

SUPREME COURT OF COLORADO  
101 West Colfax Avenue, Suite 800  
Denver, Colorado 80203

Original Proceeding  
Pursuant to §1-40-107(2), C.R.S. (2011)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission  
Clause for Proposed Initiative 2011-2012, #84

**Petitioner:**

Barbara M. A. Walker,

v.

**Respondents:**

Corrine Fowler and Stephen A. Brunette,

and

**Title Board:**

Suzanne Staiert, David Blake, and Sharon Eubanks

Attorneys for Respondents Corrine Fowler and Stephen A.  
Brunette (Proponents)

Edward T. Ramey, #6748  
Heizer Paul Grueskin LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
Telephone: 303-376-3712  
Facsimile: 303-595-4750  
Email: [eramey@hpgfirm.com](mailto:eramey@hpgfirm.com)

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OF THE STATE OF COLORADO  
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Supreme Court Case No.  
2012SA134

**ANSWER BRIEF OF RESPONDENTS/PROPONENTS**

## 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 1,172 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

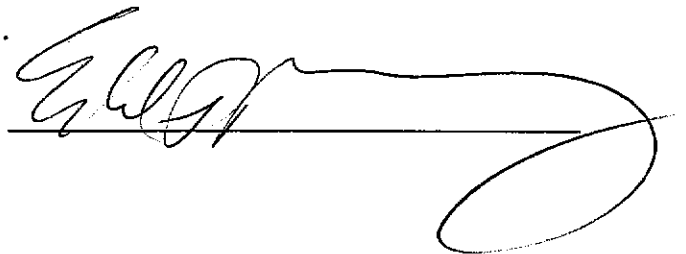
For the party raising the issue:

It contains under a 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 (R. \_\_, p. \_\_), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "E. G. G.". The line extends to the right, ending in a large loop.

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Respondents Corrine Fowler and Stephen A. Brunette, Proponents,  
respectfully submit the following Answer Brief pursuant to Order of Court dated  
May 2, 2012:

## I. SUMMARY OF THE ARGUMENT

The title, ballot title, and submission clause set by the Title Board for  
Proposed Initiative 2011-2012 #84 accurately reflect the intent and language of the  
measure and are not misleading.

## II. ARGUMENT

### A. Standard of Review:

The Proponents concur with Petitioner's statements regarding the standard  
of review, though supplemented by the statements in their own Opening Brief at  
pages 5-6.

### B. **The title, ballot title, and submission clause set by the Title Board accurately reflect the intent and language of the proposed initiative and are not misleading.**

Petitioner does not challenge the fairness and accuracy of the title if the text  
of the proposed initiative is read as the Proponents submit it should be read.

Rather, the Petitioner advocates an alternative reading of the text of the measure –  
a reading contrary to the expressed intent of the Proponents, contrary to rules of

construction, and contrary to common sense – and, therefore, inconsistent with the title adopted by the Title Board.

As acknowledged in Proponents' Opening Brief, the language of the measure is a bit awkward. Yet it clearly prohibits deprivation of real property through foreclosure "unless the party claiming the right to foreclose in the foreclosure proceeding files competent evidence of its right to enforce a valid security interest."<sup>1</sup> Petitioner's sole argument is that the measure also unambiguously requires the recording of the "competent evidence" with the county clerk and recorder before the foreclosure proceeding is commenced – and that that requirement has been omitted from the title.

Confronted with these conflicting interpretations, the Title Board first asked the Proponents what they intended the language of the measure to require. The Proponents responded, at both the initial hearing and rehearing before the Title Board, that their intent was that only the "valid security interest" need be recorded with the clerk and recorder – and that the "competent evidence" of the holder's

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<sup>1</sup> There is nothing whatsoever in the measure – notwithstanding Petitioner's suggestion to the contrary on page 7 of her Opening Brief – that would impact the rights of a creditor to present a surety bond, certification, or certified copy of a monetary judgment in lieu of the "original evidence of debt" under §38-38-101(1)(b), C.R.S. (2011), or to late-file original or certified documents under §38-38-101(2)(b), C.R.S. (2011). The measure only requires presentation, at some point in the foreclosure proceeding, of "competent evidence" of the holder's "right to enforce" a valid recorded security interest.

right to foreclose would be “filed” in the foreclosure proceeding. Rehearing Tr. p. 12, l. 24 – p. 16, l.19 (appended to Opening Brief). Petitioner now argues simply that “Proponents’ intent in promulgating the Initiative is irrelevant . . . .” Pet. Op. Br. at p. 7.

