to accord the full compendium of procedural due process protection for that right effective at "the moment of fertilization?" Again, these are not questions we need answer here – but they are questions the voters would be called upon to consider in the context of evaluating this third, and distinct, subject of the proposed initiative.

The proponents, it may be presumed, will view their initiative simply as a proposal to refine the definition of "person" for all purposes under the Colorado

Bill of Rights where such a refinement could conceivably have a rational effect (e.g., excluding such obviously inapplicable subjects as the right to bear arms under Colo. Const. art. II, § 13). Yet, this is not what they have done. They have carefully selected three independent sections, while omitting others where the proposed refinement would be no more illogical – e.g., Colo. Const. art. II, § 16a, according a right to be heard to crime victims, and Colo. Const. art. II, § 7, restricting warrants for searches or seizures. Nor does that alter the fact that multiple subjects, neither necessarily nor properly connected, are being implicated. Refining the definition of a single term – "person" – in multiple constitutional provisions dealing with distinct and different subjects is no different from adopting a public trust doctrine applicable to the public's ownership and interest in waters and, in the same measure, modifying water conservancy and conservation district election procedures – simply because it all involves "water." In re "Public Rights in Waters II," *supra*. Even a topically broad initiative such as the 1996 measure proposing recognition of a new inalienable right "of parents to direct and control the upbringing, education, values, and discipline of their children" was limited to one subject (recognizing a new "inalienable right") and sought to amend only one constitutional section, Colo. Const. art. II, § 3. In re Proposed Initiative on Parental Rights, 913 P.2d 1127, 1131 (Colo. 1996).

In sum, in a single measure, the proponents of Proposed Initiative for 2007-2008 #36 are seeking voter approval for: (1) a refinement of the point at which a constitutionally recognized category of naturally conferred substantive inalienable rights will be deemed to have been endowed upon natural persons; (2) an extension of a purely procedural right to judicial access for the enforcement by natural persons of substantive rights derived from any source (inalienable or otherwise); and (3) an advancement of the point in time at which a natural person is entitled to due process protections against governmental deprivation of any form of substantive right to life, liberty, or property. These are three separate and distinct subjects. They have no necessary or proper connection. They pose vastly different considerations for the voter. And, they reside in different and discrete sections of the Colorado Constitution for very good reason.

C. Unfair and Misleading Nature of the Title.

Titles are required to "correctly and fairly express the true intent and meaning" of a proposed initiative – § 1-40-106(3)(b), C.R.S. (2006) – "enabling informed voter choice." In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845, 846 (Colo. 1999), quoting In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 266 (Colo. 1999). In setting a title, the Board is required to "consider the

public confusion that might be caused by misleading titles." § 1-40-106(3)(b), C.R.S. (2006).

The proponents of Proposed Initiative for 2007-2008 #36 candidly acknowledged at the initial Title Board hearing that their dominant purpose is to stop abortions:

MR. MEUSER: In Roe v. Wade, the United States Supreme Court in the majority decision said, if personhood was ever established, then the case for Roe collapses. What we are doing is we're defining when personhood begins in the state of Colorado as set forth by the Chief Justice in the United States Supreme Court. So, thus, in this state, there would be no abortions.

...
MR. MEUSER: Again, our purpose is to establish a Constitutional principle that fundamental rights of a person vest at the moment of fertilization. Because of the three sections that we have defined person or have established personhood, one of the effects of that would be addressing what the Supreme Court said in Roe v. Wade. That would just be one of the – the effects of, you know – of calling an unborn baby a person.

BOARD MEMBER: Well, just give me examples of other effects.

MR. MEUSER: That would be the – that is the major effect. I – I would have to sit here and just try to, you know, think up creative hypotheticals, but it is – it's also establishing a principle in the state of Colorado that we support life, you know.

Tr. p. 9, ll. 7-14; p. 23, l. 22 – p. 24, l. 13 (see attached).

Nowhere in the text or title of the initiative does this dominant and overriding purpose appear. Voters are simply left to guess as to the intended

purpose and application of the initiative's pronouncements. And, while it is likely that many voters will guess right, this Court has clearly stated that the voters are entitled to be *clearly apprised in the title* regarding the proposal of "a legal standard that is new and likely to be controversial." In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 242 (Colo. 1990). That is certainly the case here, and the title set in this case wholly fails to meet this requirement.

V. CONCLUSION

For the reasons set forth above, Petitioners request the Court to reverse the actions of the Title Board and to direct the Board to strike the titles, ballot titles, and submission clauses and return proposed Initiative for 2007-2008 #36 to its proponents.

Respectfully submitted this 10th day of September, 2007.

ISAACSON ROSENBAUM P.C.

By: Kara Veitch
Kara Veitch, #32227
Edward T. Ramey, #6748
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, Colorado 80202

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

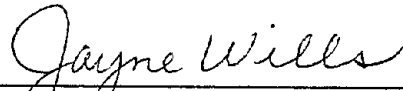
I HEREBY CERTIFY that on this 10th day of September, 2007, a true and correct copy of the foregoing **OPENING BRIEF OF PETITIONERS** was served as indicated to the following addressees:

Via Overnight Delivery

Michael J. Norton, Esq.
Burns, Figa & Will, P.C.
6400 South Fiddlers Green Circle
Suite 1000
Greenwood Village, CO 80111

Via Hand Delivery

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, CO 80203



Jayne Wills

ATTACHMENT 1

Final
#36

Be it Enacted by the People of the State of Colorado:

SECTION 1. Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 31. Person defined. AS USED IN SECTIONS 3, 6, AND 25 OF ARTICLE II OF THE STATE CONSTITUTION, THE TERMS "PERSON" OR "PERSONS" SHALL INCLUDE ANY HUMAN BEING FROM THE MOMENT OF FERTILIZATION.

PROPOSERS:

Kristine Burton
PO Box 298
Peyton, CO 80831
720-979-7768
contact@coloradoequalrights.com
www.coloradoequalrights.com

Mark Meuser
PO Box 298
Peyton, CO 80831
720-979-7768
contact@coloradoequalrights.com
www.coloradoequalrights.com

RECEIVED

JUL 03 2007

ELECTIONS / LICENSING
SECRETARY OF STATE

10:32 am
W

ATTACHMENT 2

Ballot Title Setting Board

Proposed Initiative 2007-2008 #36¹

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

An amendment to the Colorado constitution defining the term "person" to include any human being from the moment of fertilization as "person" is used in those provisions of the Colorado constitution relating to inalienable rights, equality of justice, and due process of law.

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 defining the term "person" to include any human being from the moment of fertilization as "person" is used in those provisions of the Colorado constitution relating to inalienable rights, equality of justice, and due process of law?

Hearing July 18, 2007:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 3:30 p.m.

Hearing August 1, 2007:

Motion for Rehearing denied.

Hearing adjourned 2:56 p.m.

¹ Unofficially captioned "Definition of Person" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

ATTACHMENT 3

COPY

MINITRANSSCRIPT

**INITIATIVE TITLE SETTING
REVIEW BOARD**

Wednesday, July 18, 2007, 2:00 p.m.

**Secretary of State's Blue Spruce
Conference Room
1700 Broadway, Suite 270
Denver, Colorado**

**Agenda Item 2007-2008 #36 -
"Definition of Person"**

Board Members:

Bill Hobbs, Deputy Director of State, Chair

**Dan Cartin, Deputy Director of the
Office of Legislative Legal Services**

Dan Domenico, Solicitor General

INITIATIVE TITLE SETTING REVIEW BOARD

Wednesday, July 18, 2007, 2:00 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

Agenda Item 2007-2008 #36 - "Definition of Person"

Board Members:

Bill Hobbs, Deputy Secretary of State, Chair

Dan Cartin, Deputy Director of the Office of
Legislative Legal Services

Dan Domenico, Solicitor General

1 PROCEEDINGS

2 CHAIRMAN HOBBS: Good afternoon.

3 Let's go ahead and get started. This is a meeting
4 of the Title Setting Board pursuant to Article 40 of
5 Title 1, Colorado Revised Statutes. The date is
6 July 18th, 2007. The time is 2:01 p.m. We're
7 meeting in the Secretary of State's Blue Spruce
8 conference room, 1700 Broadway, Suite 270, Denver,
9 Colorado.

10 The Title Setting Board today
11 consists of the following: My name is Bill Hobbs,
12 I'm the Deputy Secretary of State, and I'm here on
13 behalf of Secretary of State Mike Coffman. To my
14 left is Dan Cartin, Deputy Director of the Office of
15 Legislative Legal Services, who is here as a
16 representative of the Director of the Office of
17 Legislative Legal Services, Charlie Pike. And to my
18 right is Dan Domenico, Solicitor General, who is
19 here as the representative of Attorney General John
20 Suthers.

21 Today we're meeting to consider
22 title setting for one proposed measure, 2007-2008
23 #36, Definition of Person. For anybody who wishes
24 to testify, there is a sign-up sheet on the table by
25 the back door. If you -- if you do wish to testify,

1 be sure to sign up. The hearing is a recorded
2 formal meeting and it is broadcast over the
3 Internet.

4 Let me talk a little bit about the
5 procedures that we follow. Basically, for each new
6 measure there are three steps that we go through.
7 First, the board will hear from the proponents, and
8 that is to primarily make sure that the board
9 members understand the proposal. So, typically
10 there are questions -- there may be questions from
11 the board members directed to the proponents to make
12 sure that we understand the proposal.

