

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) (2015) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #100</p> <p>ANITA CAMERON and JULIE FARRAR Petitioners,</p> <p>v.</p> <p>LANCE WRIGHT and MERCEDES APONTE Respondents,</p> <p>And</p> <p>SUZANNE STAIERT, FREDERICK YARGER, and JASON GELENDER Title Board</p>	<p>↑ COURT USE ONLY ↑</p>
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<p>RESPONDENTS' 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:

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SUMMARY OF THE ARGUMENT

Proposed Initiative #100 contains the single subject of establishing a right to receive Medical Aid in Dying (“MAID”). It does not create new classes of citizens and broad inalienable rights, but instead uses definitions and findings to help narrow and clarify its single subject.

The Title of Proposed Initiative #100 which was set by the Title Board is fair, clear, and accurate. The changes proposed by the Petitioners would not clarify the Title, but would instead broaden it beyond the scope of the Initiative, causing voter confusion.

ARGUMENT

I. The Initiative Contains a Single Subject of Establishing Medical Aid in Dying as a Right in Colorado.

Proposed Initiative #100 (“the Initiative”) has a single subject of establishing a right to receive Medical Aid in Dying (“MAID”) for mentally-competent adults who are legal residents of the United States in the state of Colorado with the assistance of a medical professional through the administration of a medical protocol. The Petitioners disagree, contending that the Initiative has two subjects: (1) establishing MAID and (2) creating new inalienable rights. Petitioners’ Opening Brief 8. The Petitioners are incorrect for three reasons: (1) the Initiative does not

create a new class of citizens; (2) the right to MAID is directly connected to the single subject of the Initiative; and (3) the rights created through the Initiative are narrowly construed, not wide-reaching.

A. The Initiative uses “citizen-sovereign” as a definition of an existing class of citizens, not the creation of a new class.

The Petitioners object to the new Initiative being a single subject because it creates a new class of citizen-sovereigns. Petitioners’ Opening Brief 8. This is an incorrect reading of the Initiative. The Initiative merely defines a class of individuals for the purpose of identifying who may access MAID, but does not create this class.

The “Definitions” section of the Initiative defines “citizen-sovereign” as “a mentally competent, adult, lawful resident of the United States of America.” Initiative § 6(c). This is simply a definition of the class of people who may elect to participate in MAID, not the creation of a new class.

Petitioners appear concerned about the use of the word “sovereign” in the definition “citizen-sovereign.” Petitioners’ Opening Brief 8-9. “Sovereign” as used in this context is “one that exercises supreme authority within a limited sphere.” *Sovereign*, Full Definition of Sovereign: Definition 1(b), Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/sovereign> (last visited May 26, 2016). A “citizen-sovereign” is a mentally-competent adult who has

supreme authority over his or her own health. He or she is a sovereign of his or her own life's decisions—including how it comes to an end. There is precedent for this concept of a citizen rather than the state having sovereignty over some decisions. Individuals can decide for themselves where to live within the country, where to work, what religion (if any) to practice, and, importantly, whether to seek medical care for themselves. *See People v. Medina*, 705 P.2d 961, 973 (Colo. 1985) (“If the patient is competent to participate in the treatment decision, then the patient’s refusal to submit to the proposed treatment must be respected *out of the law’s regard for a person’s right to make decisions on matters affecting his own bodily integrity*” (emphasis added).) The definition of “citizen-sovereign” within the Initiative is not creating a new concept. Instead, it is merely defining who may exercise the right to decide the time and manner of his or her death and placing this decision within the realm of actions over which citizens have individual authority.

Finally, the use of the term “citizen-sovereign” will not have far-reaching implications, as Petitioners imply. Section 6 of the Initiative is clear that the Definitions are only “[a]s used in this Section.” Initiative § 6. The Court reads the Initiative according to the plain and ordinary meaning of the terms. *Cordero v. Leahy (In re Title, Ballot title, and Submission Clause for 2013-2014 #90)*, 328 P.3d 155, 159 (Colo. 2014). According to the plain meaning of “[a]s used in this Section,” the

use of the phrase “citizen-sovereign” will have no meaning outside of this discrete section of the Constitution if adopted. Therefore, it will not have any broad effects on Colorado law and so does not violate the single subject requirement.

