

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2015) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #124 (“Medical Aid in Dying”)</p> <p>Petitioners: Michelle Stanford, Robin Stephens, and Renee Walbert,</p> <p>v.</p> <p>Respondents: Harlan Hibbard and Julie Selsberg,</p> <p>and</p> <p>Title Board: Suzanne Staiert, Frederick R. Yarger, and Jason Gelender.</p>	<p>Supreme Court Case No.: 16SA137</p>
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<p>PETITIONER MICHELLE STANFORD’S ANSWER BRIEF</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).

It contains 1,645 words.

The brief complies with C.A.R. 28(a)(7)(A).

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.

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/ Thomas M. Rogers III

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Petitioner Michelle Stanford, through her undersigned counsel, hereby submits this Answer Brief:

SUMMARY OF THE ARGUMENT

*What's in a name? That which we call a rose
By any other name would smell as sweet.*

William Shakespeare, *Romeo and Juliet*, act II, sc. ii, 1-2.

What's in a name? Based on the Proponents' strenuous effort to avoid calling assisted suicide "assisted suicide," plenty. But as the Bard told us in *Romeo and Juliet*, changing a name won't change the facts. The Proponents have written their measure in a manner that gives assisted suicide a new name, but this Court should help the voters understand what the measure really does.

In other words, just because the measure states that a patient's taking of a medication to end his or her life must not be considered suicide under the law, it does not change the fact that the measure legalizes assisting another to commit suicide. This, similar measures, and legislative bills are commonly known and referred to as "assisted suicide" proposals, and the title's failure to use this common and well-known description renders the title confusing and misleading to the voters. Colorado statute—including the very section to which Initiative 124 seeks to create an exception—uses the word "suicide," prohibiting causing or aiding such an act.

Contrary to the Title Board's arguments, "suicide," or "assisted suicide" is not an impermissible catch phrase. In fact, precisely the opposite: avoiding the use of those terms, due to the sensitivity of the subject, and employing a euphemism that is strategically employed by the Proponents in the text of the measure is what the prohibition against the use of "catch phrases" is intended to prevent.

Further, that the Initiative would require the falsification of death certificates must be included in the title. The fact that the measure mandates a misrepresentation in the official public records is one of the few provisions in the Initiative that affects not just the patient and the physician, but the general public, insurance businesses, court proceedings, demographic and research data and statistics, among others. It is a central feature of which the petition signers and voters should be informed.

ARGUMENT

I. Initiative 124 is a measure to legalize assisted suicide in Colorado, and the title should reflect its true intent and meaning.

Proponents insist that because the patient's death resulting from self-administering deadly medication is not referred to as suicide in the measure, it should not be called "suicide" in the title. But just because the Proponents prefer not to use the word "suicide" and attempt to find ways to distance themselves from that word, it does not change the fact that by the plain terms of the measure, the

patient commits suicide with the assistance of a physician, under any definition of the word “suicide.” *See* Merriam-Webster’s Collegiate Dictionary 1249 (11th ed. 2014) (suicide is “the act or an instance of taking one’s own life voluntarily and intentionally esp. by a person of years of discretion and of sound mind. ”); The American Heritage College Discovery 1380 (4th ed. 2002) (suicide is “the act or an instance of intentionally killing oneself”); Black’s Law Dictionary 1571 (9th ed. 2009) (suicide is “[t]he act of taking one’s own life.”).

Under Initiative 124, a person with terminal illness, with a prognosis of six months or less to live, who is (1) an adult; (2) mentally capable; and (3) acting voluntarily, may request a medication that the person must **self-administer** to end his or her own life. *See* Ex. A to Pet’r’s Op. Br., proposed 25-48-102(15); 25-48-103. Thus, under any definition of suicide, the action taken by a patient under Initiative 124 is suicide.

Under C.R.S. § 18-3-104(1)(b), a person commits the crime of manslaughter if he or she “intentionally causes or aids another person to commit suicide.” The Initiative seeks an exception to that statute. *See* Ex. A to Pet’r’s Op. Br., proposed 25-48-121 (“Actions taken in accordance with this article do not, for any purpose, constitute suicide, assisted suicide . . . under the “Colorado Criminal Code”, as set

forth in title 18, C.R.S.”). Yet, the title set by the Board does not inform the voters that this is precisely what the measure does—legalize assisted suicide in Colorado.

Legalization of assisted suicide is the subject of national debate. Similar measures and legislative bills have been proposed in Colorado and elsewhere and have frequently appeared in the press, which has described these efforts as “assisted suicide” measures. *See Assisted-suicide effort a nonstarter at Colorado*, THE DENVER POST, Feb. 4, 2016;¹ *Colorado lawmakers vote down assisted suicide bill*, REUTERS, Feb. 7, 2015.² Thus, the voters are familiar with what Initiative 124 is attempting to accomplish, but they know it as an effort to legalize assisted suicide. The voters should not be left confused and wondering whether Initiative 124 is an assisted suicide measure or something else entirely.