13 The second step is for the board to
14 determine if the measure complies with the single
15 subject requirement of the Constitution, and this is
16 necessary because the Constitution and the statutes
17 prohibit the board from setting a title if the
18 measure comprises more than one subject.

19 And then third, if the board finds
20 that it has jurisdiction to set a title because the
21 measure complies with the single subject
22 requirement, then the board will work on setting a
23 title using a staff-prepared draft, which I think is
24 also on the table by the back door.

25 Generally we take all of the

1 testimony first. Then the board discusses and votes
2 after testimony. A decision is reached by two of
3 the three members of the board. And I want to
4 emphasize, of course, that the board is concerned,
5 not with the merits of any proposal, but just with
6 the setting of a fair title. Anybody who is
7 dissatisfied with the decision of the board today
8 can file a motion for rehearing with the Secretary
9 of State within seven days.

10 With that, then let's turn to the
11 agenda item, No. 2007-2008 #36. I would like -- as
12 I indicated, would like to hear from proponents
13 first, if -- whoever is speaking for proponents, if
14 you would like to come forward, identify yourself
15 for the record, and then if you -- if you have any
16 general remarks, feel free to do that. I think one
17 of the things we typically ask is, you know, if --
18 assuming the measure is a single subject, what do
19 you consider the single subject and what do you
20 consider the purpose of the measure.

21 I'll turn it over to you, sir.

22 MR. MEUSER: My name is Mark Meuser.
23 I am one of the proponents of this initiative. Our
24 -- you asked the question what do we consider our
25 single subject. The proposed amendment addresses

1 the single subject, which is a Constitutional
2 principle that fundamental rights of a person vest
3 at the moment of fertilization.

4 CHAIRMAN HOBBS: I'm sorry, the
5 Constitutional rights, and what was it you said?

6 MR. MEUSER: The Constitutional
7 principles -- the Constitutional principle that
8 fundamental rights of a person vest at the moment of
9 fertilization.

10 CHAIRMAN HOBBS: Are there questions
11 from members of the board?

12 BOARD MEMBER: I might as well ask
13 this now. I'm not sure if this is a single subject
14 question or -- or just a general question. Why --
15 but the -- what jumps out at me is why limit your
16 amendment to these three sections of the -- of
17 Article II, the Bill of Rights, rather than just
18 make a simple blanket statement?

19 MR. MEUSER: We could have, but we
20 figure, you know, in looking at, you know, all of
21 Article II and looking at every time the word
22 "person" or "persons" came up, these three
23 Constitutional -- or these three sections in
24 Article II really were the only three sections that
25 would make sense, that a person could be defined

1 that far back. I mean, right to a jury trial -- I
2 can't remember what all the more -- there were
3 several of them. It's, like, there's no way that
4 unborn baby -- that that right would even make any
5 sense. So, for the sake of simplicity, confusion,
6 or anything like that, we limited it to the three
7 that -- that we felt that it actually applied to.

8 BOARD MEMBER: Mr. Meuser, I have
9 just a couple of questions, and you may have already
10 heard them at the comment hearing. But the measure
11 impacts three distinct -- as I see it, three
12 distinct, separate rights or groups of rights under
13 the State Constitution, and I think arguably each of
14 those sections covers a unique subject. Can you
15 explain to me why the measure, since it impacts
16 those three sections, contains a single subject, or
17 why it doesn't contain multiple subjects, or why, if
18 it does contain multiple subjects, there's a common
19 thread running through the amendment to each of
20 those particular rights?

21 MR. MEUSER: Okay. Section 3, 6,
22 and 25 are all what we consider inalienable rights.
23 They are basic fundamental rights as a Colorado
24 citizen. We are establishing in this -- this is a
25 general Constitutional principle that the

1 person begins for these -- for these rights.
2 BOARD MEMBER: I think you probably
3 -- I think within that response, you probably
4 answered my next question, but I just want to be
5 clear. So, what is -- what do you see is the change
6 to current law that this would make?

7 MR. MEUSER: Well, it just -- it
8 ensures for the Colorado Constitution that these --
9 these rights that are granted in section 3, 6, and
10 25, that those rights are insured to be given to the
11 unborn equally with the born -- with the born. A
12 baby who's one, you know, day old has the same
13 rights as the baby who's two days before being born.
14 The same fundamental Constitutional rights that we
15 give to the born we are granting to the unborn.

16 BOARD MEMBER: Thank you.

17 CHAIRMAN HOBBS: And I guess I'd
18 just like to follow up on that a little bit because
19 I'm still a little fuzzy on -- you know, as
20 Mr. Cartin was, I think, asking, what's really the
21 change -- the practical effect of the change in the
22 law? I mean, I think you indicated that to some
23 degree you feel like the courts have already
24 extended rights --

25 MR. MEUSER: Yeah.

1 fundamental rights as granted by, you know, these
2 amendments -- or by these sections, that a person
3 begins at the moment of fertilization.

4 The thing is, if you read Article --
5 or section 25 of Article II, that's the due process
6 clause, and as an attorney, you understand that
7 there are procedural due processes and substantive
8 due processes. The thing is, we have a single
9 principle of a person's life begins at the moment of
10 fertilization. There are multiple applications,
11 just like the due process has multiple applications.
12 Inalienable rights, section 3, multiple
13 applications. These amendments have multiple
14 applications, but the single subject is the
15 fundamental right of a person, the fundamental
16 Constitutional right granted to the citizens of the
17 state of Colorado, we are saying, for, you know,
18 purposes of our Constitution, begins at the moment
19 of fertilization.

20 We can -- you know, these -- a lot
21 of these fundamental rights, we have cases in the
22 Supreme Court where they have said these rights
23 belong to an unborn person. All we're doing in some
24 sense is, you know, making sure that the
25 Constitution elaborates when life begins or when a

1 CHAIRMAN HOBBS: -- to unborn
2 people, at least I assume as early as the moment of
3 fertilization. But on the other hand, I'm assuming
4 there may be case law or principles that are to the
5 contrary, and if you could sort of elaborate a
6 little bit, I'd appreciate it.

7 MR. MEUSER: In Roe v. Wade, the
8 United States Supreme Court in the majority decision
9 said, if personhood was ever established, then the
10 case for Roe collapses. What we are doing is we're
11 defining when personhood begins in the state of
12 Colorado as set forth by the Chief Justice in the
13 United States Supreme Court. So, thus, in this
14 state, there would be no abortions.

15 CHAIRMAN HOBBS: Are there
16 questions? Thank you.

17 You know, we've really gotten into
18 what I said is the second step because I think most
19 of our questions really relate to considerations of
20 whether or not the measure comprises a single
21 subject. And I -- unless you have anything further,
22 then I think I'd like to call upon others who might
23 want to address that issue of whether the measure
24 comprises a single subject.

25 MR. MEUSER: I have comments

1 regarding the staff, but I understand we need to
2 discuss the single subject. If you -- after they
3 talk, I would love a chance to respond why -- you
4 know, legally why we feel that this is a single
5 subject.

6 CHAIRMAN HOBBS: Okay. That's fine.
7 So, if -- let's see, I think I just have one person
8 so far signed up to testify, unless someone
9 additionally has signed up. And, Kara Veitch -- I
10 may be mispronouncing that, I'm sorry if I am --if
11 you can identify yourself for the record, who you
12 represent, please.

13 MS. VEITCH: It's Kara Veitch.

14 CHAIRMAN HOBBS: Kara. I'm sorry.
15 I'm 0 to 2.

16 MS. VEITCH: It happens all the
17 time.

18 I'm an attorney, and my clients are
19 Ellen Brilliant, Trudy Brown, Vicki Cowart, Amanda
20 Montjoy, and Juanita -- or, I'm sorry -- Jacinta
21 Montoya.

22 I think the board has already
23 touched on the fact that this initiative has a
24 single subject problem. Inalienable rights, access
25 to courts, and due process, the framers of the

1 And those are our primary concerns.
2 CHAIRMAN HOBBS: Are there questions
3 for Ms. Veitch?

4 BOARD MEMBER: I appreciate what
5 you're saying, and it's certainly clear that this
6 affects a number of different kinds of rights, but
7 would you have the same problems if this -- if the
8 proposal simply -- the flip side of what I asked
9 earlier, if this proposal didn't limit itself to
10 these three sections, if it simply said for purposes
11 of the Colorado Constitution or even for Article II,
12 a person is defined as beginning at the moment of
13 fertilization?

14 MS. VEITCH: Good question. I think
15 first I'd point out that's not what they're doing
16 here. And to whether or not change -- I guess they
17 would essentially be changing their initiative to
18 say we are re-defining person for the purpose -- for
19 the Colorado Constitution. That's drastically
20 different from what they're doing here.

21 I'm not willing to concede that
22 there aren't any problems with that at this point,
23 but I haven't given it much thought at this hearing.

24 BOARD MEMBER: When I asked that, he
25 said -- the response I got was essentially that it's

1 Constitution put those in separate sections of the
2 Constitution. They themselves understood that they
3 were not the same. They could have identified
4 access to courts as an inalienable right. They
5 could have put it in the inalienable rights section.
6 They didn't do that. They could have identified due
7 process as an inalienable right. Again, they didn't
8 put that in the inalienable rights section.

