

<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 #145 (“Medical Aid in Dying”)</p> <p>Petitioners: Michelle Stanford, Robin Stephens, and Renee Walbert,</p> <p>v.</p> <p>Respondents: Jaren Ducker and Julie Selsberg,</p> <p>and</p> <p>Title Board: Suzanne Staiert, David Blake, and Jason Gelender.</p>	<p>Supreme Court Case No.: 16SA151</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 1,266 words.

The brief complies with C.A.R. 28(b).

For the party responding to the issue:
It contains under a separate heading a statement whether the party agrees with the other party's statement of standard of review.

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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Attorney for Petitioner Michelle Stanford

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Petitioner Michelle Stanford, through her undersigned counsel, hereby submits this Answer Brief:¹

INTRODUCTION

As Dr. Stanford noted in her Opening Brief, Initiative 145 is substantially identical to Initiative 124, the title of which was appealed in Case No. 16SA137. In this appeal, Dr. Stanford has raised four challenges to Initiative 145's title, two of which are on the same grounds as the challenges raised to Initiative 124's title. Earlier this afternoon, the Court issued an order affirming the Title Board's action with respect to Initiative 124. Accordingly, Dr. Stanford hereby withdraws the two challenges to Initiative 145 that were also raised for Initiative 124 and instead focuses solely on the two additional arguments that were not raised with respect to Initiative 124.

¹ The Title Board argues that Dr. Stanford's appeal was untimely as it was filed in this case on May 6, 2016, or one day late. As set forth in Dr. Stanford's Opening Brief, n. 3, on May 5, 2016, Dr. Stanford timely filed her petition with the Court via ICCES and served the Attorney General's office (counsel for the Title Board) and Mr. Mark Grueskin (counsel for the Respondents) electronically and via U.S. Mail on the same day. On the following day, May 6, 2016, the undersigned was notified by the Clerk of the Court that Dr. Stanford had to re-file her petition, as a matter challenging the title for Initiative #145 had already been initiated by another petitioner's filing, causing a case number to be assigned under which Dr. Stanford's petition would need to be filed. Accordingly, Dr. Stanford re-filed her petition in this case on May 6. The technicalities involved in the electronic filing system, however, do not render Dr. Stanford's petition out of time.

SUMMARY OF THE ARGUMENT

Initiative 145 seeks to legalize assisted suicide in Colorado. It contains a number of provisions related to implementing this proposed change: specifying qualifications for patients eligible to request such assistance, setting procedures for submitting a request, delineating requirements for the required written consent, among others. Generally, these provisions affect solely the patient and the physician. Other features of the Initiative would have impacts beyond just the patient and physician: for instance, provisions of the measure would change how a patient's choice to commit suicide affects existing insurance contracts, and insurance underwriting and risk evaluation procedures. Contrary to the Respondents' arguments, these are not details of the measure, but significant changes to Colorado law that may have an impact on many residents and businesses of the state. Petition signers and voters are entitled to be apprised of those features.

Further, the measure allows health care facilities to prohibit physicians from prescribing aid-in-dying medication. The omission of that feature of the Initiative from the title renders the title incomplete and misleading to voters.

RESPONSE TO RESPONDENTS' STANDARD OF REVIEW

Petitioner agrees with the Respondents' statement of the applicable standard of review.

ARGUMENT

I. Contrary to the Respondents' arguments, the measure's impact on insurance policies and underwriting is not an interpretation or effect, but is expressly included in a provision of the Initiative.

The Respondents argue that Dr. Stanford's interpretation of the measure regarding its effect on insurance should not be included in the title, as it is beyond the scope of the Court's review. Resp'ts' Br. 14-15.² That argument is unavailing, however, because there is a difference between asking this Court to review the merits and wisdom of a proposed measure and, like here, asking the Court to sufficiently construe the meaning of the Initiative to determine whether the title meets the applicable legal standard. *See In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 No. 75*, 138 P.3d 267, 271 (Colo. 2006) ("In conducting our review of the Title Board's action, we do not address the merits of the proposed initiative or suggest how an initiative might be applied if enacted; however, we must examine its wording to determine whether the Title Board's

² The Title Board's Opening Brief does not address or defend the Title Board's 2-1 decision to omit from the title the measure's effect on insurance.

action complies with the constitutional and statutory provisions governing the setting of a title and ballot title and submission clause.”).

Proposed section 25-48-115 of the Initiative provides, in relevant part:

(1) The sale, procurement, or issuance of, or the rate charged for, any life, health, or accident insurance or annuity policy must not be conditioned upon, or affected by, an individual’s act of making or rescinding a request for medical aid-in-dying medication in accordance with this article.

(2) A qualified individual’s act of self-administering medical aid-in-dying medication pursuant to this article does not affect a life, health, or accident insurance or annuity policy.

See Ex. A to Pet’r’s Op. Br.

Dr. Stanford is not asking this Court to speculate as to the likely effect or application of the measure, but requests that the measure’s express provision that would change insurance underwriting and the way insurance contracts are interpreted be reflected in the title. The Respondents gloss over the proposed 25-48-115, arguing that it does not mention suicide exceptions; yet, they do not deny that it is precisely what this section means. It is a central feature of the Initiative, as evidenced by the fact that it is one of the frequently asked questions in connection with the proposed measure. *See* Ex. C to Pet’r’s Op. Br. at 7:

[Q:] How does participation in death with dignity impact my insurance?

[A:] Death with Dignity statutes specify that participation under them is not suicide. Therefore, your decision to end your life under a Death

with Dignity statute has no effect on your life, health, or accident insurance or annuity policy.

The proposed 25-48-115 may or may not have significant public impact by affecting the insurance rates and availability of certain insurance products in the marketplace, but voters are entitled to be alerted to the existence of this provision to be able to make an informed decision. *See In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 2012 CO 25, ¶ 26, 274 P.3d 562, 570 (The title “must convey to voters the initiative’s likely impact.”) (internal quotation marks omitted).

II. Provision that permits a health care facility to prohibit a physician from writing a prescription for aid-in-dying medication is a central feature of the Initiative.

The Respondents argue that the measure’s provision allowing a health care facility to prohibit a physician from prescribing aid-in-dying medication is not a central feature.³ However, its omission renders the title confusing and misleading to voters. The title states that a patient may “receive a prescription from a **willing** licensed physician” for aid-in-dying medication, implying that as long as a physician is willing to prescribe such medication, the patient will be able to receive it regardless of the health care facility the patient has chosen. Under proposed 25-48-118, that is not the case, as **both** the physician and the health care facility must

³ The Title Board’s Opening Brief does not address this basis of Dr. Stanford’s challenge either.

be willing to participate in the measure's assisted suicide protocol for the patient to be able to receive such assistance. Mentioning one but not the second condition of the measure renders the title insufficient. The title should be remanded to the Board.

CONCLUSION

Petitioner respectfully requests that this Court determine that the title and submission clause set for the Proposed Initiative 2015-2016 #145 is inaccurate and fails to reflect its true intent and meaning and remand to the Title Board with instructions to redraft the title.

Respectfully submitted this 2nd day of June, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

s/ Thomas M. Rogers III

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2016, a true and correct copy of the foregoing was served on the following via ICCES:

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