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Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

In the Matter of the Title and Ballot Title and Submission Clause for Initiative
2015-2016 #124

MOTION FOR REHEARING

Registered electors, Robin Stephens and Renee Walbert, through their legal counsel Carrie Ann Lucas and Courtney Longtin of Disabled Parents Rights, request a rehearing of the Title Board for Initiative 2015-2016 No. 124. As set forth below, Ms. Stephens and Ms. Walbert respectfully object to the Title Board's setting of the title, and the ballot title and submission clause on the following grounds:

TITLE AND SUBMISSION CLAUSE

On April 6, 2016, the Title Board designated the title as follows:

A change to the Colorado revised statutes to permit any mentally capable adult Colorado resident who is dying of a terminal illness to receive a prescription from a licensed physician for medication that can be self-administered to bring about death; and in connection therewith, requiring two licensed physicians to confirm that the terminally-ill patient has six months or less to live and has received information about alternative care and treatment; requiring two physicians or mental health professionals to determine that the patient is making a voluntary and informed decision in requesting the medication; granting immunity from civil and criminal liability and professional discipline to any person who in good faith assists in providing access to or is present when a patient self-administers the medication; and establishing criminal penalties for persons who knowingly violate statutes relating to the request for the medication.

The Title Board set the ballot title and submission clause as follows:

Shall there be a change to the Colorado revised statutes to permit any mentally capable adult Colorado resident who is dying of a terminal illness to receive a prescription from a licensed physician for medication that can be self-administered to bring about death; and in connection therewith, requiring two licensed physicians to confirm that the terminally-ill patient has six months or less to live and has received information about alternative care and treatment; requiring two physicians or mental health professionals to determine that the patient is making a voluntary and informed decision in requesting the medication; granting immunity from civil and criminal liability and professional discipline to any person who in

good faith assists in providing access to or is present when a patient self-administers the medication; and establishing criminal penalties for persons who knowingly violate statutes relating to the request for the medication?

GROUND FOR RECONSIDERATION

I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION THE COLORADO CONSTITUTION AND STATUTES

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See* Colo. Const. art. V., § 1(5.5); § 1-40-106.5 C.R.S.; *In re Title, Ballot Title, Submission Clause*, 974 P.2d 458, 463 (Colo. 1999) (a proposed initiative violates the single subject rule where it "has at least two distinct and separate purposes which are not dependent upon or connected with each other."). The Title Board must examine an initiative's central theme "to determine whether it contains incongruous or hidden purposes or bundles incongruous measures under a broad theme." *Gonzalez-Estay v. Lamm*, 138 P.3d 273, 279 (Colo. 2006). The Board set title for Initiative No. 124 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- A. Initiative # 124 explicitly changes several state laws, with multiple unintended effects:
 - 1. 30-10-606(1) – Which would require a coroner to lie on a death certificate and indicate the death was not a suicide;
 - 2. The “Colorado Medical Assistance Act” (Articles 4, 5 and 6 of Title 25.5 CRS – addressing financial assistance to needy families;
- B. Modifies many references in Colorado criminal code, Title 18, having to do with mercy killing, homicide or elder abuse, making it impossible to enforce unrelated statutes;
- C. Implicitly changes insurance laws and contracts;
- D. Implicitly changes coroner duties;
- E. Implicitly changes Colorado Medical Treatment Decision Act by creating new and conflicting definitions, as well as preventing some types of advance directives aimed at preventing the use of this proposed law;
- F. Implicitly changes title 27 with respect to care for people with mental illness;

- G. Implicitly changes probate code by prohibiting will and trust provisions;
- H. Implicitly changes employment contracts between medical providers and their employers.

II. The Titles are misleading and do not express the true intent of the Initiative.

An initiative's ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. § 1-40-106(3)(b). The title should clearly express the initiative's single subject. In re Title, Ballot Title, and Submission Clause for 2009-2010 # 45, 234 P.3d 642, 647-48 (Colo. 2010). 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." C.R.S. § 1-40-106(3)(b).