9 Additionally -- in addition to them
10 being in separate sections, they are distinct.
11 Inalienable rights under the Colorado law are
12 natural and essential. They include the right of
13 enjoying and defending life and liberty, of
14 acquiring and protecting property, and seeking and
15 obtaining safety and happiness. Due process and
16 access to courts are a different type of right.
17 They exist solely because the government has
18 established a judicial system. They are not natural
19 rights, as inalienable rights are.

20 On the flip side, due process
21 requires that no person shall be deprived of life,
22 liberty or property. It says nothing of happiness
23 and safety, which is an inalienable right. Again,
24 this demonstrates the partition between these two
25 articles and sections.

1 not drastically different, that these are
2 effectively the only sections of the Constitution
3 where this would really have any practical effect,
4 is why they limited it to this. Now, if that's
5 true, then essentially my hypothetical is not that
6 much different than what we're actually asked to do
7 here.

8 Now, if, in fact, you believe what
9 he said is false and there are other sections, and
10 this really is kind of picking and choosing, then we
11 do have a different question, but if really -- and
12 -- and I have to tell you, my reading of Article II
13 at least is that he's correct, that really this --
14 the only practical effect is in these three
15 sections, even if you did write it as my
16 hypothetical. Then -- I mean, I think that really
17 is the question. Can we -- could someone come in
18 and simply redefine for purposes of the Constitution
19 what it is to be a person? Is that a single
20 subject?

21 MS. VEITCH: I mean -- let me see if
22 I get this right. Your question is, if the
23 proponents had proposed an initiative that said we
24 -- or to change the definition of person for the
25 Colorado Constitution, would there be a single

1 subject violation?
 2 BOARD MEMBER: Well, I guess --
 3 yeah, I guess I have two questions, two related
 4 questions. There could -- there could be two single
 5 subject problems here, two different kinds. One is
 6 if, by picking and choosing certain sections of
 7 Article II, that somehow creates the problem, or if
 8 it's simply too broad, even -- if you made it even
 9 broader, would that eliminate the problem or would
 10 that solve the problem?

11 MS. VEITCH: Let me address your
 12 first question. I think, yes, by picking certain
 13 sections and affecting different sections of the
 14 Colorado Constitution, that, yes, they create a
 15 single subject problem with this initiative. Your
 16 second question is, would it be too broad if they
 17 generally defined --

18 BOARD MEMBER: I mean, would --
 19 would my hypothetical solve the problem or make it
 20 worse? Is the problem simply that it's too broad
 21 and it covers all these different, disparate kind of
 22 rights that are in Article II and there -- and,
 23 therefore, making it even broader would obviously
 24 make that a worse problem, or is it that they've
 25 kind of picked and chose certain ones, and then by

1 leaving others out there -- that somehow creates the
 2 single subject problem? Because I have to sort of
 3 conceptually figure out what the single subject
 4 problem is here.

5 MS. VEITCH: Sure. I think the
 6 single subject -- there is definitely a single
 7 subject problem with the latter. I think there's no
 8 question as to that. Now, whether there's a single
 9 subject problem with the first part of the question,
 10 I'm not sure at this point. I'm not willing to
 11 concede that there's no single subject problem with
 12 it.

13 BOARD MEMBER: Well, let -- let me
 14 ask it this way: Could -- could someone come in
 15 here with an equal protection amendment that says no
 16 one shall be denied under the Colorado Constitution
 17 equal protection of the laws, because that -- equal
 18 protection brings into it a lot of -- all the laws
 19 of the state, right? And so it affects fundamental
 20 rights, it affects statutory rights, it affects the
 21 same different kinds of rights that you're saying
 22 creates a single subject problem here. And I'm --
 23 so I'm just trying to figure out, would that be a
 24 problem?

25 MS. VEITCH: The distinction between

1 that and what the proponents are doing here is that
 2 would just affect one section -- or one section of
 3 Article II, correct? That would affect --
 4 BOARD MEMBER: Well, say there were
 5 no equal protection amendment in the Colorado
 6 Constitution, but someone came in here before us and
 7 said, I propose to amend the Colorado Constitution
 8 to say no person shall be denied the equal
 9 protection of the laws of the State of Colorado.

10 That, equal protection, this blanket concept, covers
 11 all sorts of different fundamental rights, due
 12 process rights, even more. It affects much more
 13 than what they're doing here, right?

14 And so I wonder if something that
 15 broad, under your theory, at least, as you presented
 16 it at first, that would be a single subject
 17 violation.

18 MS. VEITCH: I think -- and I'm not
 19 sure because this was not part of their initiative
 20 -- that there's case law that says equal protection
 21 is part of due process in Colorado, but I would have
 22 to give -- honestly have to give that some more
 23 thought, speaking on behalf of my clients.

24 BOARD MEMBER: I'd like to ask some
 25 questions about kind of what tests we should follow

1 in deciding whether the measure complies with the
 2 single subject requirement. So, for example, one of
 3 the tests that the State Supreme Court has -- has
 4 talked about is that a measure violates single
 5 subject requirement if it has two or more distinct
 6 and separate purposes, which are not dependent on or
 7 connected with each other. And we heard the
 8 proponents identify what they view as the -- the
 9 single purpose, I think. Can you articulate for me
 10 separate and distinct purposes that are not
 11 dependent on or connected with each other?

12 MS. VEITCH: Yes. There are
 13 distinct purposes in that the proponents could
 14 arguably change the definition of person in just the
 15 inalienable rights section, and by changing it in
 16 three separate sections, they are changing three
 17 distinct and not dependent rights -- group of
 18 rights.

19 CHAIRMAN HOBBS: Not dependent on or
 20 connected with each other, separate -- you're
 21 viewing those as three separate purposes that have
 22 no relationship to each other.

23 MS. VEITCH: Right, because I think
 24 the inalienable rights stands alone. It's not
 25 connected to or dependent on the access to courts.

1 I don't think -- or due process, or vice versa.

2 BOARD MEMBER: I mean, they all
3 involve basic rights of people. I mean, there are
4 some connections.

5 MS. VEITCH: I think there's
6 probably -- perhaps very -- yes, they all fall under
7 the Bill of Rights, so they all discuss rights, but
8 I think that is probably too broad a subject.

9 BOARD MEMBER: I guess another way
10 to ask the question about, you know, what -- what
11 tests we apply is if we go back to the statute, the
12 single subject statute, 1-40-106.5. Now, this was
13 the statute that was enacted by the General Assembly
14 at the same time they referred it to the people, the
15 Constitutional amendment that enacted the single
16 subject requirement. So this is part of the
17 legislative history. And the General Assembly said
18 that it -- that it was their intent that the
19 Constitutional single subject requirement be
20 construed -- be liberally construed so as to avert
21 the practices against which they're aimed, and it
22 listed two practices that -- that the measure was
23 aimed at.

24 One was, basically what I -- what I
25 think has been called log rolling, and it defines

1 same person can actually say, I like the fact that
2 it applies to Section 3, but I do not want it to
3 apply to Section 25.

4 BOARD MEMBER: Is -- is there any
5 reason to believe that the measure is surreptitious?
6 I want to see if -- I just want to see if you can
7 address the second practice.

8 MS. VEITCH: Well, if it has a
9 surprise element to it? I will have to think about
10 that a little longer, but I definitely think we have
11 a log rolling problem.

12 BOARD MEMBER: Okay.

13 BOARD MEMBER: Yeah. I'd just like
14 -- could you explain that to me a little bit, where
15 the log rolling problem would come from? I mean,
16 who -- who would want -- and I'm just trying to
17 figure out how someone would -- would -- how that
18 would break down in someone's mind.

19 MS. VEITCH: I think that -- I'd use
20 an example of someone who thinks it's appropriate to
21 define person as a human being from fertilization
22 for the purposes of inalienable rights but not grant
23 that same person access to the courts. In -- and
24 this is a hypothetical, but if someone were to do
25 that, it seems that they would have a -- that they

1 that as putting together in one measure subjects
2 having no necessary or proper connection for the
3 purpose of enlisting in support of the measure the
4 advocates of each measure. That's one. I'm going
5 to ask you to help me decide which of these
6 practices might apply here.

7 The second practice that -- that is
8 -- that they are working against here is to prevent
9 surreptitious measures, that is, to prevent surprise
10 and fraud from being practiced upon voters. Can you
11 -- can you help me understand how this measure
12 constitutes either log rolling or surprise and
13 fraud?

14 MS. VEITCH: I -- as the initiative
15 is proposed, I think it -- I hope this addresses
16 your question -- that it's possible for someone to
17 want to give -- apply the definition of person to
18 inalienable rights but not give that person access
19 to court or due process. That --

20 BOARD MEMBER: That's -- that's what
21 I'm getting at. So, one group of people might
22 support the fact that it applies to Section 3.
23 Another group might say, I like the fact that it
24 applies to Section 25.

25 MS. VEITCH: Well, and I think the

1 would want the State to take a kind of philosophical
2 position that the unborn have inalienable rights,
3 but at the same time they might not want the courts
4 to have to appoint attorneys for the unborn, to
5 allow the unborn to sue to protect those rights.

6 BOARD MEMBER: Okay. Thanks.

7 CHAIRMAN HOBBS: Any other questions
8 for Ms. Veitch?

9 Thank you.

10 Before I return to the proponents, I
11 -- I just want to see if there was anybody else who
12 wishes to testify on the question of whether the
13 measure complies with the single subject
14 requirement. If not, then, Mr. Meuser, if you'd
15 like to respond to the arguments from Ms. Veitch,
16 please.