B. The right to MAID is not overly broad, but directly connected to the single subject of the Initiative.

The Petitioners challenge the single subject of the Initiative because they claim the Initiative creates a new inalienable right which is not part of the single subject. However, the right to MAID is (1) a small part of the broader right to make one’s own medical decisions and (2) narrow enough that it is the single subject of the Initiative.

A similar argument to Petitioners’ was made in *Earnest v. Gorman (In re Title, Ballot Title, and Submission Clause for 2009-2010 #45)*, 234 P.3d 642 (Colo. 2010). The initiative at issue in that case, Initiative #45, purportedly created “a new, undefined constitutional ‘right’ to ‘health care choice.’” *Id.* at 646. The Supreme Court, relying on *Hayes v. Lidley (In re Title, Ballot Title, & Submission Clause for 2009-2010 #24)*, 218 P.3d 350 (Colo. 2009), determined that a broad statement of principle in an initiative must be read in connection with the implementing provisions of the initiative in question. *Earnest*, 234 P.3d at 646; *Hayes*, 218 P.3d at 353-54. When the rest of the initiative confines the reach of the broad right in an

initiative and outlines when, how, and to what extent the right in question will be protected, it confines a broad right to a narrow single subject. *Earnest*, 234 P.3d at 647. This is a permissible single subject for an initiative.

The right to MAID is similarly constrained in this Initiative. The Title Board has stated that the first three Sections of the Initiative are merely findings. The portion at issue regarding the right to MAID, then, is Section 4: Rights of Citizen-Sovereigns. Section 4(a) establishes the right “to set the time and tone of their own death by obtaining a medical professional’s assistance in achieving a peaceful death through the careful administration of a medical protocol.” The following sections then go on to define that this right is voluntary, how to revoke such right, and how to maintain such a right during mental incompetency. Initiative § 5. The Definitions section further defines the terms used so that they are limited. Initiative § 6. The Legislation section allows the legislature and the appropriate administrative agencies to develop more specific procedures and details at a later time. Initiative § 6.¹

Additionally, both the provision establishing the right to MAID (Initiative § 4(a)) and the provision providing immunity to those providing MAID (Initiative § 4(b)) are directly related to the single subject of establishing MAID. In *Earnest*, the

¹ Due to a typographical error, there are two Sections numbered “6” in the Initiative. The first is the Definitions section and the second is the Legislations section.

Court determined that both provisions at issue were necessary to fulfill the single purpose of allowing individuals to choose their own health care arrangements. 234 P.3d at 647. This Initiative is similar. Without the first provision, the state could prevent individuals from accessing MAID and thereby choosing their own method of death. Without the second provision, MAID would be virtually inaccessible, because those who were severely sick and unable to obtain the necessary medical protocol or self-administer it would lack the assistance needed to exercise their right. Therefore, both provisions go to the single subject of the Initiative.

In addition, the provision allowing medical assistance to those who choose to receive MAID is essential. One of the key intentions of this Initiative is to provide MAID for those who cannot, due to their illness or condition, end their own life without assistance but would like to do so. Proposals which allow citizen-sovereigns to end their own life but do not provide immunity to those providing assistance actually discriminate against those who have a disability that would not allow them to take this course of action. Therefore, Section 4(b) of the Initiative is absolutely essential to the purpose of the Initiative.

As a result, the right of MAID is both narrow enough and essential enough to the single subject of the Initiative that it meets the single subject requirement.

C. The Initiative has limited scope and therefore meets the single subject requirement.

Petitioners also challenge the Initiative based on the claim that the passage of the Initiative will affect other Colorado laws, including but not limited to the Colorado Anti-Discrimination Act. Petitioners' Opening Brief 10. Petitioners point to the Section 1 of the Initiative as causing widespread negative effects.

