

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, Colorado 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #149 (“Right to Continue Living from Conception”)</p> <p><b>Petitioners: Tralita Faye Barnhart &amp; Angela Eicher</b></p> <p>v.</p> <p><b>Respondent: Kelly L. Page</b></p> <p><b>and</b></p> <p><b>Title Board: Kathleen Wallace, Michael Dohr, and Kurt Morrison</b></p>	<p>DATE FILED December 22, 2025 9:35 AM</p> <p>▲ COURT USE ONLY ▲</p>
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<p><b>RESPONDENT’S ANSWER BRIEF ON PROPOSED INITIATIVE 2025-2026 #149 (“RIGHT TO CONTINUE LIVING FROM CONCEPTION”)</b></p>	

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

☒ It contains 1458 words.

☐ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

☐ For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

☒ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

*s/ Mark G. Grueskin* \_\_\_\_\_

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## **SUMMARY OF ARGUMENT**

Initiative #149 eliminates the right to abortion, adopted by voters at the last general election. It also creates an unbounded right to “continue living” for all children from the moment they are conceived. These are separate subjects, and Proponents’ insistence that any repeal is a single subject is at odds with this Court’s previous decisions, as set forth below.

Moreover, Proponents state that the issues raised around their right to “continue living” are hypothetical in nature and do not raise single subject concerns. They fail to state that their own statements to the Title Board confirmed the Board’s concerns about this measure’s reach, and those admissions are relevant in determining whether the initiative represents a single subject.

## **LEGAL ARGUMENT**

### **I. Initiative #149’s implied repeal of a woman’s right to abortion is a subject that is distinct from its stated right of children to “continue living.”**

Proponents contend that their abolition of the constitutional right to abortion is a mere “consequence” of establishing a right of children to live from the point of an egg’s fertilization and that “consequences” such as this one present no single subject violation. Proponents’ Opening Brief (“Prop. Op. Br.”) at 10. In support of that proposition, they cite *In re Title, Ballot Title and Submission Clause for Initiative*

2019-2020 #3, 2019 CO 57 (“*In re Title for #3*”), in which this Court held that the repeal of TABOR was a single subject.

But the question before this Court isn’t whether an initiative can repeal a provision of the Constitution and comply with the single subject requirement. Objector made that very point in her Opening Brief. *See* Respondent’s Opening Brief at 7 (“Resp. Op. Br.”) (“An initiative that clearly and specifically repealed the provision would almost certainly be immune from a single subject challenge”).

The question before this Court is whether an initiative can, as part of a proposal that seeks to achieve distinct objectives, fundamentally alter or repeal separate provisions of law in ways that voters will not understand. For instance, in *In re Title, Ballot Title and Submission Clause for Proposed Initiative for 2001-2002 #43* (“*In re Title for #43*”), 46 P.3d 438 (Colo. 2002), an initiative made various changes to the procedures required to place an initiative on the ballot. It also provided that an initiative’s single subject was established by the fact that the proposal dealt with provisions contained within “only one article of the constitution, one title of state statutes, one charter article, or one ordinance.” *Id.* at 445. It did not stop there. Under this measure, initiatives that had been previously ruled to be multiple subjects would be exempt from this new single subject rule. *Id.* at 447.

Not surprisingly, the Title Board wanted to know what this exemption would accomplish. At hearing, “one of the proponents conceded that the intended effect of

this provision is to prevent the repeal of TABOR.” *Id.* At that time, in case law and the Blue Book that described the referred measure proposing the single subject requirement for initiatives, TABOR was deemed a multi-subject initiative. *See In re Proposed Initiative 1996-4*, 916 P.2d 528, 533 (Colo. 1996); Legislative Council of the Colorado General Assembly, *An Analysis of 1994 Ballot Proposals*, Research Publication No. 392, at 3 (1994).

In #43, the Court didn’t find the exemption to protect TABOR from legal challenges to be a mere consequence of a changed single subject rule. Instead, this exemption was “the epitome of a surreptitious measure,” one that was “intended to secure the support of various factions which may have different or even conflicting interests.” *Id.* The Court found that voters would not know that, in changing the way that single subjects were identified, they were also insulating TABOR from a single ballot measure to repeal it. *In re Title for #43, supra*, 46 P.3d at 448.