17 MR. MEUSER: Thank you very much.
18 We -- we -- we would agree with -- we do not think
19 that there is any surprise in the matter. The
20 amendment is very short, to the point. We don't
21 think that there would be a problem with the issue
22 of surprise.

23 As for the log rolling, just go back
24 to the same, what is the subject? We are defining
25 for -- the basic fundamental rights of Colorado

1 citizens, we are just making sure that they cover
2 the unborn. Multiple applications, but there is a
3 single purpose of defining who a person is. And,
4 you know, statutorily, that's why you have a
5 definitional section at the beginning and then you
6 have all the statutes thereafter. And, you know,
7 there will be definitional sections that only apply
8 to different sections.

9 This -- we feel that there is no
10 difference in this right here, where we have
11 confined it to the single purpose -- you know, the
12 Bill of Rights, you know. To make it simple and to
13 ensure that there is no, you know, fraud or
14 deception, we went through and, you know,
15 specifically listed out the three sections that
16 would be applicable where this definition of person
17 would even matter, as the Solicitor General
18 mentioned. This is the only place where it makes
19 sense. So, in order to avoid fraud, we just let the
20 voters know exactly which sections it would be in.

21 So, we feel that the Bill of Rights
22 may -- is dependent, it's altogether one section or
23 one article of the Constitution, and at that, I
24 would say there's no log rolling problem and no --
25 no problem of voter fraud or surprise.

1 CHAIRMAN HOBBS: Further questions?

2 BOARD MEMBER: I think I would like
3 to -- this is kind of in the nature of a follow-up
4 question, I guess. I mean, at the beginning, you
5 described what you viewed the purpose of the measure
6 being.

7 MR. MEUSER: Yes.

8 BOARD MEMBER: And I'm -- and I'm a
9 little fuzzy, I think, on what you said about
10 abortion because I -- you know -- and I -- and I
11 think it was that it wasn't the purpose of the
12 measure to prohibit abortion from the moment of --
13 of fertilization. Rather, you described the purpose
14 as being extending, you know, those fundamental
15 rights to persons from the moment of fertilization.

16 MR. MEUSER: Yes.

17 BOARD MEMBER: And that the effect
18 on abortion was perhaps a major result, major
19 effect, major consideration. I don't remember.
20 That's why I'm a little fuzzy, exactly how that fits
21 into your thought process here.

22 MR. MEUSER: Again, our purpose is
23 to establish a Constitutional principle that
24 fundamental rights of a person vest at the moment of
25 fertilization. Because of the three sections that

1 we have defined person or have established
2 personhood, one of the effects of that would be
3 addressing what the Supreme Court said in Roe v.
4 Wade. That would just be one of the -- the effects
5 of, you know -- of calling an unborn baby a person.

6 BOARD MEMBER: Well, just give me
7 examples of other effects.

8 MR. MEUSER: That would be the --
9 that is the major effect. I -- I would have to sit
10 here and just try to, you know, think up creative
11 hypotheticals, but it is -- it's also establishing a
12 principle in the state of Colorado that we support
13 life, you know. You look out, you know, at the
14 state, you know. Ms. Veitch is making a statement
15 that we protect and we respect life beginning at the
16 very beginning.

17 BOARD MEMBER: Well, and -- well,
18 let me ask whether this would be an example, to the
19 extent that the measure applies to Section 3, which
20 guarantees the rights of persons to acquire, possess
21 and protect property. So, for example, would --
22 would this extend the rights of inheritance, say, to
23 -- to unborn people from -- from the moment of
24 fertilization?

25 MR. MEUSER: I'm not 100 percent

1 sure of this, but as I understand it, you know, we
2 already as a state, you know -- if -- you know, if a
3 baby is born within nine months of the death of the
4 father, they take, you know, equally with their
5 other siblings under inheritance rights. So, I
6 don't think this amendment does anything that the
7 courts haven't already established.

8 And, you know, in Section 6, you
9 know -- you know, same thing, you know. Various
10 parts of this, the courts have already, you know,
11 found that these rights, you know, vest in that
12 unborn baby, you know, upon their birth.

13 CHAIRMAN HOBBS: Any other questions
14 for Mr. Meuser?

15 Thank you very much.

16 I'll turn to board discussion of
17 whether the measure complies with the single subject
18 requirement. Any discussion by the board? All
19 right.

20 MR. CARTIN: Thank you, Mr. Chair.
21 I -- I've concluded that the measure does contain a
22 single subject, and I -- and I appreciate the -- the
23 discussion here. Mostly, Mr. Hobbs, I've gone
24 through the various -- the various tests from the
25 case law and from the statute in making the

1 determin- -- the single subject determination, and
2 more or less asked myself the question -- questions,
3 are there separate and unconnected purposes? Are
4 there incongruous subjects in the measure? If there
5 are multiple subjects or multiple purposes, is there
6 no necessary or proper connection?

7 And I felt like the answer to those
8 questions was -- was no, that there were -- if there
9 were purposes, they were -- there was a thread --
10 multiple purposes, there -- there was a thread,
11 there was some connectivity, there was some
12 congruity, that the measure doesn't attempt to
13 further two or more unconnected purposes. I do feel
14 that it does have a central theme, as explained by
15 Mr. Meuser, and I'll hit on that briefly here in a
16 -- in a second.

17 But -- and I also, as, again in
18 follow-up to Mr. Hobbs' inquiry, I looked to one of
19 the -- actually you could -- you could look at it as
20 a -- as a test from the decision on -- on measure 55
21 last year, but the court said in connection with
22 that, "First, this initiative's complexity and
23 omnibus proportions are hidden from the voter." And
24 I -- I looked -- I kind of applied that to this
25 measure as well, and I don't feel as though the

1 And so I -- I tend to agree with the
2 single subject of the measure as stated by
3 Mr. Meuser. It seems to me to be an extension of
4 these certain rights. The moment of fertilization,
5 that that's kind of the common thread, that's the
6 connectivity that runs through the impact to these
7 three separate sections out of the Bill of Rights.

8 CHAIRMAN HOBBS: Thank you.
9 Mr. Domenico.

10 MR. DOMENICO: Well, I don't
11 disagree with much in there. I think it's -- it's
12 pretty clear to me and it's quite clear to me that
13 if this were not limited to certain sections of the
14 Constitution, it would -- I would have no question
15 that it were a single subject. So, the only real
16 question for me is whether, by limiting it to
17 certain sections, that creates some kind of a
18 problem.

19 And I -- I guess the way that it
20 would create a problem is somehow by surreptitiously
21 hiding -- people who believed, say, they wanted to
22 adopt this Constitutional principle that we believe
23 that a person begins at fertilization, as -- as the
24 proponents state, might think they're doing that for
25 a number of important purposes, whereas if they got

1 complexity of the measure or that it has omnibus
2 proportions that are necessarily hidden from the
3 voter as far as the single subject determination
4 goes.

5 And I think in connection with --
6 with Mr. Domenico's good line of questioning, I'm
7 personally not certain that the failure to extend
8 the definition of person to all 33 rights under
9 Article II would necessarily raise a single subject
10 problem. I'm just -- I see us going there, but I
11 can't say conclusively, and maybe I haven't thought
12 it through as completely as necessary, but -- but
13 the failure to extend the definition of person to
14 all 33 instead of just three of those 33, or in the
15 legislative draft, I counted the number of rights
16 under Article II in which the word "person" appears
17 and it's 16 out of the 33. To the other 16, I don't
18 think that necessarily raises a single subject
19 problem.

20 And I cannot say for certain that
21 the application of this revised definition or this
22 clarification to just these three rights or three
23 sets of rights automatically raises log rolling or
24 an incongruity issue or one of inconnected --
25 unconnected purposes.

1 into the technical, this section and not that
2 section, it could cause a problem.

3 But I'm -- I'm -- I've looked
4 through Article II as well, and nothing I've heard
5 here today has changed my mind that -- that that's
6 not a problem that gives rise to a single subject
7 problem. These really are, it seems to me, the
8 parts of Article II that -- that, as I understand
9 it, they -- there may have been problems in the
10 past, or where at least changing the definition in
11 this way to include unborn children would have the
12 effect that the proponents wanted to have, and that
13 -- that there's -- I don't see much chance that some
14 of the other 13, I guess, uses of person would
15 confuse anyone or that someone would be disappointed
16 to find out that one of them weren't included in the
17 measure.

18 So, while that gave me a little bit
19 of pause when I first read the measure, I -- I think
20 looking at Article II and hearing the discussion
21 today has reassured me that it's a single subject.
22 CHAIRMAN HOBBS: And I agree. I --
23 for the reasons that are -- have been expressed by
24 Mr. Cartin and Mr. Domenico, it seems to me that the
25 measure does comprise a single subject, you know.

1 As Mr. Cartin said, you know, we've -- we've got
2 some tests, and it seems to me the measure appears
3 to satisfy those tests, both the statutory and the
4 case law. And, like Mr. Domenico, I -- I had looked
5 through the other sections, and it does seem to me
6 that I can see why proponents limited their -- their
7 choices to those three sections. The others don't
8 appear to be relevant. You know -- you know,
9 there's -- you know, just as you go through them,
10 they just don't, you know -- the prohibition on
11 slavery, and so forth, it just doesn't seem like
12 they apply.

