

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Mark Grueskin, Objector,

vs.

Erin Behrens and Giuliana Day, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #108

Mark Grueskin, registered elector of the State of Colorado, objects to the Title Board’s title and ballot title and submission clause set for Initiative 2019-20 #108.

A. The Board lacked jurisdiction to set titles.

1. The measure contains multiple subjects, including but not limited to prohibiting certain abortions and imposing professional sanctions for performing certain medical services without a specified intent and without a criminal conviction.
2. On information and belief, the final version of the measure departs from and exceeds the legislative staff’s Review and Comment memo (which has been taken down from the General Assembly’s website and is not now available to the public).

B. The titles set are inaccurate, misleading, fail to conform with the requirements of Colorado law, and do not inform voters of certain central elements of Initiative #108.

1. The single subject statement contains a summary of the measure’s exception, a combination that is at odds with the purpose of the single subject statement and is also misleading.
2. The single subject statement of the measure contains a misleading and inaccurate statement of the measure’s exception.
3. The titles do not make clear that the definition of “abortion” is changed by this measure in a significant manner, even though the titles must specify #108’s new definition of that term.
4. The titles do not provide any summary of the new definition of “gestational age.”
5. The titles do not refer to any of the key elements of the definition of “probable gestational age” (including “judgment of the physician,” “reasonable probability,” and “at the time an abortion is planned to be performed”) that are pivotal to the measure’s operation.
6. The titles are silent about the manner in which probable gestational age is assessed, including the fact that “probable gestational age” is to be determined in the way in which a reasonably prudent physician would establish “gestational age.”

7. The titles do not state that the affirmative defense may be satisfied using an assessment of “gestational age” that is “made by another physician.”
8. The titles do not specify that an unlawful abortion is one that is performed or attempted to be performed “intentionally or recklessly.”
9. The titles do not state that there is no exception to the prohibition on abortion for the psychological condition of the mother.
10. The titles do not state that the exception for the life of the mother require the abortion to be conducted in a way that “provides the best opportunity for the fetus to survive.”
11. The titles do not state that the measure’s exceptions are a function of the physician’s “intent.”
12. The titles do not state that this statute is “self-executing” and thus will be effective without any legislative act to clarify one or more of the vague provisions included therein or define otherwise undefined terms that will determine the measure’s reach.

WHEREFORE, Initiative #108 should be returned to the Proponents or its titles should be corrected to address a lack of needed information and various material misrepresentations about #108 as well as the titles’ non-compliance with Colorado law.

RESPECTFULLY SUBMITTED this 10th day of July, 2019.

RECHT KORNFELD, P.C.

/s/ Mark Grueskin
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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2019-2020 #108** was sent this day, July 10, 2019, via U.S. Mail, first class, postage prepaid to:

Erin Behrens
Giuliana Day
3440 Youngfield St., #283
Wheat Ridge, CO 80033

/s/ Erin Holweger
Erin Holweger