

SUPREME COURT, STATE OF COLORADO  
2 East 14<sup>th</sup> Ave., Denver, CO 80203

Original Proceeding Pursuant to § 1-40-107(2)  
C.R.S. (2015)  
Appeal from the Ballot Title Board

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**In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2015-2016 #100**

**ANITA CAMERON, JULIE FARRAR**  
Petitioners,

v.

**LANCE WRIGHT, MERCEDES APONTE**  
Respondents,

**SUZANNE STAIERT, FREDERICK YARGER,  
AND JASON GELENDER**  
Title Board.

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DATE FILED: May 12, 2016 10:14 PM

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Case Number:  
2016SA141

**OPENING BRIEF OF CAMERON & FARRAR IN SUPPORT OF  
PETITION FOR REVIEW OF PROPOSED INITIATIVE 2015-2016  
#100 (“MEDICAL AID IN DYING”)**

## 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) because it contains 3146 words. The Petition on Appeal complies with C.A.R. 32 because it is prepared using Roman style font 14 point size including footnotes.

The brief complies with C.A.R. 28(k) because it contains under 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 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.

Dated this 12<sup>th</sup> day of May, 2015,

s/ Carrie Ann Lucas, #36620  
Attorney for Petitioners Cameron and Farrar

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## **ISSUES PRESENTED FOR REVIEW**

A. The Title Board lacked jurisdiction to set title because the proposed initiative contains multiple, distinct, and not interdependent subjects under the single umbrella category of medical aid in dying.

B. The Title Board erred in setting a title and submission clause that are confusing, misleading, and fail to reflect the intent of the proposed initiative

## **STATEMENT OF THE CASE**

### **I. Nature of the Case**

If approved, proposed initiative 2015-2016 #100 (the “Proposed Initiative,” “Initiative,” or “Initiative #100” legalizes euthanasia, creates a new class of “citizen sovereigns” and creates new inalienable rights.

### **II. Course of the Proceedings and Disposition Below**

On February 15, 2016, Lance Wright and Mercedes Aponte (collectively “Proponents”) filed the Proposed Initiative with the Office of Legislative Council. The review and comment meeting was held



under C.R.S. § 1-40-105(1) on February 17, 2016, 2016. On or about February 17 or 18, 2016, Proponents submitted original, amended and final versions of the Initiative to the Secretary of State for title setting. On March 2, 2016, title was denied. Subsequently Proponents filed a motion for rehearing, but withdrew that motion.

On March 9, 2016, Proponents submitted a new set of original, and amended, versions of the Initiative to the Secretary of State for title setting. On March 9 or 10, 2016 Proponents submitted a final version of the Initiative to the Secretary of State for Title Setting. On April 6, 2016, the Title Board set the Initiative's title.

On April 13, 2016, Petitioners timely filed a Motion for Rehearing pursuant to § 1-40-107(1) C.R.S. on the basis that the title set by the Title Board violated the single subject rule, and failed to fairly describe the meaning and intent of the Initiative. The Title Board held a rehearing on April 20, 2016 and denied the Petitioners' motion except to the extent that the Board amended the title.

The final title was designated as follows:

An amendment to the Colorado constitution establishing a right to assistance from a medical professional to achieve

death through a medical protocol, and, in connection therewith, allowing a mentally competent adult to exercise the right or to enter into an agreement to exercise the right at a future time when the individual may no longer be mentally competent and the conditions specified in the agreement are met; and granting immunity from civil and criminal liability and professional discipline to any person who provides assistance to a person exercising the right.

The ballot title and submission clause was designated as follows:

Shall there be an amendment to the Colorado constitution establishing a right to assistance from a medical professional to achieve death through a medical protocol, and, in connection therewith, allowing a mentally competent adult to exercise the right or to enter into an agreement to exercise the right at a future time when the individual may no longer be mentally competent and the conditions specified in the agreement are met; and granting immunity from civil and criminal liability and professional discipline to any person who provides assistance to a person exercising the right?

Petitioners Cameron and Farrar timely submitted this matter to the Court for review. *See* Petition for Review of Final Action of Title Setting Board Concerning Proposed Initiative 2015-2016 #100 (“Medical Aid In Dying”) filed by Petitioners, filed April 27, 2016.

## SUMMARY OF ARGUMENT

The Proposed Initiative contains multiple, unrelated subjects having no necessary or proper connection to the Initiative's purported single subject: "An amendment to the Colorado constitution establishing a right to assistance from a medical professional to achieve death through a medical protocol." *See* Final Title. In addition to legalizing euthanasia, the measure creates new inalienable rights that affect many Colorado statutes.