13 And I actually have a little bit of
14 concern that if the -- the possibility, at least,
15 that if the measure had defined a person for all of
16 Article II, that there could have been unintended
17 effects or consequences that potentially could have
18 arisen to -- to a single subject problem as well
19 maybe. You know, I haven't identified that, but I
20 think there's a great -- there is at least that
21 risk. And so it makes some sense that the measure
22 would identify the particular sections that achieved
23 their purpose.

24 So, with that, I would entertain a
25 motion.

1 Mr. Cartin, go ahead.

2 MR. CARTIN: Mr. Chairman, I'd move
3 that the Title Board find that measure No. 36,
4 definition of a person, as a single subject for
5 purposes of the Constitutional single subject
6 requirement.

7 MR. DOMENICO: I'll second the
8 motion.

9 CHAIRMAN HOBBS: That's been moved
10 and seconded. If there's no other discussion, all
11 those in favor say aye.

12 (Responses of aye)

13 CHAIRMAN HOBBS: All those opposed,
14 no.

15 (No response)

16 CHAIRMAN HOBBS: That motion carries
17 three to zero.

18 Then let's turn to the staff-
19 prepared draft. Ms. Gomez is displaying it on the
20 screen in the room. And, Mr. Meuser, I guess I'd
21 like to ask you first if you've had the chance -- I
22 think you indicated you had some comments about the
23 staff draft, and I'd like to hear your comments if
24 you'd like to comment on the staff draft.

25 MR. MEUSER: Thank you. We have had

1 BOARD MEMBER: Just -- I guess I
2 just want to put this on the record just so we
3 address the concerns, more than for any other
4 purpose. Just to address the log rolling question,
5 while the hypothetical that was brought up is
6 certainly -- is plausible, and more plausible than
7 anything I was able to think of myself, it seems to
8 me that the only way to make sense of the log
9 rolling prohibition is to tie it into incongruous
10 purposes and -- and the no unifying thread language
11 that the court has held in other places, because in
12 any measure that has any effect that's more than
13 very specific, there will always be someone who
14 would say, you know, I'm -- I like this part but not
15 this other part.

16 As long as they're not in conflict
17 necessarily with one another or completely unrelated
18 to one another, I don't think we have the authority
19 to deny a measure single subject status, if you
20 will, on that basis. And so that's why, despite the
21 plausible hypothetical, I'm not -- I don't believe
22 there's a log rolling problem that rises to the
23 level of denying single subject.

24 CHAIRMAN HOBBS: Thank you.

25 Is there a motion?

1 a chance to look at the staff draft, and as a
2 general rule, we are completely in favor with what
3 you have. We do think grammatically "concerning
4 defining," we don't think that -- we think that's a
5 little confusing language, and I have, you know,
6 scribbled on my piece of paper here a way of just
7 switching that wording around so that I think it
8 would be clearer. Would you like me to --

9 CHAIRMAN HOBBS: Sure, go ahead.

10 MR. MEUSER: I'll just go ahead and
11 read. Line 1, "an amendment to the Colorado
12 Constitution concerning," scratch out the word
13 "defining" and put in "the definition of a legal
14 person," and go back to your text, "for certain
15 sections of the Colorado Constitution," delete the
16 word "a person," and then just pick it up, "to
17 include any human being from the moment of
18 fertilization."

19 Jumping down to line 4, "Shall there
20 be an amendment to the Colorado Constitution
21 concerning," scratch out the word "defining," change
22 it to "the definition of a legal person," back to
23 the text, "for the certain sections of the Colorado
24 Constitution," cross out "a person" and go "to
25 include any human being from the moment of

1 fertilization." That's -- you know, I just didn't
2 like how that was worded, so that's how I kind of --

3 CHAIRMAN HOBBS: Okay.

4 MR. MEUSER: -- made it so I thought
5 it sounded a little bit clearer.

6 CHAIRMAN HOBBS: And I -- one thing
7 -- let me just comment on one thing, kind of a
8 technical comment. We basically have two titles
9 here. We have the title. Then we have the ballot
10 title and submission clause, which is identical
11 except that it's in the form of a question, and
12 typically we work off of just the first one.

13 MR. MEUSER: Okay.

14 CHAIRMAN HOBBS: With any changes
15 that we make will be made to the second.

16 MR. MEUSER: Okay.

17 CHAIRMAN HOBBS: The identical
18 changes.

19 MR. MEUSER: I saw what that was,
20 but I just -- you know, I just made the correction
21 both places, it's the exact same correction.

22 CHAIRMAN HOBBS: Sure. And so,
23 again, I think we can focus on the changes we want
24 to make in what's now lines 1 through 3, and with --
25 you know, implicitly we'll make the same changes in

1 are going to be there anyway, as far as extending,
2 you know, the definition of person from the moment
3 of fertilization. I mean, this goes back to our
4 discussion about surreptitious, and so forth. I
5 don't think there's going to be any real confusing
6 -- confusion probably, but this -- but it is pretty
7 vague to say "certain sections."

8 And I -- I don't know whether we can
9 say something about that or whether we should. I
10 wondered if we could say, you know, certain sections
11 of the Constitution that establish the rights --
12 various rights of persons, or something. I mean,
13 we're in the Bill of Rights, or, you know, in that
14 section. It's not just any sections of the
15 Constitution. So, I don't know if you have any
16 comment or suggestion. Go ahead.

17 MR. MEUSER: You know, if you wanted
18 to address that thing, we would have no problem. I
19 -- I'll go ahead and read. "An amendment to the
20 Colorado Constitution concerning the definition of a
21 legal person for Sections 3, 6, and 25 of the
22 Colorado Constitution," or "of the State
23 Constitution," either -- either one I think would
24 address your concerns, and it probably would
25 actually be even clearer for the voters, and it's

1 the other lines as well.

2 MR. MEUSER: Okay. I just thought,
3 you know, "concerning defining" just did not sound
4 grammatically correct, and so we just, you know,
5 switched it so that it stayed the same tense
6 throughout, I think.

7 CHAIRMAN HOBBS: And I think your
8 suggestion touches upon some things I was wondering
9 about. I don't -- I don't necessarily -- I haven't
10 formed an opinion about whether we ought to make any
11 changes, but the ordering is one thing that I was
12 concerned about. You know, what's the clearest
13 reading, what's the simplest and clearest reading?
14 And reordering it might -- may or may not be
15 helpful.

16 But I guess one concern that I don't
17 think you touched upon, I don't believe, is -- yeah,
18 because you're leaving in "for certain sections of
19 the Colorado Constitution." And -- and that bothers
20 me a little bit. I mean, I -- I would prefer if we
21 could say something about those, because to -- to
22 the reader -- now, this is a pretty short title --

23 MR. MEUSER: Yeah.

24 CHAIRMAN HOBBS: -- relatively. You
25 know, and -- and I think maybe that the key words

1 basically, you know -- as you said, the amendment is
2 so short, it's almost taking the language and just
3 putting it in there. So, we would have no -- no
4 issue at all of just actually saying Sections 3, 6
5 and 25.

6 CHAIRMAN HOBBS: Well, and obviously
7 the concern about that may be -- although that is
8 more specific information, the concern would be that
9 the reader doesn't know what Sections 3, 6 and 25
10 are.

11 MR. MEUSER: Yeah.

12 CHAIRMAN HOBBS: And really I was
13 just aimed more at trying to give a clue of the
14 general subject matter of those sections, that this
15 is about rights of persons, or something along those
16 lines. But -- I don't know that there is a
17 solution, but --

18 MR. MEUSER: I don't think there
19 would be a solution absent making the ballot title
20 10 times longer than the actual amendment itself,
21 you know. I think, you know, the purpose of the
22 ballot title is to generally let the person know
23 what -- what's going on. They can always refer to
24 the amendment, and finding -- you know, if, you
25 know, a person is really confused, you know, the

1 Colorado Constitution is readily available to
2 people, and, you know, to figure out what 3, 6, 25
3 is. I mean, I know on our Web site we have it, and
4 I know throughout this, you know, entire next
5 16 months is going to be well publicized, what those
6 rights are. So, I mean, absent making this title,
7 you know, 20 lines long to make sure everybody knows
8 exactly what everything is, I don't think it's
9 necessary.

10 CHAIRMAN HOBBS: Well, and, you
11 know, one of the things that we -- I mean, typically
12 when we're setting titles, I mean, one way to look
13 at it is that there's two basic things that we --
14 that we are asked to achieve, and one is that we're
15 required to clearly express the single subject. The
16 other thing is that we identify the -- the chief
17 features of the proposal. And in other measures,
18 the -- as a result of that, the structure of the
19 ballot title typically might be, you know, an
20 amendment to the Colorado Constitution concerning
21 something, the single subject, and in connection
22 therewith, doing A and B and C.

23 MR. MEUSER: Okay.

24 CHAIRMAN HOBBS: Here, this -- it
25 does strike me, as -- as the drafter of this title,

1 -- you know, for the purposes of clarity, I don't
2 think there would be a problem with that.
3 CHAIRMAN HOBBS: Well, and I -- it
4 does -- I like that from the point of view of it
5 providing more clarity, more information for voters.
6 I'm being somewhat strict about, you know -- my
7 concern about trying to list the subjects of those
8 three sections in the expression of the single
9 subject, because it tends to suggest, and this goes
10 back to our discussion about single subject, that
11 it's three subjects.

12 MR. MEUSER: Yeah.

13 CHAIRMAN HOBBS: It's concerning the
14 definition of person for purposes of this section
15 about so and so, and this section about so and so,
16 and so forth. So, yeah, it's just -- you know,
17 general rule, we try to avoid conjunctions in the
18 expression of single subject.

