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

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**MOTION FOR REHEARING**

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

**I. Violation of Single Subject Requirement**

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

1. The proposed initiative comprises a new and significant constitutional prohibition on intentionally killing an “innocent person,” but leaves this critical term undefined. While the initiative expressly refers to such measures as birth control, the proponents have indicated that the measure also covers a wide range of legal and illegal conduct nowhere expressly referred to in the measure. A prohibition on certain reproductive rights is a distinct and separate subject from the included prohibition on all forms of euthanasia, stem cell research, vigilantism, make-my-day homeowner defense, or actions taken by state or federal law enforcement officers in the line of duty, to name a few. This measure will enlist the support of voters who may favor one prohibition, in support of another prohibition which may be less likely to pass on its own merits. This is quintessential logrolling, a hallmark of multiple subjects.

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

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

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

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

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

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

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

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

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

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

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**CERTIFICATE OF SERVICE**

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

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