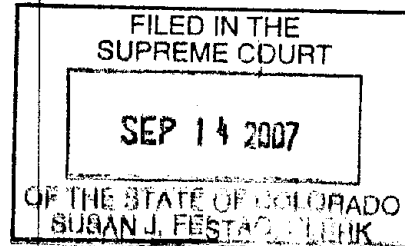


SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
C.R.S. § 1-40-107(2), 1 C.R.S. (2006)

Appeal from the Ballot Title Board



IN THE MATTER OF THE TITLE, BALLOT TITLE AND
SUBMISSION CLAUSE AND SUMMARY FOR 2007-2008,
#36 (CONCERNING DEFINITION OF A PERSON)

Petitioners: ELIZABETH ANNISON, ELLEN BRILLIANT,
TRUDY B. BROWN, VICKI J. COWART, CATHRYN L.
HAZOURI, JACINTA MONTOYA AND TONI PANETTA,
OBJECTORS,

v.

Respondents: KRISTINE BURTON AND MARK
MEUSER, Proponents.

and

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

▲ COURT USE ONLY ▲

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Case No. 07SA245

RESPONDENTS' OPENING BRIEF

TABLE OF CONTENTS

ISSUES PRESENTED 1

STATEMENT OF THE FACTS..... 2

STATEMENT OF THE CASE..... 3

SUMMARY OF ARGUMENT 4

LEGAL ARGUMENT 5

 I. The Initiative contains only one subject: The Definition of a Person. 5

 II. Initiative #36 Does Not Have a Hidden Purpose
 Unrelated to its Central Theme..... 9

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

In re Proposed Initiative “Public Rights in Water II,” 898 P.2d 1076 (Colo. 1995)7

In re Title and Ballot Title and Submission Clause for 2005-2006 #55, 138 P.3d 273 (Colo. 2006)..... 6

In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 # 200A, 992 P.2d 27, 31 (Colo. 2000)..... 11

In re Title, Ballot Title and Submission Clause for 2005-2006 #74, 136 P.3d 237 (Colo. 2006)..... 7

In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43, 46 P.3d 438, 443 (Colo. 2002)..... 6

In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 255, 4 P.3d 485, 496 (Colo. 2000)..... 5

In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #256, 12 P.3d 246 (Colo. 2000)..... 7

In re Title, Ballot Title, and Submission Clause and Summary for 2005-2006 #75, 138 P.3d 267 (Colo. 2006)..... 8

In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 #227, #228, 3 P.3d 1, 4-5 (Colo. 2000) 10

Statutes

C.R.S. § 1-40-102(10)..... 10

C.R.S. § 1-40-106..... 1, 3, 11

C.R.S. § 1-40-106(1)..... 3
C.R.S. § 1-40-106(3)(b)..... 11
C.R.S. § 1-40-107(1)..... 3
C.R.S. § 1-40-107(2)..... 1, 4
C.R.S. §1-40-106.5..... 2

Other Authorities

Colo. Const. art. V, §1(5.5)..... 1, 2

ISSUES PRESENTED

1. Does proposed Initiative 2007-2008 #36 violate the single subject requirements of Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 by adding a definition to three different sections of Article II of the Colorado Constitution?
2. Does the proposed Initiative 2007-2008 #36 violate the single subject requirement of Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 by not allowing a voter to consider the merits of changing the definition of “person” in three different sections of Article II of the Colorado Constitution?
3. Does the proposed Initiative 2007-2008 #36 have a hidden purpose unrelated to its central theme because it does not disclose the Proponents’ stated purpose of stopping abortions?
4. Is the proposed Initiative 2007-2008 #36 misleading in contravention of C.R.S. § 1-40-106 because it does not disclose the Proponents’ stated purpose of stopping abortions?

STATEMENT OF THE FACTS

Kristine Burton and Mark Meuser (“Respondents”) have proposed Initiative 2007-2008 #36 (“Initiative #36”), which would amend the Colorado Constitution by adding Section 31 to Article II. Initiative #36 provides:

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.

The title set by the Ballot Title Board (“Board”) for Initiative #36 reads 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.

Petitioners object to Initiative #36 and the Board’s title, claiming that it violates the single subject requirement of Colo. Const. art. V, §1(5.5) and C.R.S. §1-40-106.5 by adding a definition to three different sections of Article II of the Colorado Constitution, not allowing the voter to consider the

merits of changing the definition of “person” in each of three different sections of Article II, and by hiding the Respondents’ underlying intentions of prohibiting abortion. Petitioners also object on the grounds that Initiative #36 is misleading because it fails to disclose that the underlying motive behind the initiative is to prohibit abortions.

