

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025-2026 #149
("Prohibiting Certain Surgeries on Minors")**

Initiative Proponents: Tralita Faye Barnhart & Angela Eicher

v.

Objector: Kelly L. Page

MOTION FOR REHEARING

On behalf of Kelly L. Page, a registered voter of the City and County of Denver, this Motion for Rehearing is submitted because the Title Board must reverse its decision to set titles for Initiative #149, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On October 15, 2025, the Title Board set the following ballot title and submission clause for #149: *"Shall there be an amendment to the Colorado Constitution creating new law that children have the right to continue living once conceived?"*

As background to the Title Board's 2-1 decision to set the above ballot title and submission clause, the full text of Initiative #149 reads as follows:

SECTION 1. In the constitution of the state of Colorado, add section 33 to Article II as follows:

Section 33. Right to be born.

CHILDREN HAVE THE RIGHT TO CONTINUE LIVING FROM THE MOMENT THEY ARE CONCEIVED.

Self-Executing. This provision shall be self-executing, shall supersede any conflicting state statutes, legislation, judgments, or constitutional provisions, and shall apply and shall take effect December 25, 2026, if approved by the vote of the people.

The Board erred in setting titles for the following reasons.

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #149.

A. Initiative #149 repeals Amendment 79 and thus contains a second subject.

The proponents' stated intent is to prevent any interference with the decision to continue a pregnancy from "the moment" of conception. In other words, they are trying to constitutionally

ban abortion in Colorado. This initiative does not state it is effectively repealing Amendment 79, passed by voters in 2024, which put the right to abortion in the Colorado Constitution.¹ But that is what it does. And that repeal is a second subject.

Initiative #149 achieves this end by means of an implied repeal of the voter-approved right to an abortion. In Colorado, repeals by implication are not to be found “unless there is a repugnancy or an irreconcilable conflict between the statutes under consideration.” *Ferch v. People*, 74 P.2d 712 (Colo. 1937).

#149 and Amendment 79 present an irreconcilable conflict. #149 seeks to deprive a woman of the right to determine the course of her pregnancy, as guaranteed by Amendment 79. It is exactly the type of measure that will “deny” or “impede” that right, expressly authorized by Section 32 of Article II of the Colorado Constitution. The undermining of rights guaranteed by voters in 2024 is repugnant to the slyly worded right of just-fertilized eggs,² now treated as children “from the moment they are conceived,” to “continue living.”

The Colorado Supreme Court has held that an “implied repeal” of an existing constitutional provision violates the single subject requirement. For example, the Court agreed with petitioners that an “implied repeal” of the otherwise broad constitutional grant of authority over Denver’s courts, in addition to the measure’s other objectives, was a single subject violation. *In re Title & Ballot Title & Submission Clause, and Summary for Initiative 1999-2000 #29*, 972 P.2d 257, 263-64 (Colo. 1999); *In re Title & Ballot Title & Submission Clause, and Summary for Initiative 1999-2000 #104*, 987 P.2d 249, 256 (Colo. 1999). Here, the implied repeal of Amendment 79, coupled with a murkily worded amendment about the right of a child, is also just such a violation.

This measure’s “Self-executing” provision states that #149 “shall **supersede any conflicting** state statutes, legislation, judgments, or **constitutional provisions**.” (Emphasis added.) In other words, #149 creates this right to continued life, but it also sets that right as a preemption of Amendment 79. The undefined rights of a just-fertilized egg (or of any organism that qualifies as a “child” under this measure) is not intended to co-exist with the rights enshrined in Amendment 79.

Likewise, because #149 supersedes any conflicting “judgments,” the courts are prevented from giving effect to Amendment 79. This restriction on judicial application of Amendment 79 would be hidden from voters in violation of the single subject requirement.

Therefore, #149 should be returned to its proponents.

¹ According to the 2024 Blue Book, “Amendment 79 makes abortion a constitutional right in Colorado and prohibits state and local governments from denying, impeding, or discriminating against exercising that right.” Legislative Council of the Colorado General Assembly, Research Publication No. 815 at 26.

² According to the esteemed Cleveland Clinic, “Conception (or fertilization) is when sperm and an egg join together.” <https://my.clevelandclinic.org/health/articles/11585-conception> (last viewed Oct. 22, 2025).

B. Initiative #149's key language – “the right to continue living” – reflects separate subjects to obtain “yes” votes from divergent, conflicting constituencies, and thus the Board lacks jurisdiction to set titles.

