

**National Lawyers Association, Colorado Chapter
Commission for the Protection of Constitutional Rights (CPCR)**

Mr./Mrs. Chair and members of the Committee: My name is Brad Bergford. I am President of the Colorado chapter of National Lawyers Association and its Commission for the Protection of Constitutional rights.

Equal Protection Issue (Facial)

HB16-1054 has an equal protection problem on its face because it is available to only those Coloradans with a terminal diagnosis. Others could challenge, arguing that it is unequal to prefer one person's death wish over that of another. After all, all humans are terminal. 100% of people die of something. It could be argued, then, that all living humans are in the process of dying and that the only real question is *when* any given person's life will end. Courts might agree and extend to all the provisions of this legislation.

Statutory cause of death

1054 presents problems for the medical community. Deaths are not reportable, and coroners are prohibited from performing autopsies and will be statutorily required to state that the cause of death was the victim's terminal illness. (25-48-109(2).) So, 1054 prohibits anyone from learning the truth about what happened to a person who is alleged to have committed suicide pursuant to this legislation. Incidentally, Colorado law sets forth in great detail the responsibilities of coroners and even *criminalizes* a coroner's failure to perform an autopsy when required or when requested by the DA. Under 1054, coroners will be prohibited from performing autopsies and will become our only elected officials who are statutorily *required* to lie. This presents the likelihood of litigation over the cause of death.

Death in a Peaceful Manner vis a vis Eighth Amendment Protection

1054 provides for an "informed decision" to end life in a "peaceful manner." The 8th Amendment prohibits cruel and unusual punishment for criminals. For decades, experts have searched for a lethal injection protocol that will not be cruel and unusual. It is difficult, then, to believe that this legislation can be trusted to lead to deaths in a "peaceful manner." Notably, the bill directs physicians to communicate the potential risks and that the anticipated result is merely "probable." (25-48-106(1)(e)(IV).) Thus, 1054 admits risks, admits that the death could be other than "peaceful," and admits that death is not guaranteed.

Conclusion

HB16-1054 creates more legal problems than it even hopes to solve. It has equal protection and other legal flaws, purports to absolve all who are involved in the deaths of the patients, and then commandeers coroners to complete the cover-up. Legal fictions cannot rid this bill of the adverse legal realities that it will create for families, physicians, therapists, insurance companies, and the judicial system. The bill includes a "safety clause" stating that the act is necessary for the immediate preservation of the public peace, health, and safety. If ever there were an instance of facetiousness in proposed legislation, this "safety clause" is it.