19 MR. MEUSER: You know, personally, I
20 -- I, you know, like brevity, and, I mean, I would
21 take what we have here and then you'll shorten it
22 about half and make it extremely short and to the
23 point, but you are in a position where you're in a
24 balancing type position, and I think you -- you
25 gentlemen are in the, you know, best position to do

1 I think -- thought that it's such a short measure
2 that it's not necessarily necessary probably to
3 follow that structure of, you know, "concerning"
4 something and then doing these things.

5 We could -- along the lines of what
6 you just said, we could say, concerning the
7 definition of person -- of person for certain
8 provisions and in connection therewith, providing
9 that such a definition shall apply to, you know,
10 section 3 concerning something, section 6 concerning
11 something, and so forth. We could provide more
12 information. I mean, personally I think that's
13 unnecessary, but that is another -- another approach
14 to it.

15 MR. MEUSER: Well, along that line,
16 we could say, you know, for -- okay, an amendment to
17 the Colorado Constitution concerning the definition
18 of a legal person for -- for certain sections of the
19 Colorado Constitution, which include inalienable
20 rights, due process clause, and equality of justice.
21 I mean, if -- if you felt that it would, you know,
22 avoid deception with the voters -- with the voters
23 to actually just, you know, use the titles that are
24 already given for 3, 6 and 25, if -- it would make
25 the ballot a little bit longer, but I don't think I

1 that. I think whoever drafted this draft, you know,
2 did a very good job, and I -- you know, I've given a
3 couple of suggestions about how far you could go,
4 and I think that's -- you know, I think that's your
5 guys' position to exactly where you guys are
6 comfortable with of just what is the best. And I --
7 you know, I think we are going to be in agreement
8 with you on, you know, based upon this, you know, to
9 just where you go with it.

10 CHAIRMAN HOBBS: Other questions for
11 Mr. Meuser?

12 MR. DOMENICO: No, I don't think so.
13 I mean, I have sort of general questions.

14 CHAIRMAN HOBBS: Mr. Cartin?

15 MR. CARTIN: Yes. So, just to be
16 clear, was it your preference or do you care whether
17 or not the title expression of the single subject or
18 the trailer mentions the three rights?

19 MR. MEUSER: I enjoy brevity, so the
20 shorter we can make it, the better, but if you guys
21 feel that we need to, you know, have -- you know,
22 mention 3, 6, 25 or inalienable rights, due process,
23 equality of justice, if you feel that that -- you
24 know, in order to meet our Constitutional ballot, to
25 make sure we have a formal record, you feel like you

1 have to do that, by all means do it.
2 Our -- our position is, you know,
3 shorter is probably going to be better and easier to
4 understand. It's a short amendment to begin with,
5 so --

6 MR. CARTIN: Thank you.
7 CHAIRMAN HOBBS: Thank you very
8 much.

9 Ms. Veitch, would you like to
10 comment on the staff draft, or is --

11 MS. VEITCH: (Inaudible) concerning
12 certain sections of the Colorado Constitution is
13 vague and doesn't tell the voters what is going on.
14 I think even saying certain sections of Article II
15 is so vague that they have no idea what they're
16 actually voting on.

17 CHAIRMAN HOBBS: Would it -- would
18 it be your preference to, for example, use the
19 captions in those sections to --

20 MS. VEITCH: To list the three?

21 CHAIRMAN HOBBS: Yes.

22 MS. VEITCH: So you would say to
23 affect inalienable rights and due process? I think
24 that -- that gives the voters a better idea of
25 what's happening.

1 that I think are consistent with both the -- fixing
2 the "concerning defining," kind of eliminating the
3 -- the uncertainty or the ambiguity of the "for
4 certain sections of the Colorado Constitution." And
5 so --

6 CHAIRMAN HOBBS: I think we have at
7 least a couple of extra, I think maybe Mr. Meuser
8 and Ms. Veitch --

9 MR. CARTIN: On -- on the draft that
10 you have, maybe it would be better -- I don't know
11 which the other board members would prefer to talk
12 about, but I think that the first shot at it raises
13 the issue that Mr. Hobbs brought up about using a
14 conjunction. And that would be "An amendment to the
15 Colorado Constitution concerning the inclusion of
16 any human being from the moment of fertilization
17 within the definition of a person or persons for
18 purposes of those provisions of the Constitution
19 relating to inalienable rights, equality of justice,
20 and due process of law." And you wouldn't have a
21 trailer, but you would have the -- the conjunction
22 issue as far as single subject goes.

23 And maybe more consistent with what
24 the proponents and Mr. Meuser brought up would be to
25 say, and this would probably be even tailored to his

1 CHAIRMAN HOBBS: Thank you.
2 Is there anybody else who wishes to
3 testify on the staff drafts? Then I'll -- I'll turn
4 to board discussion on the staff drafts. Suggested
5 revisions?

6 MR. DOMENICO: Well, just to begin
7 with, I agree with Mr. Meuser, that the "concerning
8 defining" is, if nothing else, ugly and should be
9 fixed. And I know we have a rule that it's got to
10 say concerning something. So, if we're going to
11 start there, I actually thought that -- that the
12 suggestion made by the proponents was a good place
13 to at least start, and then before we get into the
14 more substantive issue, if -- I'd like to sort of
15 see what that would look like, and then maybe we can
16 go from there.

17 CHAIRMAN HOBBS: I don't know,
18 Mr. Cartin, I think, had a suggestion, and I -- and
19 I think it may be -- may be consistent with what you
20 were saying, Mr. Domenico. Mr. Cartin, would you
21 like to describe that?

22 MR. CARTIN: Yeah. Thank you,
23 Mr. Chairman. I -- and I've got -- I'm never
24 certain how to do this, but I've got -- I brought
25 some extra copies of kind of a couple of approaches

1 initial suggestion, language to the effect that "An
2 amendment to the Colorado Constitution concerning
3 the inclusion of any human being from the moment of
4 fertilization within the definition of a person or
5 persons for purposes of provisions of the
6 Constitution relating to certain fundamental rights
7 and in connection therewith, specifying that such
8 definition applies to those provisions, inalienable
9 rights, equality of justice, and due process of
10 law." And I realize, again, that that's probably
11 twice as long as the measure, but sometimes we -- we
12 get those snags here.

13 So those would be, you know, a
14 couple of alternatives or suggestions. In looking
15 at Mr. Meuser's suggestion, perhaps it would be as
16 easy to -- to say as he -- to kind of modify his
17 suggestion on the staff draft to say, "An amendment
18 to the Colorado Constitution concerning the
19 definition of a legal person" or "a person," and
20 then go right to, "to include any human being from
21 the moment of fertilization," and then add the "and
22 in connection therewith." I know I'm kind of
23 jumping around here, but --

24 CHAIRMAN HOBBS: I'm sorry. Could
25 you say that again? So, you're focusing more on the

1 second?

2 MR. CARTIN: Right.

3 CHAIRMAN HOBBS: And if you could go

4 over that again. You're -- you're building in

5 Mr. Meuser's approach?

6 MR. CARTIN: I am. And so the

7 suggestion would kind of be a blend, I think,

8 between Mr. Meuser's modification of the staff draft

9 and my second take on the title, so that it -- the

10 new -- the draft would provide, at least perhaps for

11 opening discussion, Mr. Hobbs, "An amendment to the

12 Colorado Constitution concerning the definition of a

13 person to include any human being from the moment of

14 fertilization," comma -- let me try that again.

15 "An amendment to the Colorado

16 Constitution concerning the definition of a person

17 to include any human being from the moment of

18 fertilization for purposes of provisions of the

19 Constitution relating to certain fundamental rights,

20 and in connection therewith specifying that such

21 definition applies to those provisions, inalienable

22 rights, equality of justice, and due process of

23 law." I think that's kind of lengthy.

24 MR. DOMENICO: Well, I think that's

25 a good place to start if we really are going to

1 from this? Okay. So --

2 BOARD MEMBER: Well, I guess, why

3 don't -- why don't we just -- if it's -- if it suits

4 the board, why don't we just go with the language of

5 the second paragraph here for starters? Is that --

6 is that all right?

7 BOARD MEMBER: Sure. Give Ms. Gomez

8 an opportunity to type it in on the screen for the

9 benefit of everybody in the room. How about if I

10 read it for you or if I held it up, stand.

11 (Inaudible).

12 BOARD MEMBER: And it is a tiny

13 keyboard. It's harder to type.

14 BOARD MEMBER: I've used it, so I'm

15 defending the difficulty here.

16 BOARD MEMBER: I guess maybe what

17 I'll suggest is just, Cesi, if you wouldn't mind

18 just conforming it to the -- to the draft as it

19 appears here, and maybe we can come back and -- and

20 see about inserting the word "definition." So my

21 suggestion would be, on line 1, strike "definition

22 of a," and then strike "person to include" -- I mean

23 "person to" on line 1. Yeah, "person to." And

24 change "include" to "inclusion." Insert the word

25 "of" after "inclusion" at line 2. After

1 stick with keeping "concerning" in there. I mean,

2 it would be easier to turn either "defining" or

3 "including" into the -- into the word there, into

4 the -- what is that, in genere? I don't know what

5 it is. But if we -- if we use "defining" or

6 "including" there, it would be easier to write and a

7 tiny bit shorter, but I think -- I actually think

8 what you had written down is a pretty good place to

9 start, or -- or flipping it around a little bit,

10 either one of them I think is fine and certainly

11 meets the requirements of the Title Board. But --

12 so, am I overruled on -- on suggesting getting rid

13 of "concerning," as usual?