The Board considered whether a right to “continue living” means only the prohibition on abortion. Rights such as a putative right to health care for children and a putative right not to be shot in classrooms were mentioned. The inquiry certainly does not stop there.

Does this proposed constitutional right also include the right of every child to be fed? Or the right of every child to be housed? Clearly, depriving any child of sustenance or shelter is a direct attack on the child's life. Certain voters who support the right to abortion (and thus oppose #149) would also support the feeding and sheltering of children (which could impel them to vote for #149). How are these voters to cast their ballots?

Likewise, reading #149 literally, a child's right to “continue living” means a child who is severely injured or severely ill and who has no brain activity can never be removed from life support treatment in a hospital, despite the best interest of the child. Such a decision, while painful, can be made by a parent or legal guardian after full explanation of the medical realities affecting that child. But under this measure, no parent or guardian could take on such a role, and no hospital or medical professional could allow such intervention to occur.

This is not all that is encompassed within the right to “continue living.” A family that practices Christian Science or relies solely on homeopathic remedies would have to place their child, suffering from a severe illness or injury, in the care of medical professionals at a hospital or urgent care facility. If consistent with a doctor's professional judgment, the child would have to take prescribed pharmaceuticals.

On a somewhat different but related note, under #149, all parents would be mandated to have their children vaccinated against all diseases that can be fatal but that can be prevented through such anticipatory treatment. This would be consistent with a child's right to “continue living.”

Furthermore, Initiative #149 would certainly seem to apply to an embryo that results from the IVF process. “In vitro fertilization is a medical treatment that helps women **conceive** and carry a baby.” <https://uihc.org/services/vitro-fertilization-ivf> (last viewed Oct. 22, 2025) (emphasis added). Under #149, must an embryo be implanted if it is viable? Absent implantation, would the embryo have been allowed to “continue living”?

The Title Board cannot find a measure contains a single subject if the Board does not know what the measure actually does. And here, despite its dialogue with proponents, it does not. This is a well-settled legal proposition that is consistent with the notion that initiatives may have broad single subjects. “[W]here the Board has acknowledged that it cannot comprehend the initiatives well enough to state their single subject in the titles, we hold that the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent.” *In re Title & Ballot Title & Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 469 (Colo. 1999).

It is not this Board's job to concoct the single subject of an initiative. That responsibility belongs to proponents, based on the language they have used in their measure.

The ultimate responsibility for formulating a clear and understandable proposal for the voters to consider belongs to the proponents of the initiative.

When we return the titles and summary to the Title Board for non-compliance with the applicable constitutional and statutory requirements, the Title Board must then determine whether any re-proposal of the initiative complies with the single subject and clarity requirements; if not, it must refuse to set the titles.

In re #29, supra, 972 P.2d at 262 (emphasis added).

It is no defense to maintain, as proponents did here, the actual breadth of this initiative will be sorted out by the courts. Recall the "Self-executing" clause of Initiative #149. It prevents any "conflicting... judgments." Under this measure, courts cannot bring clarity to the application of this measure. And in light of the precedent cited above, that limitation on the judicial power is a subject unto itself. *See id.*

II. The ballot title is misleading, unfair, and inaccurate.

The titles do not state that this measure repeals Amendment 79. Neither do they state that it supersedes conflicting constitutional provisions and court judgments. Both of these failures are material omissions from the titles that must be corrected if this measure is to proceed to the petitioning phase and/or to the ballot.

Further, the lack of clarity in the initiative's text, discussed above, prevent setting a clear title. The fact that the title incorporates this facial vagueness does not prevent voter confusion. "[T]he source of a title's language does not rule out the possibility that the title could cause voter confusion." *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶15. The problem is not the Board's to solve. "Here, perhaps because the . . . proposed initiative [itself] is difficult to comprehend, the titles . . . are not clear." *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #44*, 977 P.2d 856, 858 (Colo. 1999).

Because of the way in which this measure was drafted, a clear title cannot be set. But the title the Board approved does not – cannot, really – meet the statutory requirements for a description of this measure that will not confuse voters. Thus, the Board's decision cannot stand.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #149 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 22nd day of October, 2025.

RECHT KORNFELD PC

s/ Mark Grueskin

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025-2026 #149** was sent this day, October 22, 2025, via first-class mail, postage prepaid to Proponents:

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