To the extent the Court finds that the Initiative includes only one subject, the Final Title is nevertheless confusing, misleading, and not reflective of the Proponents' intent and, therefore, must not be forwarded to the voters. The Final Title fails to reflect that the Proposed Initiative: fails to reflect that the measure creates a new class of "citizen sovereigns" or creates new inalienable rights, or that the Proposed Initiative legalizes euthanasia.

## ARGUMENT

### I. Appellate Standard of Review

The Colorado Constitution requires that citizen-initiated measures contain only a single subject, which shall be clearly expressed in its title. Colo. Const. art. V, § 1(5.5); see also § 1-40-106.5 C.R.S. The single-subject requirement prevents proponents from combining multiple subjects to attract a “yes” vote from voters who might otherwise vote “no” on one or more of the subjects if proposed separately. *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 333 P.3d 76, 79 (Colo. 2014) (citing *In re Proposed Initiative for 1997-1998 #84*, 961 P.2d 456, 458 (Colo. 1998)). Accordingly, an initiative’s subject matter “must be necessarily and properly connected rather than disconnected or incongruous.” *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo. 2012)). Titles containing general “umbrella proposals” to unite separate subjects are unconstitutional. *Id.*

When reviewing the Board's single-subject determination, the Court assumes legitimate presumptions in favor of the propriety of the Board's actions. *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010) (citing *In re Title, Ballot Title, & Submission Clause for 2009-2010, #24*, 218 P.3d 350, 353 (Colo. 2009)). The Court does not consider the initiative's efficacy, construction, or future application. *Id.* When necessary, however, the Court "will characterize the proposal sufficiently to enable review of the Title Board's action." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). When construing an initiative, the Court applies the general rules of statutory construction. *In re Title, Ballot Title & Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 873 (Colo. 2007).

The Title Board is charged with setting a title that fully, fairly and accurately informs voters of the central elements of the measure, to enable them to make a thoughtful decision about its merits. § 1-40-106(3)(b) C.R.S.; see also *In re Title for 1999-2000 No. 258(A)*, 4 P.3d at 1098. The title must be sufficiently clear so voters "understand the

principal features of what is being proposed” and because “a material omission can create misleading titles.” *Id.* The requirement of a fair and accurate title is intended to prevent “surreptitious measures,” and it tasks the Title Board with the duty to “apprise the people of the subject of each measure by the title” to prevent “surprise and fraud from being practiced upon voters.” *In re Title, Ballot Title, & Submission Clause & Summary for 1999-2000 No. 29*, 972 P.2d 257, 260-61 (Colo. 1999). If the Title Board cannot comprehend a proposed initiative sufficiently enough to state its single subject clearly in the title, the initiative cannot be forwarded to the voters. *Matter of Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999).

## **II. Preservation for Appeal**

Petitioners, in their Motion for Rehearing, properly raised and preserved their challenge to the Initiative’s failure to comply with the single-subject rule. *See* Motion for Rehearing at 1. The Title Board

considered and denied the Petitioners' motion on this issue at the April 20, 2016 rehearing. *See* Final Title.

In their Motion for Rehearing, Petitioners properly raised and preserved their challenge regarding the Initiative's failure to comply with § 1-40-106(3) C.R.S. *See* Motion for Rehearing at 1. The Title Board considered and denied the Petitioners' motion on this issue at the April 20, 2016 rehearing. *See* Final Title.

### **III. Under the guise of Medical Aid in Dying, the Initiative Contains Multiple and Distinct Subjects.**

As reflected in the final title, the Proposed Initiative's purported single subject is "An amendment to the Colorado constitution establishing a right to assistance from a medical professional to achieve death through a medical protocol." *See* Final Title. In addition to legalizing euthanasia, the measure also creates new unalienable rights that will affect many Colorado laws.

The Proposed Initiative creates a new class of citizen-sovereigns who have inalienable rights to euthanasia. Final Text ¶ 4. This new

class of citizens, unheard of in the laws of Colorado, or any other state in the United States. According to The American Heritage Dictionary the term "sovereign" (when applied to a person) means "a king, queen, or other noble person who serves as chief of state; a ruler or monarch." *Sovereign, American Heritage Dictionary* (5th ed. 2015). The term is generally used in the context of a person who possesses or holds supreme political power, like a king or queen. It is also used as an adjective as "self governing." *Id.* The creation of this new class of either noble person, or a self-governing person with a number of unalienable rights has the potential to affect many aspects of the Colorado Constitution, and Colorado laws. In particular, it could substantially affect the applicability of civil rights statutes prohibiting discrimination, such as the Colorado Anti-Discrimination Act, § 24-34-601 C.R.S., *et seq.*, with this Proposed Initiative's declaration of inalienable rights of "life, liberty, and pursuit of happiness."<sup>1</sup> *Final Text*

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<sup>1</sup> While these are rights expressed in the 1776 Declaration of Independence, the pursuit of happiness in particular, is not codified into the U.S. Constitution, or the Colorado Constitution as expressed by the Proposed Amendment. *Cf.* U.S. Const. amend. XIV, § 1; Colo. Const. art. II, § 3.



