

<p>COLORADO SUPREME COURT  2 East 14<sup>th</sup> Ave.  Denver, Colorado 80203</p>	<p>DATE FILED: May 26, 2016 9:03 AM</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 #100</p> <p>PETITIONERS: Anita Cameron and Julie Farrar,</p> <p>v.</p> <p>RESPONDENTS: Lance Wright and Mercedes  Aponte,</p> <p>and</p> <p>TITLE BOARD: Suzanne Staiert; Frederick Yarger;  and Sharon Eubanks.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;"><b>THE TITLE BOARD'S ANSWER BRIEF</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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,174 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 Sharon Eubanks (hereinafter “the Board”), by and through undersigned counsel, hereby submit the following Opening Brief.

### **STATEMENT OF THE ISSUES**

- 1) Whether the measure complies with the single subject requirement.
- 2) Whether the title satisfies the clear title rule.

### **SUMMARY OF THE ARGUMENT**

The Court should affirm the Board’s actions in setting a title for #100. The measure satisfies the single subject rule because it does not create new inalienable state rights to life, liberty or happiness. And even if it might be construed in such a manner by a future interpreting court, that constitutes a mere effect of the measure, not a separate subject. The Board’s title also complies with the clear title requirement. Including the word “euthanasia” in the title would be misleading because that is not what #100 permits. Similarly, #100’s title need not state that the measure creates a new class of “citizen-sovereigns” with a

new inalienable state right to happiness because that is not what the measure accomplishes. Instead, the measure uses “citizen-sovereign” as a defined term to identify the minimum prerequisites that are necessary to obtain the medical protocol.

## **ARGUMENT**

### **I. The measure complies with the single subject rule.**

#### **A. Standard of Review and Preservation.**

The applicable standard of review is stated in the Board’s Opening Brief at page 5. The Board agrees Anita Cameron and Julie Farrar (“Objectors”) preserved this issue for review in their motion for rehearing. *Attachment to Petition for Review*, p. 12.

#### **B. The measure does not create new inalienable state rights in violation of the single subject rule.**

Objectors argue that #100 violates the single subject rule because, in addition to “legalizing euthanasia,” the measure also creates new inalienable rights through the use of the term “citizen-sovereign.” *Objectors’ Op. Br.*, p. 8. Such rights, Objectors contend, include the

previously-unknown state rights of “life, liberty, and [the] pursuit of happiness.” *Id.*, p. 9 (quoting proposed § 28(a)). In addition to the arguments raised in the Board’s Opening Brief, this Court should reject Objectors’ arguments for two additional reasons.

**First**, the measure does not create new inalienable state rights of life, liberty or the pursuit of happiness. Instead, the measure’s text merely reaffirms what the Declaration of Independence and the Colorado Constitution already say.<sup>1</sup> Indeed, both documents are expressly referenced in section 1 of #100’s text. *Attachment to Petition for Review*, p. 1. Members of the Board at the initial hearing even commented that the declarations in section 1 of the measure do not “have any legal effect” and that they simply state “there are certain documents that say certain things.” *Hearing Before Title Board on Proposed Initiative 2015-2016 #100, Part I* (Apr. 6, 2016), available at <http://tinyurl.com/zar5zye>, at ~1:28:10 & 1:28:43 (last visited May 23, 2016).

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<sup>1</sup> Contrary to Objectors’ argument at footnote 1 in their Opening Brief, the pursuit of happiness is *already* expressly mentioned in the Colorado Constitution. See COLO. CONST. art. II, § 3.

**Second**, because the measure does not create these new inalienable state rights, it will have no impact on other laws like the Colorado Anti-Discrimination Act. *See Objectors' Op. Br.*, p. 9. But even if it might, Objectors' argument asks this Court to speculate on the proponents' motivations or to construe the legal effect of the measure as if it were law; neither is within the scope of the Court's single-subject review. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #200A*, 992 P.2d 27, 31 (Colo. 2000). Mere effects of a proposed measure are not separate subjects. *See In re Title, Ballot Title and Submission Clause for 2013-2014 #90 & #93*, 328 P.3d 155, 160-61 (Colo. 2014).

Accordingly, this Court should affirm the Board's finding that #100 satisfies the single subject rule.

**II. The Board's title for #100 satisfies the clear title rule.**

**A. Standard of Review and Preservation.**

The applicable standard of review is stated in the Board's Opening Brief at pages 9 to 11. The Board agrees Objectors preserved this issue



for review in their motion for rehearing, with the exception of their argument that promoting euthanasia is the measure's true intent. The word "euthanasia" does not appear in their motion for rehearing.

*Attachment to Petition for Review*, p. 12.

**B. The measure does not promote euthanasia or create new inalienable state rights for citizen-sovereigns.**

Objectors assert two arguments based on the clear title rule: (1) failing to include the term "euthanasia" in the title will cause voter surprise; and (2) the title should inform voters that #100 creates a "new class" of citizen-sovereigns who have an inalienable right to the pursuit of happiness. *Objectors' Op. Br.*, pp. 12-14. In addition to the reasons stated in the Board's Opening Brief, Objectors' arguments should be rejected for the reasons below.

Objectors' first argument is unpreserved for appellate review. *See In re Ballot Title 1999-2000 #265*, 3 P.3d 1210, 1215-16 (Colo. 2000); *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1130 n.3 (Colo. 1996). But even if preserved, the word "euthanasia" need not appear in the title because it would be misleading. Objectors' own

definition of euthanasia states it is “the administration of a lethal agent by *another person* to a patient . . . .” *Objectors’ Op. Br.*, p. 12 (emphasis added). The text of #100, by contrast, is narrower. It permits a patient to obtain “a *medical professional’s* assistance in achieving a peaceful death through the careful administration of a medical protocol.” *Attachment to Petition for Review*, p. 3 (emphasis added). Thus, describing #100 as promoting euthanasia—whereby *any* person may administer the protocol—would be inaccurate and misleading. *See In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (stating title must not be “insufficient, unfair, or misleading.” (internal quotations omitted)).

Objectors’ second argument should be rejected for the same reason. Stating in the title that #100 creates a new class of citizen-sovereigns with a new inalienable state right to happiness would be inaccurate and misleading. As indicated in the Board’s Opening Brief and above, the term “citizen-sovereign” is a defined term that operates as a shorthand to identify the minimum prerequisites that must be met before the patient may obtain the medical protocol. It does not create a

new inalienable state right to the pursuit of happiness. Objectors' argument should therefore 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").

## CONCLUSION

For the above-stated reasons, and the reasons stated in the Board's Opening Brief, the Court should affirm the Board's actions in setting the title for #100.

Respectfully submitted this 26th 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 26th day of May, 2016 addressed as follows:

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