**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #226 ("Right to Life from Conception")**

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Initiative Proponents: Mark Landess and Dr. Sean Cole,

v.

Objector: Karen Middleton.

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**MOTION FOR REHEARING**

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On behalf of Karen Middleton, a registered voter of Arapahoe County, this Motion for Rehearing is submitted because the Title Board must reverse its decision to set titles for Initiative #226, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On February 18, 2026, the Title Board set the following ballot title and submission clause for #226: "*Shall there be an amendment to the Colorado Constitution creating new law that all human beings, from the moment of fertilization until birth, shall not be deprived of life without due process of law?"*

As background to the Title Board's decision to set the above ballot title and submission clause, the full text of Initiative #226 reads as follows:

> **SECTION 1.** In the constitution of the state of Colorado, add section 25a to Article II as follows:
>
> **Section 25a**
> A HUMAN BEING IS A PERSON FROM THE MOMENT OF FERTILIZATION FOR THE PURPOSES OF THIS SECTION, AND NO PERSON SHALL BE DEPRIVED OF LIFE WITHOUT DUE PROCESS OF LAW.
>
> This provision is self-executing and shall take effect January 1, 2027, 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 #226.

A. Initiative #226 provides a broad set of legal rights under the rubric of "due process," and this bundle of rights is independent of #226's prohibition of the right to abortion.

This measure assures "due process of law" to fertilized eggs. But due process is not a singular concept under the Colorado Constitution.

On one hand, due process requires fundamental fairness to the affected party, engaged in some governmental undertaking. *City & County of Denver v. Eggert*, 647 P.2d 216, 224 (Colo. 1982). That means, at a minimum, adequate advance notice of that procedure and an opportunity to be heard. *Id.* In certain types of proceedings, the right to counsel and, where a child is involved, appointment of a guardian ad litem to represent that child's best interests are required. *B.B. v. People*, 785 P.2d 132, 136 (Colo. 1990). Where a person's life interest is at issue, due process requires impartiality on the part of the decision maker. *Stapleton v. District Court*, 499 P.2d 310 (Colo. 1972).

Beyond procedural assurances, the due process clause of the Colorado Constitution also encompasses equal protection of the laws. "[T]he right to equal protection of the law is guaranteed to Colorado citizens by means of the due process clause of article II, section 25 of the Colorado Constitution." *City of Broomfield v. Farmers Reservoir & Irrigation Co*., 239 P.3d 1270, 1278 (Colo. 2010). That means that, under #226, similarly situated fertilized eggs must receive the same treatment under the state's laws.

This amalgamation of rights, while broad, is a subject unto itself.

B. Initiative #226 conflicts with, and effectively repeals, Amendment 79 and thus contains a second subject.

Notwithstanding the breadth of the newly extended due process to fertilized eggs (and the accompanying redefinition of "person"), the proponents' stated intent is to develop a legal structure that conflicts with Amendment #79, adopted by voters in 2024. This initiative does not state it is contravening or repealing Amendment 79, which constitutionally recognized the right to abortion and prohibited government interference with the exercise of that right.[1] But that is what it does.

#226 achieves this end by erecting a legal barrier to the right of a woman to choose to have an abortion. Amendment #79 stated, "Government shall not deny, impede, or discriminate against the exercise" of this constitutionally protected right. Colo. Const., art. II, sec. 32. Rather than propose an outright repeal of this constitutional protection against government interfering with a

[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, https://content.leg.colorado.gov/sites/default/files/2024-blue-book-english-accessible.pdf?_gl=1*6k543s*_ga*NzAzMjc1MjU1LjE3NDAxNzgwMzY.*_ga_V0L3NG2C4C*czE3NzE4Nzk2NjMkbzE4MCRnMSR0MTc3MTg3OTY2NyRqNTYkbDAkaDA.

person's right to abortion, Initiative #226 implicitly repeals this prohibition by authorizing a fertilized egg's due process rights that can only be exercised through a judicial act (i.e., an act of government).[2]

Repeals by implication are found only where "there is a repugnancy or an **irreconcilable conflict** between the statutes under consideration." *Ferch v. People*, 74 P.2d 712 (Colo. 1937) (emphasis added). #226 presents an irreconcilable conflict with Amendment 79. #226 seeks to deprive a woman of the right to determine the course of her pregnancy through providing to a fertilized egg due process of law before that fertilized egg is "deprived of life." In other words, a woman's decision to have an abortion must now be litigated. If the litigation is successful, the right has been denied; even if it is not, the right has certainly been impeded by requiring that a woman run the full judicial gauntlet before she can exercise this right.[3]

At the review and comment hearing on #226, the staff asked proponents if they considered taking any steps so #226 would not conflict with Amendment #79. Proponents said they knew of this conflict but would not revise #226 to address it. "**To be honest and be on the record, it (Initiative #226) would create an inherent conflict in the Colorado Constitution**. Ours is specifically dealing with (Article II, Section) 25 but **by the nature of (Article II, Section) 32, there would be a conflict**."[4] (Emphasis added.) The proponents followed up their comment with the caveat that they believed this conflict "would be resolved through the constitutional process and the courts," but this added statement does nothing to undermine their concession that the right to abortion is the intended (albeit concealed) subject of #226. In fact, it underscores the precise way in which #226 will, at the very least, impede the right to abortion—namely through the courts. The right to abortion, guaranteed by voters, is repugnant to the slyly worded right of a just-fertilized egg to its own due process.