§ 28(a). Because the Colorado Constitution is supreme over statute, under this Proposed Initiative, a new right to pursue happiness could be used to argue, for example, that one's happiness depends on upholding religious convictions, thus allowing a public accommodation to refuse to serve a transgendered person. The creation of this new category of "citizen-sovereign" and new inalienable rights, unrelated to the purpose of legalizing euthanasia will allow a backdoor to invalidating any number of Colorado statutes. This is more than a single subject, and a violation of the Colorado Constitution.

Therefore, the Court should reverse the decision of the Title Board and find that the Proposed Initiative has multiple and distinct purposes in violation of article V, section 1(5.5) of the Colorado Constitution.

**IV. The final title does not fairly and accurately inform voters of important aspects of the Initiative**

The Final Title is confusing, misleading, and not reflective of the Proponents' intent and, therefore, must not be forwarded to the voters. The Proposed Initiatives represent a thinly-disguised effort to legalize

euthanasia and create a new class of citizen sovereigns and new inalienable rights. For this reason alone, the Titles violate the statutory requirement that titles must “correctly and fairly express the true intent” of initiatives. *See* § 1-40-106 C.R.S.

The Titles should be “a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.” § 1-40-102(10) C.R.S. In setting titles, the Board “shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a ‘yes/for’ or ‘no/against’ vote will be unclear.” § 1-40-106(3)(b) C.R.S. The Titles fail to meet these standards, because they describe The Proposed Initiative’s subject as permitting “An amendment to the Colorado constitution establishing a right to assistance from a medical professional to achieve death through a medical protocol” and improperly omit material provisions of the Proposed Initiative.

**A. The titles fail to correctly and properly identify the true intent and meaning of the Initiative, which is to legalize euthanasia.**

The term “euthanasia” is commonly known and understood by the general public. The American Medical Association (AMA) defines euthanasia as occurring when “the administration of a lethal agent by another person to a patient for the purpose of relieving the patient’s intolerable and incurable suffering.” The AMA Code of Medical Ethics, Opinion 2.21, Euthanasia, June, 1991. <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion221.page?> (last accessed May 12, 2016). This is exactly what the measure legalizes. The measure legalizes “the application of... a medical protocol that is lethal.” Final Text ¶ 6(f). The language in the measure, and most importantly, the title is euphemistic and hides the purpose of the Proposed Initiative from the voters, which will cause voter surprise about the true effect of the initiative. *See In re Title, Ballot Title, Submission Clause, & Summary by the Title Board Pertaining to a Proposed Initiative on “Obscenity”, 877 P.2d 848, 850*

(Colo. 1994) (“There may be situations, therefore, where the title and submission clause likely would create public confusion or ambiguity about the effect of the initiative even though they merely repeat the language contained in the initiative itself”).

**B. The Titles fail to reflect that the measure creates a new class of citizen-sovereigns with new inalienable rights.**

As discussed *supra*, the Proposed Initiative creates a new class of citizen-sovereigns who have an inalienable right to the pursuit of happiness. Final Text § 28(a) and §28(a)(4). The creation of this new class of either noble person, or a self-governing person with a number of unalienable rights has the potential to affect many aspects of the Colorado Constitution, and Colorado laws

The titles as written would result in most voters not understanding that the Proposed Initiative might change the Colorado Constitution in this way. *See Matter of Proposed Election Reform Amendment*, 852 P.2d 28, 33-35 (Colo. 1993) (finding the title for an election reform initiative insufficient, in part, because it identified that

the initiative would revise procedural provisions of the initiative, referendum, and recall, but it failed to state that the initiative would revise substantive provisions of the same).

Therefore, and in the alternative, Petitioners request that the Court remand the matter to the Title Board with the instructions to amend the Final Title consistent with the concerns set forth herein

## CONCLUSION

WHEREFORE, for the reasons set forth above, the Petitioners respectfully request that the Court find that the Initiative does not contain a single subject and remand this matter to the Title Board with direction to return the Initiative to Proponents. In the alternative, Petitioners request that the Court remand the matter to the Title Board with the instructions to amend the title consistent with the concerns set forth above.

## CERTIFICATE OF WORD COUNT

By my signature below, I certified that the number of words in the body of the final form of this petition as counted by Microsoft Office, is 3146.

Respectfully submitted this 12<sup>th</sup> day of May, 2016.

s/Carrie Ann Lucas

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## CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, a true and correct copy of the foregoing was served by the ICCES filing system, and addressed to:

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