Contrary to the Title Board’s argument, “assisted suicide” is not a catch phrase, but a defined term³ that has been used by media nationwide to describe legislation similar to that proposed by Initiative 124. *See, e.g.* Debate: Should

¹ Available at http://www.denverpost.com/news/ci_29476923/assisted-suicide-effort-nonstarter-at-colorado-legislature (last visited, May 20, 2016).

² Available at <http://www.reuters.com/article/us-usa-colorado-suicide-idUSKBN0LB07L20150207> (last visited, May 20, 2016).

³ *See Black’s Law Dictionary* 1571 (9th ed. 2009) (Assisted suicide is “The intentional act of providing a person with the medical means or the medical knowledge to commit suicide.”).

Physician-Assisted Suicide Be Legal? (National Public Radio broadcast Nov. 20, 2014).⁴

In fact, it is the words employed by the Title Board—“to receive a prescription from a licensed physician for medication that can be self-administered to bring about death”—that constitute the true political catch phrase here. The Proponents have strategically used this phrase in the Initiative as a way of distancing themselves from the controversial subject of “assisted suicide,” and now advocate that their chosen language should be reflected in the title. Those words are nothing more than a euphemism used by the Proponents and adopted by the Title Board to avoid calling the Initiative exactly what it is—an assisted suicide measure. This is precisely what the prohibition against the use of catch phrases is intended to prevent. *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 649 (Colo. 2010) (“Catch phrases are words that work in favor of a proposal **without contributing to voter understanding.**”) (emphasis added).

The voters will be confused and misled by the euphemism employed by the Title Board into thinking that this measure is something other than legalization of “assisted suicide.” The title must be revised to include this commonly-known and used term to adequately apprise the voter of the measure’s true intent and meaning.

⁴ Available at <http://www.npr.org/2014/11/20/365509889/debate-should-physician-assisted-suicide-be-legal> (last visited, May 20, 2016).

II. The provision of the measure requiring that the cause of death on the person's death certificate shall be listed as the terminal illness and not suicide is a central feature of the Initiative.

Both the Proponents and the Title Board argue that the provision of the measure which requires that the patient's death certificate indicate that the cause of death was the terminal illness and not suicide is a detail and not a central feature of the Initiative. *See* Proponents' Op. Br. at 10-12; Title Bd.'s Op. Br. at 13-15.

However, they both ignore the fact that this provision, unlike most others in the measure, affects not just the patient, but other persons and entities—those who rely on the accuracy of official public records, such as, for example, attorneys and courts, who, under the Colorado Rules of Evidence, rely on those records for the truth of the matter asserted in those documents. *See* C.R.E. 803(9).

Further, researchers of various illnesses rely on the data in death certificates to determine prognosis and fatality rates from an illness.⁵ They should be informed that, under this measure, the accuracy of their data may be undermined.

⁵ *See Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting*, Centers for Disease Control and Prevention, at 21, available at http://www.cdc.gov/nchs/data/misc/hb_me.pdf ("For statistical and research purposes, it is important that the causes of death and, in particular, the underlying cause of death, be reported as specifically and as precisely as possible. Careful reporting results in statistics for both underlying and multiple causes of

Unlike the implementation details of the Initiative, such as the form of the request, the required waiting period, the requirement and the number of witnesses, etc. which the voters would necessarily expect in connection with a measure like Initiative 124, the required misrepresentation in the death certificate, hidden in the coils of the lengthy measure, is something that would cause voter surprise. Voters are entitled to be informed that by voting “yes” on the measure, they are agreeing that public records will be required to contain false information. *See In re Proposed Initiated Constitutional Amendment of Educ., 1984*, 682 P.2d 480, 482 (Colo. 1984) (The title and the submission clause “presented to the public must fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition”). Accordingly, proposed § 25-48-109 is a central feature of the Initiative which, unlike many other provisions of the measure, has a direct impact not only on the patient, but on the general public, and the Title Board erred in failing to include it in the title.

CONCLUSION

Petitioner respectfully requests that this Court determine that the title and submission clause set for the Proposed Initiative 2015-2016 #124 is inaccurate and

death (i.e., all conditions mentioned on a death certificate) reflecting the best medical opinion.

fails to reflect its true intent and meaning and remand to the Title Board with instructions to redraft the title.

Respectfully submitted this 25th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2016, a true and correct copy of the foregoing was served on the following:

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