The legislature has charged the Title Board with setting a title “which shall correctly and fairly express the true intent and meaning” of proposed ballot initiatives. §1-40-106(3)(b), C.R.S. (2011). Motions for rehearing and review by this Court are authorized when an objector believes that a title does not “fairly express the true meaning and intent” of the measure. §1-40-107, C.R.S. (2011). This Court has held that “[i]t is appropriate for the Board, when setting a title, to consider the testimony of the proponents concerning the intent and meaning of a proposal.” In re Proposed Initiative Concerning Water Rights, 877 P.2d 321, 327 (Colo. 1994). “The proponent of the measure best understands the reasons for initiating the change or addition to the constitution or statutes.” In re Proposed Initiative Concerning Unsafe Workplace Environment, 830 P.2d 1031, 1034 (Colo. 1992). Respectfully, the expressed intent of the Proponents should not be deemed “irrelevant.”

Second, the Title Board considered “the rule that words and phrases shall be read in context and construed according to the rules of grammar and common

usage.” In re Title, Ballot Title and Submission Clause for 2005-2006 #75, 138 P.3d 267, 271 (Colo. 2006). Disregarding context, and invoking THE CHICAGO MANUAL OF STYLE, the Petitioner argues that the phrase in the text set off by commas – “recorded before the foreclosure is commenced with the Recorder of Deeds” – necessarily refers back to the term “competent evidence” rather than the immediately preceding term “valid security interest.” Pet. Op. Br. at pp. 8-11.

Petitioner is correct only insofar as the text of the measure regrettably violates THE CHICAGO MANUAL OF STYLE however viewed. Clearly a restrictive clause (a point upon which Proponents and Petitioner agree), the words “recorded before the foreclosure is commenced with the Recorder of Deeds” should not technically have been set off by commas at all. THE CHICAGO MANUAL OF STYLE ¶6.22 (16<sup>th</sup> ed. 2010). As it nevertheless was, the pertinent question is the identity of the referent noun – “evidence” or “security interest.” This is precisely the question the Title Board addressed, noting that “[u]sually it refers back to the first item immediately preceding the set-off phrase.” Rehearing Tr. p. 26, ll. 17-18. The first item immediately preceding the set-off phrase is “security interest.”

Finally, the Title Board considered the context and the goal of avoiding a construction that would lead to an “unjust, absurd or unreasonable result.” Bickel v. City of Boulder, 885 P.2d 215, 229 (Colo. 1994). As with statutory construction



generally, the presumption is that the drafters “intended a consistent, harmonious, and sensible effect.” In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62, 961 P.2d 1077, 1079 (Colo. 1998).

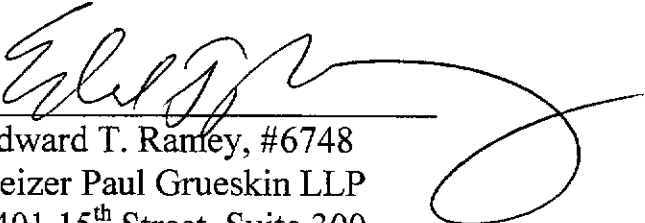
While it would make sense (particularly in the context of the proffered headnote “foreclosure due process”) to require a foreclosing party to file “competent evidence of its right to enforce” a valid recorded security interest in a foreclosure proceeding, there would be no discernable point to requiring it also to “record” all of that evidence with the county clerk and recorder “before the foreclosure is commenced.” It would make little sense to freeze the assemblage of competent evidence of enforcement rights prior to the initiation of a foreclosure proceeding. And there would be no rationale for barring valid assignments of a secured debt to a new holder during the pendency of a foreclosure proceeding simply because evidence of that assignment, albeit available in the foreclosure proceeding, did not exist and therefore had not been recorded before that proceeding was commenced. A “consistent, harmonious, and sensible” reading of the measure is to require that competent evidence of the right to enforce a valid security interest be filed in the foreclosure proceeding, and that only the valid security interest need be recorded with the clerk and recorder before that proceeding is commenced.

The Title Board engaged in precisely the inquiry mandated by this Court in interpreting the text of the proposed initiative, and it set the title accordingly. Petitioner does not challenge the sufficiency of the title under that interpretation. The actions of the Title Board should be affirmed.

### III. CONCLUSION

The Respondent Proponents respectfully request the Court to affirm the actions of the Title Board.

Respectfully submitted this 30th day of May, 2012.



Edward T. Ramey, #6748  
Heizer Paul Grueskin LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
Telephone: 303-376-3712  
Facsimile: 303-595-4750  
Email: [eramey@hpgfirm.com](mailto:eramey@hpgfirm.com)

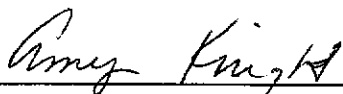
Attorneys for Respondents/Proponents

## CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2012, a true and correct copy of the foregoing **ANSWER BRIEF OF RESPONDENTS/PROONENTS** was served via Federal Express on the following:

Thomas M. Rogers III  
Nathaniel S. Barker  
Rothgerber Johnson & Lyons LLP  
1200 17<sup>th</sup> Street, Suite 3000  
Denver, CO 80202

John W. Suthers  
Maurice G. Knaizer  
Office of the Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Amy Knight