14 CHAIRMAN HOBBS: I would prefer to

15 retain the word "concerning."

16 MR. DOMENICO: Okay. Then I suggest

17 we start by putting up on the board what -- what

18 Mr. Cartin handed out, at least to start with, and

19 then go from there.

20 CHAIRMAN HOBBS: And I think that

21 makes sense. It's a lot of typing for Cesi, but I

22 -- and I think sort of, Cesi, from the second one --

23 I don't know how much you tracked, but maybe --

24 maybe Mr. Cartin can kind of guide you through that.

25 MR. DOMENICO: So, should we just go

1 "fertilization," insert "within the definition of a

2 person or persons."

3 CHAIRMAN HOBBS: Any comments from

4 proponents or from Ms. Veitch about this proposal.

5 MR. MEUSER: I personally prefer,

6 you know, "concerning the definition of," as we were

7 discussing. And then in doing that, I mean, you get

8 down to "fundamental rights," which I'm trying to

9 see which line it is on there, "fundamental rights

10 to include" -- scratch out "connection therewith,"

11 specifically that "such definition applies to

12 those," cross out "those" and go, "including the

13 provisions on inalienable rights." You just shorten

14 it up, I think that that line could pretty much be

15 wiped out and one word could do the purpose thereof.

16 So, "to certain fundamental rights

17 including the provisions on inalienable rights,

18 equality of justice, and due process of law." I

19 think that makes it -- would make it a little bit

20 clearer.

21 CHAIRMAN HOBBS: Is fundamental

22 rights, is that a term that we're making up, or is

23 that -- are these somehow under that rubric in the

24 Constitution or somewhere else?

25 MR. MEUSER: These are the due

1 process which our courts consider, you know, the
2 fundamental rights.

3 MR. DOMENICO: Right, but -- I'll
4 keep going. I would not use the word "fundamental"
5 there. I would use "Constitutional" probably, and
6 -- but other than that -- and I don't -- I don't
7 have a preference one way or the other whether it
8 starts with the inclusion or the definition, but I
9 would definitely change the end of it, even though I
10 know that's another sort of formula thing. But this
11 is not that kind of a -- an amendment. You know,
12 it's a different -- it's just a definitional
13 amendment, and so I don't think the formula makes
14 much sense here. So I -- I would agree on the --
15 sort of deleting the middle part there and -- and
16 just saying, relating to certain Constitutional
17 rights, or -- and then just laying them out right
18 there.

19 BOARD MEMBER: And I -- this may
20 surprise Mr. Domenico, but I think in this case, I
21 think we could weigh in favor of simplicity here and
22 violate our strict formula and eliminate the, you
23 know -- you know, the "and in connection therewith"
24 portion, so -- and I agree.

25 BOARD MEMBER: And I agree that --

1 and it does make me nervous to say "fundamental
2 rights." It would be better to avoid that term, I
3 think, but --

4 MR. MEUSER: Personally, I like it
5 in there, but I understand your guys' concerns, and
6 I think it would, you know, create, you know, legal
7 challenges that do not need to -- to be there, or
8 anything like that. So, I like it. If you guys
9 want to put it there, we'll take it, but it probably
10 would be best to move it to "Constitutional."

11 CHAIRMAN HOBBS: Thank you.

12 Ms. Veitch, did you want to comment
13 on this proposal?

14 MS. VEITCH: I'm not quite sure
15 (Inaudible.)

16 CHAIRMAN HOBBS: Well, let's go
17 ahead and update it perhaps, Ms. Gomez, with what
18 Mr. Domenico said. I think strike "fundamental" and
19 substitute "Constitutional."

20 BOARD MEMBER: That's right. Indeed
21 -- I mean, I guess what it would just be would be,
22 after "rights," delete the comma and say, "relating
23 to," and then delete everything up to "those
24 provisions on," I would delete all that.

25 All right. Let's see. We can make

1 it even shorter, I think. Let me make some proposed
2 cuts here. All right. "Within the definition of a
3 person or persons for purposes of those" -- what if
4 we just go -- cut everything down to from "for
5 purposes" -- well, between "for purposes of" and
6 then delete the rest of line 3 and the beginning of
7 line 4 down to "those." And so it would just read,
8 "within the definition of a person or persons for
9 purposes of those provisions," and then I guess we
10 would have to say "those provisions of the Colorado
11 Constitution relating to inalienable rights," et
12 cetera.

13 So then I would say, after the
14 "provisions" -- on line 3, I would say, "those
15 provisions of the Colorado Constitution." No, just
16 later on line 3, after "provisions," "after
17 provisions of the Colorado Constitution relating
18 to," and then delete "on."

19 How's that? I guess the -- the
20 proponents suggested sort of changing it to the
21 definition to come first. I don't have a -- I don't
22 have a preference about that one way or the other.
23 So it would say -- I guess it would say, "concerning
24 the definition of a person" -- or "the definition of
25 a person to include." Is that the idea?

1 MS. VEITCH: Definition of
2 (Inaudible).

3 BOARD MEMBER: You know, let's see.
4 It does -- it's titled "Person Defined." I mean,
5 you might just start with defining a person. I can
6 go either way with that. Does anyone --

7 BOARD MEMBER: I -- I don't have any
8 strong feelings about it one way or the other. I
9 mean, part of me likes saying, "concerning the
10 definition," but it ends up being a little awkward
11 -- a little more awkward possibly. I mean, it would
12 be "concerning the definition."

13 BOARD MEMBER: I mean, I will say
14 that the one concern I have is that there's --
15 saying it that way suggests a little bit, I don't
16 think it's really a material problem, suggests that --
17 there's some kind of existing definition in the
18 Constitution that you're changing. And partly
19 that's a problem because it -- of using "concerning"
20 there, I think is part of the problem. But as long
21 as we're leaving that, saying, "concerning the
22 definition of person" may suggest a little bit that
23 there's already in the State Constitution a
24 definition of person. I -- I don't think there is.
25 And so leaving it this way avoids any possible

1 confusion there might be on the -- not -- not that I
2 think that's a big deal one way or the other. It
3 just may be a little bit clearer this way.

4 CHAIRMAN HOBBS: And I think that's
5 a good point.

6 BOARD MEMBER: I mean, it's -- if
7 the proponents really object to that, leaving it the
8 way it is, I mean, then I -- I'd be willing to avoid
9 it. But, you know, the -- the definition in the
10 measure actually is only in the title -- in the
11 heading of it. It's not in the action part of -- of
12 the measure, whereas "include" is. And so this is
13 probably a little bit closer to the actual action.

14 But, as I say, I don't think it's a big deal.

15 CHAIRMAN HOBBS: Ms. Veitch, do you
16 want to comment on that proposal?

17 MS. VEITCH: (Inaudible)

18 CHAIRMAN HOBBS: Actually, we do
19 need to make sure we're recording, so the comments
20 should be at the microphone.

21 MS. VEITCH: (Inaudible)

22 BOARD MEMBER: I don't believe we
23 have a problem with that.

24 CHAIRMAN HOBBS: Thank you.

25 Ms. Veitch?

1 to Mr. Domenico, I think this is a -- kind of a
2 unique case where I'm not so concerned about a
3 conjunction because we're not going to have trailers
4 perhaps, if we stick with this structure. It's not
5 the normal structure, where we express a single
6 subject and then we have a series of trailers that
7 list the major features of the proposal. We sort of
8 compact this proposal, what's on the screen compacts
9 it, but we can -- we can still use that structure if
10 you're concerned about the conjunction in the
11 expression of the single subject.

12 MS. VEITCH: I do believe that by
13 inserting "in connection therewith" followed by a
14 conjunction, that it no longer has (inaudible).

15 CHAIRMAN HOBBS: Well, I'm just
16 saying that the "and in connection therewith"
17 separates the first part of the title, which
18 expresses a single subject, with the remainder of
19 the title, which provides additional information.

20 MS. VEITCH: And your question to me
21 is, do -- do I think that would be my preference?

22 CHAIRMAN HOBBS: One way or the
23 other, yes.

24 MS. VEITCH: I think the latter is
25 -- I'm sorry -- with in conjunction is probably more

1 MS. VEITCH: My concern goes back to
2 what you addressed at the beginning, Mr. Hobbs,
3 (inaudible) more than one subject.

4 CHAIRMAN HOBBS: And would you
5 prefer to resolve that, going back to the "and in
6 connection therewith," so that you express a single
7 subject without a conjunction before the "and,"
8 before you said "and in connection" -- "and in
9 connection therewith"? I mean, we can avoid this
10 and make it just a little more cumbersome. Would
11 that be your preference? I don't know whether I'm
12 being clear or not. Okay.

13 So, we're sort of back -- back to
14 before we shortened it. It would be "concerning the
15 inclusion of any human being from the moment of
16 fertilization in the definition of person or persons
17 for purposes of," and I can't remember, you know,
18 "certain provisions of the Constitution," comma,
19 "and in connection therewith," you know, defining --
20 and I've lost track of where I was, but then we
21 would cite -- then we would list the three things
22 with the conjunction after we've expressed the
23 single subject without a conjunction.