The importance of this holding cannot be overstated in light of Proponents’ position that this Court’s subsequent decision on TABOR repeal preempts all prior case law. *See Prop. Op. Br.* at 11, citing *In re Title for #3, supra*. The “pertinent conclusion” of the earlier case was that an initiative “comprised multiple subjects, given that it contained a surreptitious measure concealed within ‘an obscure line in the initiative’ that would have surprised voters who supported the initiative. *Id.* at ¶31. Initiative #149’s provision that it “supersede[s] any conflicting... constitutional

provisions” is just such an “obscure line” that will surprise voters as it applies to Article II, section 32 of the Constitution, the right to abortion that voters adopted a year ago as Amendment #79.

The proponents of #149 do not dispute that their measure seeks to displace this provision. *See* Resp. Op. Br. at 7-8. They don’t say so expressly in the text of their measure, as an earlier version of #149 did.<sup>1</sup> Instead, they tuck their implied repeal into a proposal that affords children a new right to “continue living” from the moment of conception, subject to their “Self-Executing” clause that supersedes any conflicting constitutional provision. R. at 14.

The fact that a woman’s constitutional right to abortion presents an irreconcilable conflict with a constitutional right to “continue living” of a fertilized egg (under this measure, the equivalent of a “child”) demonstrates that #149 is also the epitome of a surreptitious measure. Surprising voters with a hidden subject is problematic enough; it is intolerable where that concealed subject represents “a significant invasion of [a] fundamental constitutional right. “*In re Title for #43, supra*, 46 P.3d at 448; *see* § C.R.S. 25-6-403(2) (“A pregnant individual has a

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<sup>1</sup> Even an express repeal of a provision of law that is detached from the primary substantive element of an initiative can comprise its own, separate subject. *See In re Title, Ballot Title and Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶¶29-30, 374 P.3d 460 (initiative authorized a single commission to handle redistricting for both the state legislature and Congress, but the repeal of General Assembly authority to set Congressional districts was a separate subject from establishing new redistricting procedures for state legislative seats).



fundamental right to... have an abortion and to make decisions about how to exercise that right”).

The single subject mandate does not require that voters search for an initiative’s hidden legal meanings so that they can determine whether to vote “yes” or “no” on that measure. The Title Board and this Court are empowered to conduct such an analysis and reject an initiative for violation of the single subject requirement when hidden subjects are unveiled. “To ensure that a proposed initiative complies with this single-subject requirement, the title board is required to make inquiries (about an initiative’s purpose)..., and it is permissible for us to take note of a proponent’s responses thereto.” *In re Title for #43, supra*, 46 P.3d at 445 (citations omitted).

The indirect or implied repeal of a constitutional provision is thus not a mere consequence of the establishment of a new right. Where proponents hide that repeal from voters, it is exactly the problem that the single subject requirement was meant to remedy. Therefore, the Title Board correctly refused to set title here.

**II. Proponents incorrectly portray the reach of the right to “continue living” as hypothetical when, at hearing, they conceded that these aspects were intended to be part of #149.**

According to Proponents, “Speculative applications (e.g., medical protocols or liabilities) do not belong in the title review.” Prop. Op. Br. at 12. This argument might resonate if Proponents had not admitted that their language would apply to the

acts in question. But they did, and thus their concern does not warrant reversal of the Title Board's decision.

As has been established, Proponents admitted that #149 provides rights for children in classrooms. Proponents also admitted #149 guarantees the administration of life-saving medical treatment to children. Resp. Op. Br. at 11, 12. There is nothing speculative about these applications of #149, then.

As such, certain voters will have to trade off one of their policy priorities in voting on #149. Gun control advocates would support creating a constitutionally protected right for children to survive while at school, but they also may support the right to abortion. Similarly, those who believe no expense should be spared and no medical treatment should be foregone if it means saving a child's life may nonetheless also support the constitutionally protected right to abortion. These conflicts are inconsistent with a single subject initiative.

Thus, the Board's decision is supported by Proponents' interpretation of their measure. That input dictated the result before the Board and should be upheld here.

### **CONCLUSION**

Initiative #149 is comprised of multiple subjects, and the Title Board's decision that it lacked jurisdiction to set titles for this measure should be upheld by the Court.

Respectfully submitted this 22<sup>nd</sup> day of December, 2025.

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## **CERTIFICATE OF SERVICE**

I, Leni Charles, hereby affirm that a true and accurate copy of the **RESPONDENT'S ANSWER BRIEF ON PROPOSED INITIATIVE 2025-2026 #149** was sent electronically via Colo. Courts E-Filing System or by overnight delivery service, this day, December 22<sup>nd</sup>, 2025, to the following:

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