

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p>	<p>DATE FILED: May 25, 2016 11:48 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015- 2016 #124</p> <p>PETITIONERS: Robin Stephens; Renee Walbert; and Michelle Stanford,</p> <p>v.</p> <p>RESPONDENTS: Harlan Hibbard and Julie Selsberg,</p> <p>and</p> <p>TITLE BOARD: Suzanne Staiert; Frederick Yarger; and Jason Gelender.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>THE TITLE BOARD'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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,069 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

Under a separate heading placed before the discussion of each issue, the brief contains statements of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

s/ Grant T. Sullivan

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Title Board members Suzanne Staiert, Frederick Yarger, and Jason Gelender (hereinafter “the Board”), by and through undersigned counsel, hereby submit the following Answer Brief.

STATEMENT OF THE ISSUE

This Answer Brief addresses only the following issue raised by Petitioner Michelle Stanford:

1) Whether the title reflects the central features of the measure to accurately convey its true intent and meaning.

The Board rests on its Opening Brief for all other issues raised by the petitioners.

SUMMARY OF THE ARGUMENT

The Board’s title for #124 should be affirmed because it satisfies the clear title standard. Inserting the word “suicide” in the title, as requested by Dr. Stanford, risks misleading voters. The measure makes clear that the civil and criminal consequences of suicide do not apply when a patient takes medication in conformity with #124’s provisions. Likewise, the proposed provision regarding death certificates is not a

central feature that must be included in the already-lengthy title. At most, it constitutes a detail of implementation that need not be included. To the extent the proposed death certification provision impacts existing rules of evidence or statutory provisions, those potential effects are not required to be reflected in the title.

ARGUMENT

I. The Board’s title for #124 satisfies the clear title standard.

A. Standard of Review and Preservation.

The applicable standard of review is stated in the Board’s Opening Brief at pages 8 and 9. The Board agrees Dr. Stanford preserved this issue for review in her motion for rehearing. *Attachment to Stanford Petition*, p. 42.

B. The Board properly acted within its discretion when it declined to insert the misleading term “suicide” into the title.

Dr. Stanford argues that #124’s title should include the phrase “to assist the patient to commit suicide.” *Stanford Op. Br.*, p. 8 n.7. In addition to possibly constituting an impermissible catch phrase, *see*

Board Op. Br., pp. 12-13, this Court should reject Dr. Stanford’s argument for two additional reasons.

First, describing #124’s intent as promoting some form of suicide would be inaccurate and misleading to the voters. The text of #124 specifically states that “[a]ctions taken in accordance with this article do not, for any purpose, constitute suicide, [or] assisted suicide . . . under the ‘Colorado Criminal Code’, as set for it in title 18 of the Colorado revised statutes.” *Attachment to Stanford Petition*, p. 11 (proposed § 25-8-121). Similarly, proposed section 25-48-115 makes clear that voiding a life insurance policy—a common consequence of suicide—is unlawful when a patient self-administers medication in conformity with #124. Inserting Dr. Stanford’s requested phrase into the title thus risks misleading voters into believing that the consequences associated with suicide apply under #124 when in fact they do not.

Accordingly, Dr. Stanford’s requested “suicide” language should be rejected. *See In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873

P.2d 718, 720 (Colo. 1994) (rejecting petitioners’ requested title language because “petitioners’ argument is based on their interpretation of the proposed initiative, not on its express language”).

Second, the Board properly acted within its discretion when it declined to insert “suicide” into #124’s title. Rather than use a term that may mislead voters or potentially rise to the level of a catch phrase, the Board appropriately exercised its discretion to craft a title that uses neutral, descriptive language that closely tracks the measure’s text. The Board’s choice of language is not clearly insufficient, unfair, or misleading. *See In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010). Thus, the Court should defer to the Board’s choice of language for #124’s title. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 ##245(f) & 245(g)*, 1 P.3d 739, 743 (Colo. 2000) (affirming title and stating “the Board’s actions are presumptively valid and this presumption precludes this court from second-guessing every decision the Board makes in setting titles.”).

C. The provision regarding death certificates is not a central feature.

Dr. Stanford also asserts that the proposed statutory section regarding death certificates (§ 25-48-109) is a central feature that should be reflected in the title. In addition to the arguments stated in the Board's Opening Brief, Dr. Stanford's position should be rejected for three additional reasons.

First, the title as set by the Board is already quite lengthy (154 words). Adding additional content to the title will make it unduly long, violating the statutory requirement that ballot titles "be brief." § 1-40-106(3)(b), C.R.S. As this Court has explained, in setting titles "the Board must navigate the straits between brevity and unambiguously stating the central features of the provision sought to be added, amended, or repealed." *In re Proposed Initiative Concerning Auto. Ins. Coverage*, 877 P.2d 853, 857 (Colo. 1994). Titles are intended to be a "relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters," not "an item-by-item paraphrase of the proposed constitutional amendment or statutory

provision.” *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 # 62*, 961 P.2d 1077, 1083 (Colo. 1998).

Second, the proposed provision regarding death certificates does not rise to the level of a central feature that necessarily must be included in the title. At best, it constitutes a detail of implementation that need not be included. *See In re Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 #74*, 962 P.2d 927, 929 (Colo. 1998); *see also Blake v. King*, 185 P.3d 142, 147 (Colo. 2008) (explaining that elements of a new affirmative defense contained in initiative were not central features); *In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 #73*, 135 P.3d 736, 741 (Colo. 2006) (explaining that initiative’s restrictions on “pass-through” and “pooling” contributions to issue committees were not central features). Voters who wish to seek out more detailed information about #124 may of course consult the Blue Book and other relevant publications when filling out their ballot.

Third, any impact on existing rules of evidence or statutory sections dealing with death certificates constitute mere possible effects

of the measure. No requirement exists that the title must explain the potential effects a successful initiative may have on other statutory provisions. *In re Constitutional Amendment Concerning the Fair Treatment of Injured Workers*, 873 P.2d 718, 720 (Colo. 1994).

CONCLUSION

For the above-stated reasons, the Court should affirm the Board's actions in setting the title for #124.

Respectfully submitted this 25th day of May, 2016.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via ICCES and/or via U.S. first class mail at Denver, Colorado this 25th day of May, 2016 addressed as follows:

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