24 I mean, if that's an important thing
25 -- here it seems like this is -- as I was indicating

1 accurate, although --

2 CHAIRMAN HOBBS: Okay. Thank you.
3 Any other comments on the draft as
4 we have it at this point?

5 MR. STEADMAN: Chairman, I hadn't
6 planned on testifying, but my name is Pat Steadman.
7 I'm here just as myself. But just a small technical
8 point. I believe it's standard format in both the
9 statutes and in the Constitution to define terms to
10 appear within quotation marks. I believe the
11 proponents have placed quotation marks around the
12 words "person" and "persons" within their -- the
13 text of their measure, and I'm wondering if that
14 wouldn't also be appropriate within the title?

15 CHAIRMAN HOBBS: And so you're --
16 you're raising the possibility that at the end of
17 line 2 --

18 MR. STEADMAN: The word "person"
19 appear within quotation marks, and then on line --
20 the beginning of line 3, the word "persons" also.

21 CHAIRMAN HOBBS: And I -- that's a
22 good point. I wondered if that would help signal
23 that this is about the definition of that term or
24 those two terms. So, thank you.

25 Mr. Meuser, any comment on that?

1 Does anyone have any feeling about that?

2 MR. MEUSER: If they want to put
3 quotation marks around it, around "person" or
4 "persons," no problem with us.

5 CHAIRMAN HOBBS: Thank you.

6 MR. CARTIN: Can I just -- I -- I
7 very much appreciate that comment. That -- that's a
8 helpful thing to point out, and it actually
9 highlights something that I was sort of getting at
10 before, which is, we're -- we're -- that, to me,
11 brings up again the problem that I had before of
12 suggesting that those -- those terms are currently
13 defined. And I -- I think that's not what the --
14 the -- the measure, what it's actually doing in
15 using those in quotation marks is saying, when those
16 terms are used in these three sections of the
17 Constitution, and that's why they're in quotes, they
18 are to be interpreted to include a human being from
19 the moment of fertilization. It is not addressing a
20 currently defined term.

21 And I almost wonder if -- if that
22 sort of flips my earlier thoughts on their head and
23 suggests we should say "concerning the definition"
24 or the use of -- I mean -- I mean, maybe it's even
25 better to just say -- to change definition within

1 MR. DOMENICO: Yeah. I think -- I
2 think that would address the problem, because then
3 you -- that makes it clear to me that this is a --
4 something new, this definition, as opposed to --
5 CHAIRMAN HOBBS: And I -- I think I
6 am okay with that. I think this is a special case,
7 and we -- there is some precedent for it, and I
8 think it's clearer.

9 MR. DOMENICO: Didn't we do pieces
10 possible that way? All right. Good.

11 CHAIRMAN HOBBS: Mr. Cartin, do you
12 have an objection to that?

13 MR. CARTIN: I don't have any
14 objection to it. I think you can -- you know, if --
15 if you're hung up on defining or definition, I think
16 I agree with Mr. Domenico, that you can fix this
17 right here by just saying within the term, quote,
18 person, close quote, or persons, in quotes, but I
19 also agree with your reasoning that if you want to
20 go straight to defining, even though I'm not sure
21 that's what you're doing -- I guess that's -- that's
22 what the measure does: If -- it says that the --
23 that the person used in these provisions includes.

24 CHAIRMAN HOBBS: I think either way,
25 I think it expresses the single subject. So I'm

1 the -- the terms of, and then using quotes, person
2 or persons, as those terms are used in those
3 provisions of the Colorado Constitution. And then
4 -- then you avoid the problem I've sort of got, is
5 -- I don't think it's a problem as it is, but it
6 maybe tracks a little bit closer the -- what the
7 actual measure is doing, to say within the terms,
8 person or persons, as those terms are used.

9 CHAIRMAN HOBBS: Mr. Domenico?

10 MR. DOMENICO: Yes.

11 CHAIRMAN HOBBS: I think you've
12 articulated the dilemma that we're forced into by
13 rigidly staying with the "concerning" structure.
14 And, you know -- and I do recall now, we have made
15 exceptions where we had basically a one-sentence
16 proposal and we were simply expressing what it does.
17 I think we felt comfortable, although on the one
18 hand saying concerning some thing more clearly
19 expresses a subject, a thing, I think in those
20 special circumstances where we basically had a
21 single sentence measure, we've done that. And --
22 and I think that avoids the dilemma that you're --
23 you're struggling with if we just said, an amendment
24 to the Colorado Constitution defining, quote,
25 person, unquote, et cetera.

1 fine with going to -- to taking a deep breath and
2 eliminating "concerning."

3 BOARD MEMBER: Be radical.

4 CHAIRMAN HOBBS: I mean, just to be
5 clear, I think -- I think what I am prepared to
6 propose is something along these lines: An
7 amendment to the Colorado Constitution defining the
8 term, quote, person, unquote, to include any human
9 being from the moment of fertilization. But I want
10 to pick up, you know, maybe it's for purposes of
11 those provisions of the Colorado Constitution
12 relating to inalienable -- inalienable rights,
13 equality of justice, and due process of law. Is
14 that the right idea? Does that help, Mr. Domenico,
15 or --

16 MR. DOMENICO: I think so. And I --
17 agree with Mr. Cartin. I think if you don't do it
18 that way, we probably should do it the way I was
19 suggesting a few minutes -- before we made this
20 radical move to get rid of "concerning." Either one
21 of those I think works.

22 MR. CARTIN: I'd support your
23 proposed -- the new day for the Title Board.

24 CHAIRMAN HOBBS: Let's see what that
25 looks like. So, defining the term, quote, person.

1 And -- and I'm intentionally not saying person or
 2 persons. I'm trying to avoid the conjunction. I
 3 don't think it helps anything. Technically the
 4 measure itself recognizes that it may be -- the text
 5 may say person or it may say persons, but -- so
 6 defining the term, quote, person, unquote, to
 7 include -- what's on the screen, the inclusion of --
 8 it just says to include any -- you've gone too far
 9 -- to include any human being from the moment of
 10 fertilization.

11 Then strike beginning -- towards the
 12 end of line 2, strike from the word "within," I
 13 think, through halfway the next line, strike
 14 "definition of a person or persons" -- right there
 15 -- "defining the term person to include any human
 16 being from the moment of fertilization for purposes
 17 of those provisions of the Colorado Constitution
 18 relating to A, B and C."

19 BOARD MEMBER: I think that's great.
 20 The only other possible change would be, instead of
 21 "for purposes of," you could say something, as that
 22 term or as person is used in those provisions. That
 23 just tracks a little more closely. I don't think it
 24 -- I think the meaning is equally clear either way.

25 BOARD MEMBER: I think that's a good

1 unquote, to include any human being from the moment
 2 of fertilization as, quote, person, unquote, is used
 3 in those provisions of the Colorado -- Colorado
 4 Constitution relating to inalienable rights,
 5 equality of justice, and due process of law.

6 Any further discussion? If not, all
 7 those in favor say aye.

8 (Responses of aye)

9 CHAIRMAN HOBBS: All those opposed,
 10 no.

11 (No response)

12 CHAIRMAN HOBBS: That motion carries
 13 three to zero. And that -- that concludes our
 14 action on No. 36 and our agenda for the day. For
 15 the record, the time is 3:30 p.m., and we're
 16 adjourned.

17 I should say that if a motion for
 18 rehearing is filed within seven days, since the
 19 Title Board meets on the first and third Wednesdays
 20 of every month, we'll meet whatever the next
 21 available Wednesday is. So -- after the -- after
 22 the filing of the motion for rehearing. So -- is
 23 that right? Okay. I should have looked up the
 24 date. It's the 1st -- August 1st? Okay. We're
 25 adjourned. Thank you.

1 revision.

2 BOARD MEMBER: Okay.

3 CHAIRMAN HOBBS: Mr. Domenico, if
 4 you'll describe that for the record.

5 MR. DOMENICO: Okay. Where you are
 6 there, after "fertilization," insert as -- shall we
 7 say that term or as person -- I think I prefer as,
 8 quote, person, unquote, "is used in" -- "is used
 9 in," and then strike "for purposes of." I think
 10 that's pretty good.

11 CHAIRMAN HOBBS: Mr. -- Mr. Meuser?

12 MR. MEUSER: No objection.

13 CHAIRMAN HOBBS: Any other comments?

14 I'll move, then, the title as shown

15 on the screen.

16 BOARD MEMBER: Second.

17 CHAIRMAN HOBBS: That's been moved
 18 and seconded. So for the record let me read how
 19 that title would read. And again, it's understood
 20 that the ballot title and submission clause that
 21 follows would -- the same changes would be made
 22 there.

23 But the motion is that the title
 24 would read as follows: An amendment to the Colorado
 25 Constitution defining the term, quote, person,

1 * * * * *
 2 C E R T I F I C A T E
 3
 4 STATE OF COLORADO)
 5) ss.
 6 COUNTY OF DENVER)

7 I, Pamela Meade Hansen, Registered Professional
 8 Reporter and Notary Public in and for the State of
 9 Colorado, certify that the above-entitled matter was
 10 listened to and taken in shorthand by me and was
 11 thereafter reduced to typewritten form by me and
 12 processed under my supervision, the same consisting
 13 of 65 pages, and that the same is a full, true and
 14 complete transcription of my shorthand notes.

15
 16 IN WITNESS WHEREOF, I have affixed my notarial
 17 seal this 17th day of August, 2007. My commission
 18 expires September 3, 2010.

19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000