As the Title Board discussed at the Title Board Hearing on this matter, the first section of the Initiative is not the creation of new rights, but the finding and affirmation of what already exists within Colorado and United States law. Even if it did not do so, both Colorado and the United States have previously restricted individual rights and liberties based on their effects on the rights of others. The Colorado legislature and Courts are capable of exercising this balancing in this context if issues do arise. However, based on the text alone, this Initiative will not overturn or negatively affect any existing laws based upon its findings.

In conclusion, the Initiative does comprise a single subject of establishing a right to MAID. Each of its provisions limits, defines, and narrows this right in a way that does not add subjects, but clarifies the existing single subject. Based on this, the Proponents respectfully request that this Court deny Petitioner's request and uphold the findings of the Title Board.

II. The Title of the Initiative is Clear and Reflects the True Intent of the Initiative.

The Title Board set the Title of the Initiative to be fair, clear, and accurate, as required by the Colorado Constitution, Art. V, Sect. 1. The changes requested by the Petitioners would *create* confusion and make the title misleading. To keep the Title clear, it should remain unchanged.

A title for a proposed initiative must be fair, clear, and accurate. *Aisenberg v. Campbell (In re Title)*, 8 P.3d 1194, 1197 (Colo. 2000). The Petitioners argue that the Title does not accurately reflect the intent of the Proponents. The Petitioners argue that the intent of the Proponents is “a thinly-disguised effort to legalize euthanasia.” Petitioners’ Opening Brief 10-11. This is faulty for two reasons: (1) the intention of the Initiative is to legalize MAID, not euthanasia, and (2) the stated intention of the Proponents is consistent with the Initiative’s Title.

First, the intention of the Initiative is to legalize MAID, not euthanasia. “Euthanasia” is “the act or practice of killing or permitting the death of hopelessly sick or injured individuals in a relatively painless way for reason of mercy.” *Euthanasia*, Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/euthanasia> (last visited May 26, 2016). “MAID” is “helping a citizen-sovereign who has an incurable, life-limiting medical condition succeed in the *voluntary* pursuit of achieving a peaceful death.” Initiative § 6(f)(emphasis

added). The use of the term “euthanasia” rather than “MAID” removes the voluntariness from the Initiative that is pervasive throughout and necessary to the Initiative. (See “Participation in MAID and conditional MAID is *always voluntary*. Agreement to participate in the MAID protocol can be withdrawn *at any time* by any citizen-sovereign involved.” Initiative § 5(c)(emphasis added); “...acceptable documentation supporting the claim that the request for, and the rendering and utilization of, MAID is *voluntary* on the part of all involved in administering, or supporting the administering of, MAID.” Initiative § 4(b)(emphasis added).) To refer in any way to “euthanasia” in the Title or in the Initiative would broaden the Initiative beyond its current voluntary nature, which is the exact opposite of the intent of the Initiative. Therefore, the current Title leads is Fair, Clear, and Accurate as required by the Colorado Constitution.

Second, the Petitioners argue that the Title is contrary to the intent of the Proponents. However, the testimony of the Proponents at the Title Board Hearing is reflective of the intent of the Initiative. *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2001-2002 #21 & #22 (“English Language Education”)*, 44 P.3d 213, 217 (Colo. 2002). The testimony of the Proponents that occurred at the Title Board hearing supports the voluntariness of MAID and the accuracy of the Title Board’s chosen Title.

As the current language of the Title accurately and clearly reflects the intention of the Initiative as expressed in the testimony of the Proponents, the Proponents respectfully request that the Court uphold the Title Board's decision.

CONCLUSION

For the reasons stated herein, the Proponents respectfully request that the Court uphold the title, ballot title, and submission clause for Initiative #100.

Respectfully submitted this 26th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2016, I filed a true and correct copy of the foregoing RESPONDENTS' ANSWER BRIEF using the ICCES electronic filing system and served electronic copies to the following:

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