STATEMENT OF THE CASE

The Board conducted a public meeting pursuant to C.R.S. § 1-40-106(1) on July 18, 2007, at which time it designated and fixed a title, ballot title and submission clause (collectively referred to herein as the “Titles”) for proposed 2007-2008 Initiative #36. Petitioners filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1) on July 25, 2007. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Board, on August 1, 2007. At the rehearing, the Board unanimously denied Petitioners’ objections. On August 8, 2007, Petitioners timely filed a Petition for Review of the final action of the Board pursuant to C.R.S. § 1-40-107(2) with this Court. Respondents, through undersigned counsel, hereby file their Opening Brief.

SUMMARY OF ARGUMENT

Initiative # 36 addresses only one subject: the definition of the term “person” as such term is used in three related sections of the Colorado Constitution, to wit: sections 3, 6, and 25 of Article II of the Colorado Constitution. These three sections in the Colorado Constitution concern inalienable rights, equality of justice, and due process of law. These fundamental rights are accorded to “persons.” Thus, should this initiative be approved, such rights would vest in “persons” at the moment of fertilization. As these three sections are related, this single change made to these three sections does not violate the single subject requirement.

Initiative #36 very clearly states what its purpose is and is not surreptitious: Colorado will now afford persons, from the moment of fertilization, the protections of inalienable rights, equality of justice, and due process of law. Initiative #36 establishes a constitutional principle but does not enact or amend any other civil or criminal legislation. Any impact this constitutional principle might have on abortion is conjectural or hypothetical and would require this Court to go beyond its authority and speculate about potential legal consequences of Initiative #36. Thus, the title of Initiative #36 is not misleading.

LEGAL ARGUMENT

I. The Measure Contains Only One Subject: The Definition of the term “Person.”

Initiative #36 amends the Colorado Constitution by adding the definition of the term “person” to sections of the Colorado Constitution concerning inalienable rights, equality of justice, and due process of law. “[T]he fact that the provisions of a measure may affect more than one other statutory provision does not itself mean that the measure contains multiple subjects.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 255*, 4 P.3d 485, 496 (Colo. 2000). Thus, adding a definition of a single word which affects multiple, related, sections of the constitution (or, for that matter, statutes) does not mean the initiative has multiple subjects.

This Court may not address the merits of a proposed initiative or suggest how it might be applied if enacted, though the Court must sufficiently determine if the single subject rule has been violated. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 443 (Colo. 2002); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215-16 (Colo. 2002).

To ensure that an initiative contains a single subject, this Court must “examine sufficiently an initiative’s central theme, as expressed, to determine whether it contains incongruous or hidden purposes or bundles incongruous measures under a broad theme.” *In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 279 (Colo. 2006). A proposed initiative violates the single subject requirement when it “relate[s] to more than one subject and . . . [has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #256*, 12 P.3d 246, 253 (Colo. 2000) (quoting *In re Proposed Initiative “Public Rights in Water II,”* 898 P.2d 1076, 1078-79 (Colo. 1995)(brackets and ellipse in original)).

To evaluate whether or not an initiative encompasses a single subject, the Court should first look to the text of the proposed initiative. *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 239 (Colo. 2006). In determining whether an initiative complies with the single-subject requirement, the Court should employ the usual rules of statutory construction, including reading all words and phrases in context and construing them according to the rules of grammar and common usage. *In re Title, Ballot Title, and Submission Clause, and Summary for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006). Thus, this Court

should ascertain an initiative's intent and meaning from its plain language. *In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 #75*, 138 P.3d at 271.

The text of Initiative #36 states that, “[a]s 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.” Sections 3, 6, and 25 of the Colorado Constitution relate to inalienable rights, equality of justice and due process of law. These constitutional are closely related and apply to all persons in Colorado; these rights are thus far from incongruous. The plain language of Initiative #36 demonstrates that its single subject is the assurance that all persons, from the moment of fertilization, are accorded inalienable rights, equality of justice and due process of law. In fact it is difficult to imagine a ballot initiative as basic or more narrowly tailored to a single subject than is Initiative #36.

Section 3 of the Colorado Constitution affords persons certain inalienable rights. Section 6 of the Colorado Constitution affords persons the ability to exercise and enforce those rights in our justice system. Section 25 of the Colorado Constitution affirms that the rights granted under the Colorado Constitution are protected by due process.

