

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015- 2016 #145</p> <p>PETITIONERS: Robin Stephens; Renee Walbert; and Michelle Stanford,</p> <p>v.</p> <p>RESPONDENTS: Jaren Ducker and Julie Selsberg, and</p> <p>TITLE BOARD: Suzanne Staiert; David Blake; and Jason Gelender.</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 1,642 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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Assistant Solicitor General

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

STATEMENT OF THE ISSUES

This Answer Brief addresses only the following issues raised by petitioners’ Opening Briefs:

- 1) Whether the measure complies with the single subject requirement (Stephens and Walbert petition).
- 2) Whether the title reflects the central features of the measure to accurately convey its true intent and meaning (all petitions).

The Board rests on its Opening Brief for all other issues previously raised.

SUMMARY OF THE ARGUMENT

The Board’s title for #145 should be affirmed because it satisfies both the single subject rule and the clear title standard. Contrary to Stephens and Walbert’s single subject argument, the proposed statutory section (§ 25-48-109) that eliminates the need for post-mortem inquiries

is not a separate subject. Instead, it is necessarily and properly connected to #145's central focus.

Objectors' clear title arguments are also unavailing. Inserting the word "suicide" in the title, as requested by objectors, 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 #145's provisions. Likewise, the proposed provisions regarding death certificates, insurance contracts, and the opt-out for health care facilities are not central features that must be included in the already-lengthy title. At most, they constitute details of implementation that need not be included. To the extent the proposed provisions impact existing rules of evidence or statutory provisions governing death certificates or insurance contracts, those potential effects are not required to be reflected in the title. This Court should affirm.

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 pages 8 and 9. The Board agrees Stephens and Walbert preserved this issue for review. *Attachment to Stanford Petition*, pp. 37-38.

B. The Board correctly found that #145 satisfies the single subject rule.

Stephens and Walbert argue that the measure violates the single subject rule because one of the proposed statutory sections (§ 25-48-109) states that deaths occurring in accordance with #145 shall "not constitute grounds for post-mortem inquiry under section 30-10-606(1), C.R.S." *Attachment to Stanford Petition*, p. 7. In addition to the reasons stated in the Board's Opening Brief, this Court should reject this argument for two additional reasons.

First, much of Stephens and Walbert's objection to proposed section 25-48-109 constitutes a disagreement over the merits of the

measure itself. *See Stephens and Walbert Op. Br.*, pp. 9-10 (stating the measure “all but guarantees that any perpetrator of coercion or homicide can get away with it . . .”). But as this Court has recently reemphasized, the scope of the Court’s review is limited to determining whether the measure comports with the single subject rule and the clear title rule; the Court “refrain[s] from addressing its merits.”¹ *In re Title, Ballot Title and Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶7 (Colo. May 16, 2016).

Second, the implementing provision that eliminates mandatory post-mortem inquiries when death occurs in accordance with #145 is not “disconnected or incongruous” from the measure’s central focus: the right of mentally capable adults who have a terminally-ill medical prognosis to receive a prescription from a licensed physician that can be self-administered to bring about death. *Id.* at ¶10 (internal quotations

¹ Even if the merits could be considered, Stephens and Walbert’s interpretation is incorrect. The measure does not eliminate post-mortem inquiries when it appears death may have occurred under suspicious circumstances that do not conform to #145. Instead, only when death is “in accordance” with the measure is a post-mortem inquiry not required. *Attachment to Stanford Petition*, p. 7.

omitted). Rather, the provision is “necessarily and properly connected” to #145’s central focus because it explains what occurs (or does not occur) after death is achieved in accordance with the measure. *Id.*

Accordingly, this Court should affirm the Board’s finding that #145 satisfies the single subject rule.

II. The Board’s title for #145 is fair, clear, accurate, and complete.

A. Standard of Review and Preservation.

The applicable standard of review is stated in the Board’s Opening Brief at pages 13 and 14. The Board agrees Stephens and Walbert preserved their arguments for review. *Attachment to Stanford Petition*, p. 38. Assuming *arguendo* that Dr. Stanford’s petition for review is deemed timely-filed, the Board also agrees that Dr. Stanford preserved her arguments for review. *Id.*, p. 40.

B. Describing #145 as promoting suicide would mislead voters.

All objectors argue that the title fails to reflect the true intent and meaning of the measure, which they contend is promoting physician-assisted suicide. *Stanford Op. Br.*, pp. 12-15; *Stephens and Walbert Op.*

Br., pp. 13-14. Objectors’ argument should be rejected for the reasons stated in the Board’s Opening Brief and because describing #145’s intent as promoting some form of suicide would be inaccurate and misleading to the voters.

The text of #145 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 forth in title 18, C.R.S.” *Attachment to Stanford Petition*, p. 12 (proposed § 25-48-121). 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 #145. Inserting objectors’ requested “suicide” language into the title thus risks misleading voters into believing that the consequences associated with suicide apply under #145 when in fact they do not. *See* § 1-40-106(3)(b), C.R.S. (stating Board “shall consider the public confusion that might be caused by misleading titles . . .”).

Accordingly, objectors’ requested “suicide” language should be rejected. *See In re Constitutional Amendment Concerning the Fair*

Treatment of Injured Workers, 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”).

C. The provisions regarding death certificates, insurance contracts, and the opt-out for health care facilities are not central features.

All objectors argue that the proposed statutory section regarding death certificates (§ 25-48-109) is a central feature that should be reflected in the title. *Stanford Op. Br.*, pp. 15-16; *Stephens and Walbert Op. Br.*, pp. 14-16. Additionally, Dr. Stanford asserts that #145’s proposed provision regarding life insurance contracts (§ 25-48-115) and the exception permitting health care facilities to opt out of the measure (§ 25-48-118) are central features that should be in the title. *Stanford Op. Br.*, pp. 8-12. In addition to the arguments stated in the Board’s Opening Brief, objectors’ arguments should be rejected for three additional reasons.

First, the proposed provisions regarding death certificates, insurance contracts, and the optional opt-out for health care facilities do not rise to the level of central features that necessarily must be included in the title. At best, they constitute details 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 one or more of the measure’s 23 proposed provisions may of course consult the Blue Book and other relevant publications when filling out their ballot.

Second, any impact on existing rules of evidence or statutory sections dealing with death certificates or insurance contracts 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).

Third, the title as set by the Board is already quite lengthy (155 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).

Here, counsel to #145's proponents alerted the Board to possibility that adding language to the title to accommodate objectors' concerns could lead to a violation of the "brief title" requirement. *See Rehearing Before Title Board on Proposed Initiative 2015-2016 #145, Part I* (Apr. 28, 2016), available at <http://tinyurl.com/zar5zye>, at ~2:14:45 mins. (last visited May 31, 2016). A majority of the Board agreed and ultimately denied the objectors' motions for rehearing in their entirety. *See id.* at ~2:15:55 mins. Because objectors' requested additions to the title would constitute an unnecessary "item-by-item paraphrase" of the measure, *In re Title #62*, 961 P.2d at 1083, this Court should affirm the Board's actions in setting title for #145.

CONCLUSION

For the above-stated reasons, and for the reasons stated in the Board's Opening Brief, the Court should dismiss Dr. Stanford's petition for review and affirm the Board's actions in setting the title for #145.

Respectfully submitted this 2nd day of June, 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 2nd day of June, 2016 addressed as follows:

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