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AUG 28 2019

S. WARD
4:27 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Mark Grueskin, Objector,

vs.

Erin Behrens and Giuliana Day, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #116

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 #116.

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.

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 #116.

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 how the definition "abortion" is changed by this measure in a significant manner, even though the titles must specify the #116's new definition of that term rather than simply stating that the measure defines "abortion."
4. The titles do not provide any summary of the new definition of "gestational age," even though the titles must specify the #116's new definition of that term rather than simply stating that the measure defines "gestational age."
5. The titles do not make 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 there is "reasonable probability" (a new legal standard in this context) concerning a determination of "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: (a) that is either performed or attempted; and (b) that such performed or attempted abortion must have been either “intentional or reckless.”
9. The titles do not specify that criminal penalties apply in ways that are broader than “unlawful abortions” as defined by the measure as they extend to any person who “induces... or attempts to... induce” an abortion that is deemed unlawful under the measure.
10. The titles do not state that there is no affirmative defense for an abortion that is attempted, performed, or induced due to the psychological condition of the mother.
11. The titles do not state that, based on the definition of the term, an “abortion” is a function of the any involved person’s “intent” rather than the commission of the acts delineated.
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.
13. The titles contain superfluous information – specifically, that the measure defines “twenty-two weeks” – making it more difficult for the Board to actually address all of the measure’s central features.
14. The titles incorrectly suggest there will be professional licensing consequences, as there is no subsection “12-240-121(ee)” actually set forth in this proposed statute.
15. The titles’ phrase, “excepting medical procedures relating to miscarriage or ectopic pregnancy,” is so vague as to be confusing to voters about what such procedures represent an exception from.

WHEREFORE, the titles set August 21, 2019 should be returned to the Proponents or the titles should be corrected to address material misrepresentations and about #116 as well as their non-compliance with Colorado law.

RESPECTFULLY SUBMITTED this 28th day of August, 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 #116** was sent this day, July 10, 2019, via email to counsel for Proponents:

Suzanne Staiert, Esq.
SStaiert@mavenlawgroup.com

/s/ Erin Holweger
Erin Holweger