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Colorado Secretary of State

COLORADO TITLE BOARD

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In the Matter of:

**TITLE, BALLOT TITLE & SUBMISSION CLAUSE FOR PROPOSED INITIATIVE  
2019-2020 # 121: "PROHIBITION ON LATE-TERM ABORTIONS"**

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**MOTION FOR REHEARING**

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In accordance with C.R.S. § 1-40-107 (1) (a) (I), and by and through undersigned counsel, Colorado registered electors Sarah Taylor-Nanista and John Teter (the "Movants") hereby request a rehearing before the Colorado Title Board (the "Board") with respect to Proposed Initiative 2019-2020 No. 121, regarding "Prohibition on Late-Term Abortions" (the "Initiative"). As set forth below, Movants respectfully object to the title, ballot title, and submission clause approved by the Board based upon the following:

**I. BACKGROUND**

Following a hearing held August 21, 2019, the Board designated and fixed the following title for the Initiative:

A change to the Colorado Revised Statutes concerning requiring the Colorado medical board to suspend the medical license of a licensee for performing or attempting to perform an abortion when the probable gestational age of the fetus is at least twenty-two weeks, except when the life of the pregnant woman is physically threatened and when expedited delivery of a living fetus is impossible or poses a greater risk of death to the pregnant woman than an abortion, and, in connection therewith, defining terms related to the measure including "abortion," "probable gestational age," and "twenty-two weeks"; and excepting medical procedures relating to miscarriage or ectopic pregnancy.

Likewise, the Board designated and fixed the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning requiring the Colorado medical board to suspend the medical license of a licensee for performing or attempting to perform an abortion when the probable gestational age of the fetus is at least twenty-two weeks, except when the life of the pregnant woman is physically threatened and when expedited delivery of a living fetus is impossible or poses a greater risk of death to the pregnant woman than an abortion, and, in connection therewith, defining terms related to the measure including "abortion," "probable gestational age,"

and “twenty-two weeks”; and excepting medical procedures relating to miscarriage or ectopic pregnancy?

(together, the “Title”).

## II. GROUNDS FOR RECONSIDERATION

**The Title omits material features of the Initiative, does not fairly and accurately represent the Initiative’s true intent and meaning, and may confuse and mislead voters.**

A. A measure’s title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. *See* C.R.S. §1-40-106(3)(b). The title and submission clause should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010). “[A] material omission can create misleading titles.” *In re Title, Ballot and Submission Clause 1999-2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000).

The initiative provides only a limited “exception” to its directive that the Colorado Medical Board sanction physicians who perform, or attempt to perform, abortions beyond the twenty-second week of pregnancy. As set forth in proposed Section 12-240-121 (ee), this “exception” applies only

[w]here the pregnant woman’s life is threatened by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, but not including psychological or emotional conditions. . . .

As set forth above, the Initiative’s “exception” becomes available, if at all, only when a physician has determined that a woman is suffering a life-threatening *physical* disorder, illness, or injury that is caused by or arises from her pregnancy and is *not* accompanied by psychological or emotional conditions. The fact that a woman suffers from mental illness that puts her life in jeopardy is, according to the proponents, of no concern. Likewise, the Initiative makes no exception for circumstances in which a woman’s life-threatening ailment or injury is not directly linked to her pregnancy, such as might occur with leukemia diagnosed during the twenty-third week of a pregnancy. Finally, the Initiative makes its “exception” unavailable where a woman’s life is put at risk by a physical disorder that includes an “emotional or psychological condition.” Thus, a patient diagnosed with a potentially terminal malignancy during the twenty-third week of her pregnancy who is also under the care of a treating psychiatrist for clinical depression diagnosed before she became pregnant would likely have no access to abortion care.

The Title, as set, inaccurately states that the “exception” applies whenever “the life of a pregnant woman is physically threatened and when expedited delivery of a living fetus is impossible or poses a greater risk of death to the pregnant woman than an abortion.” It provides

no indication to voters that the purported "exception" also requires that a woman's life-threatening condition be caused by her pregnancy, and not include "psychological or emotional conditions." The Title should, therefore, be reconsidered.

**B.** In order to accurately advise voters as to what a "yes" vote will support, the Title should be amended to indicate that the Initiative would require the Medical Board to suspend a physician's license for not less than three years where the physician is found to have provided abortion care to a patient after the twenty-second week of her pregnancy.

Respectfully submitted this 28<sup>th</sup> day of August, 2019.

**RANGE PC**



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ATTORNEYS FOR MOVANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 28<sup>th</sup> day of August, 2019, a true and correct copy of the **MOTION FOR REHEARING** was filed with the Colorado Secretary of State and served via U.S. mail, postage prepaid, to the following:

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