What use are rights granted to persons under section 3 if a person has no power to enforce those rights? What use are rights if they can be trampled on without following constitutionally guaranteed procedures, i.e., due process? Without applying the rights granted by the definition of "person" in section 3 (inalienable rights), section 6 (equality of justice), and section 25 (due process) of the Colorado Constitution, a change to include persons from the moment of fertilization would be completely ineffective. Thus, these three sections of the Colorado Constitution are not only related, but interdependent upon each other and inextricably tied together. Thus, the inclusion of this initiative's definition of a person necessarily and properly includes sections 3, 6, and 25 of the Colorado constitution.

While three sections of the Colorado constitution are affected, the only thing that Initiative #36 does is define one (1) term "person." This Court has held that initiatives which changed the definition of three different forms of marriage by adding the requirement that a "marriage" be between a man and a woman did not violate the single subject requirement. *In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 #227, #228*, 3 P.3d 1, 4-5 (Colo. 2000). A change in the definition of marriage affects countless constitutional and statutory rights. Thus, if initiatives which changed three definitions ("valid common-law marriages,"

“validly licensed marriages,” and “valid-foreign jurisdiction marriages”) were held to be in compliance with the single-subject requirement, an initiative which changes one definition (“person”) certainly complies with the same single subject requirement.

II. Initiative #36 Does Not Have a Hidden Purpose Unrelated to its Central Theme

The title of the proposed initiative is not misleading or surreptitious. The title of an initiative should be “a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.” C.R.S. § 1-40-102(10). In setting titles, the Board “shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.” C.R.S. § 1-40-106(3)(b).

The purpose of Initiative #36 is to afford the protection of inalienable rights, equality of justice, and due process to “persons” from the moment of fertilization. While Petitioners claim that Initiative #36 contains the hidden purpose of prohibiting abortions, even if this were Respondents’ personal motive and intention, this Court has held that the personal motivations of proponents of an

initiative are immaterial. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 # 200A*, 992 P.2d 27, 31 (Colo. 2000).

While the Court cannot address the merits of an initiative or conjecture how it might be applied, the Court can determine any unstated purpose of an initiative and its relationship to the central theme of the initiative. *In re Ballot Title 2005-2006 # 55*, 138 P.3d at 278. If the Court finds that there is an unstated purpose, if that purpose is related to the central theme of the initiative, there is no violation of the “hidden purpose” prong of the single subject requirement.

As previously stated, the purpose of Initiative #36 is to afford the protection of inalienable rights, equality of justice, and due process to all human beings from the moment of fertilization. While Petitioners state that Initiative #36 contains the “hidden purpose” of prohibiting abortions, it is important to note that Initiative #36 establishes a constitutional principle but does not enact any other civil or criminal legislation. In fact, however, Initiative #36 would not in any way change any current constitutional or statutory provisions that relate to abortion. It requires complete conjecture to determine any ramifications that may arise after the enactment. Thus, any effect this initiative might have on abortion is merely conjectural and cannot be addressed by the Court. *Id.* at 443.

Even if this Court were to find that Initiative #36 had the unstated purpose of prohibiting abortions, such a purpose would be consistent with the general purpose and central theme of Initiative #36. Again, evaluating any effect Initiative #36 may have on the practice of abortion is merely conjectural, though if prohibiting abortions is an unstated purpose of the initiative, it could not be considered unrelated to the purpose of affording rights to all human beings from the moment of fertilization.

CONCLUSION

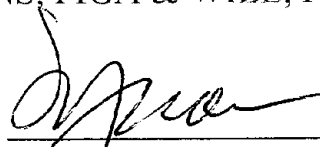
Initiative #36 complies with the single subject requirement in that it contains one subject: Affording the protection of inalienable rights, equality of justice, and due process to all persons from the moment of fertilization. Initiative #36 is not misleading because it clearly states that the initiative's purpose is that persons, from the moment of fertilization, will be afforded the protection of inalienable rights, equality of justice, and due process of law under the Colorado Constitution. Even assuming, *arguendo*, that this Court were to find that prohibiting abortions is a hidden purpose behind this initiative, this "hidden purpose" is consistent with the central theme of the initiative.

Accordingly, the Board correctly set a title and its action should be affirmed.

Respectfully submitted this 14th day of September, 2007.

BURNS, FIGA & WILL, P.C.

By:



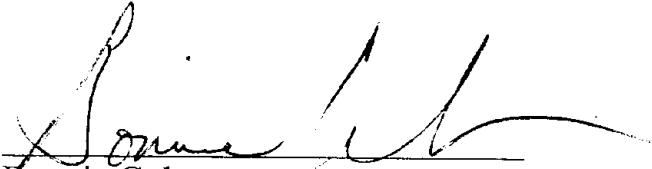
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CERTIFICATE OF HAND DELIVERY

The undersigned hereby certifies that a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was served on this 14th day of September, 2007, as follows:

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