The single subject problem is plain. This is a surreptitious repeal of Amendment #79. The conflict, identified by proponents, is tucked behind a new promise of due process for unborn organisms. As a result, voters will not see beyond the "due process" language to realize the true subject of this measure is repeal of abortion rights. Had the proponents not admitted that their measure is designed to conflict with this constitutional right, there might be something to debate. But they were clear about that fact.

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[2] "The most obvious consequences of fetal personhood laws are restrictions on abortion and contraception. If a zygote or a fetus is a person, abortion might be legally considered murder. The same goes for certain types of birth control." J. Hussain, *The Legal Consequences of the Fetal Personhood Movement*, Cornell J.L. & Pub. Pol'y, The Issue Spotter, (Mar. 4, 2025), https://jlpp.org/legal-consequences-of-the-fetal-personhood-movement/.

[3] "Impede" means "to interfere with or get in the way of or the progress of" or "hold up" or "detract from." *Webster's Third New International Dictionary* 1132, cited by *Arthur Andersen LLP v. United States*, 544 U.S. 696, 707 (2005).

[4] https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20260205/-1/17965 (1:05:42-1:06:05).

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). Here, the implied repeal of Amendment 79 amidst a murkily worded amendment is also just such a violation.

In this regard, #226 is no different from Initiative 2025-2026 #149 which purported to give children the right to "continue living" from the point of conception. The Title Board refused to set a title for that multi-subject measure because it, too, was an implied repeal of the right to abortion under Amendment #79. The Supreme Court summarily affirmed this Board's decision in that matter. There is no reason to treat #226 in any way other than the way that #149 was considered.

The fact that #226 limits the right to abortion without using the word "abortion" is no salvation to its single subject problem. Clarity for voters is of paramount importance to the Supreme Court when abortion measures are placed before the public.

The issue of abortion has long been recognized by this Court as one of particular voter concern. Before the single subject requirement was even part of our Constitution, this Court considered an initiative whose ballot title failed to state that, for purposes of abortion, life began "at any time after fertilization" – the functional equivalent of #226's treatment of life beginning for children "at the moment they are conceived." In the aforementioned case, the new status given to a just-fertilized egg was a significant legal change voters had to understand if they were to knowledgeably cast their ballots.

> [T]he legal status of the fetus is one of the central issues in the abortion debate. Neither Colorado statute nor common law has addressed the issue of when life begins. Thus, by defining "abortion" as the termination of pregnancy by "caus[ing] the death of the minor child's unborn offspring at any time after fertilization," the proposed initiative adopts **a legal standard that is new and likely to be controversial**, even though limited in application to the implementation of the proposed parental notification initiative. Certainly, the voters are entitled to know of **this new standard** which **will be of significance to all concerned with the issues surrounding the subject of abortion**.

*In re Proposed Initiative on Parental Notification of Abortions for Minors,* 794 P.2d 238, 242 (Colo. 1990) (emphasis added). If that definition alone was enough to invalidate a ballot title, surely the fact that #226 undermines the right to abortion is important enough that voters would want to consider it on its own merits.

Therefore, no titles should be set for this measure, and #226 should be returned to its proponents.

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

The titles do not state that this measure repeals Amendment 79. This is a material omission that must be corrected if this measure is to proceed to the petitioning phase and/or to the ballot.

The initiative text's own lack of clarity prevents setting a clear title. The fact that the title incorporates this facial vagueness and does not refer to the repeal of the constitutional right to abortion 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. Thus, the Board's decision cannot stand.

Clearly, where it is warranted by the record created by proponents, a ballot title may describe the law that is intended to be changed by an initiative. For instance, for a proposed measure that redirected state expenditures for road transportation and used the Highway Users Trust Fund for distribution of affected revenue, the title set included the measure's effect of "decreasing funding for other transportation-related services and programs provided by the state and local governments."[5] If stating a major impact is appropriate for a revenue measure, it is essential where an initiative seeks to negate a constitutional right.

Therefore, if it finds the measure to comprise a single subject, the title must be revised to reflect its intended conflict with Amendment #79.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #226 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 25th day of February, 2026.

RECHT KORNFELD PC

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[5] *See* ballot title and submission clause set for Initiative 2025-2026 #175 (https://www.coloradosos.gov/pubs/elections/Initiatives/titleBoard/results/2025-2026/175Results.html).

## CERTIFICATE OF SERVICE

I, Leni Charles, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025-2026 #226** was sent this day, February 25, 2026, via first class mail, postage prepaid, to Proponents:

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*s/ Leni Charles*