A. The Titles for Initiative #124 are Misleading Because Patients Are Not Required to be Dying

The Board's titles imply that the proposed law is limited to people who are "dying." There is no such limit. The law instead applies to persons with a mere prognosis (prediction) of six months or less to live due to terminal illness. Such persons, in fact, may have years, even decades, to live. This is true for two reasons:

1. Misdiagnosis occurs; predicting life expectancy is not an exact science

Patients predicted to have six months or less to live, may, in fact, have years to live due to misdiagnosis and because predicting life expectancy is not an exact science.¹ People frequently outlive a terminal diagnosis, by months, years and decades. People with congenital neuromuscular diseases are often predicted to die before reaching adulthood, but commonly live into their 60s, 70s, and 80s.

2. The definition of terminal illness is so expansive as to include such diseases as insulin dependent diabetes.

¹ See: Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14; and Nina Shapiro, "Terminal Uncertainty — Washington's new 'Death with Dignity' law allows doctors to help people commit suicide — once they've determined that the patient has only six months to live. But what if they're wrong?," *The Seattle Weekly*, 1/14/09. Excerpts attached hereto at A-14 and A-15 to A-17, respectively.

The proposed Colorado law applies to persons with a survival prognosis of six months or less due to a “terminal illness.” Moreover, the law states: “Terminal illness” means an incurable and irreversible illness that will, within reasonable medical judgment, result in death. This includes such chronic conditions as diabetes. Without insulin, a person who has insulin dependent diabetes will be dead within a month. Diabetes is not curable or irreversible, it is manageable. Accordingly, people with insulin dependent diabetes, for example, would be eligible for physician assisted suicide under this proposed law because they have an incurable and irreversible illness that will result in death.

The bottom line, the proposed law applies to people with years, even decades, to live. The proposed titles, which imply that only a person “who is dying” will be eligible, are materially misleading and must be changed.

- B. The language “prescription from a licensed physician for medication that can be self-administered to bring about death,” is misleading and hides the true intent of the law.**

The American Medical Association (AMA) defines physician-assisted suicide as occurring when “a physician facilitates a patient’s death by providing the necessary means and/or information to enable the patient to perform the life-ending act.”¹ The AMA gives this example: “[A] physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.”²

“Assisted suicide” is a general term in which the assisting person is not necessarily a physician. “Euthanasia,” by contrast, is a direct administration of the lethal dose with the intent to cause another person’s death.³

This proposed law would allow both, and voters are entitled to know these actions are allowed by this law.

- 1. The proposed bills allow someone else to administer the lethal dose to the patient.**

Generally accepted medical practice allows a doctor, or a person acting under the direction of a doctor, to administer prescription drugs to patients. Common

¹ The AMA Code of Medical Ethics, Opinion 2.2II, Physician-Assisted Suicide.

² *Id.*

³ *Id.* at Opinion 2.2i, Euthanasia.

examples include parents administering drugs to their children, and adult children who administer drugs to their parents. This is a normal practice

The way self-administration is defined, generally accepted medical practice allows someone else to administer lethal dose to the patient. With someone else allowed to administer the lethal dose, the patient's choice and control are once again not guaranteed, and euthanasia occurs.

The definition of self-administration does not preclude another individual giving the individual the medication, having been told to do so at the time of administration, or sometime in the past, even if the individual subsequently changed their mind about ingesting the lethal dose.

WHEREFORE, Petitioners Robin Stephens and Renee Walbert respectfully request a rehearing and reconsideration of the title, ballot title and submission clause set by the Title Board on April 6, 2016, for Initiative 2015-2016 #124.

Respectfully submitted this 13th day of April, 2016.

DISABLED PARENTS RIGHTS



Carrie Ann Lucas, #36620

Courtney Longtin, #43937

Attorneys for Robin Stephens and Renee Walbert

Certificate of Service

I hereby certify that on April 13, 2016, a true and correct copy of the foregoing was served by electronic mail or by placing a true and correct copy in the United States Mail, postage prepaid and addressed to:

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