

FILED IN THE  
SUPREME COURT

<p>SUPREME COURT OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80203</p>	<p><b>MAY - 2 2012</b></p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▪ COURT USE ONLY ▪</p>
<p>Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Ballot Title Board</p>	<p>Case No. <u>12SA134</u></p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2011-2012 No. 84 ("Foreclosure Process")</p> <p><b>Petitioner: Barbara M. A. Walker;</b></p> <p>v.</p> <p><b>Respondents: Corrine Fowler and Stephen A. Brunette;</b></p> <p>and</p> <p><b>Title Board: Suzanne Staiert, David Blake, and Sharon Eubanks.</b></p>	<p><b>PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 NO. 84 ("FORECLOSURE PROCESS")</b></p>
<p>Attorneys for Petitioner Thomas M. Rogers III, #28809 Nathaniel S. Barker, #43572 ROTHGERBER JOHNSON &amp; LYONS LLP 1200 Seventeenth Street, Suite 3000 Denver, CO 80202 Phone: 303.623.9000 Fax: 303.623.9222 Email: trogers@rothgerber.com nbarker@rothgerber.com</p>	

Petitioner Barbara M. A. Walker, a registered elector of the State of  
Colorado, through her counsel Rothgerber Johnson & Lyons LLP and pursuant to

C.R.S. § 1-40-107(2), respectfully petitions this Court to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2011-2012 No. 84 ("Foreclosure Process"), and states:

### **STATEMENT OF THE CASE**

#### **I. Procedural History of Proposed Initiative No. 84**

On April 6, 2012, after Corrine Fowler and Stephen A. Brunette ("Proponents") proposed Initiative 2011-2012 No. 84 ("Initiative"), the Office of Legislative Council and Legislative Legal Services conducted a statutorily mandated review and comment hearing. Later that same day, Proponents submitted the original, amended, and final versions of the Initiative to the Secretary of State for title setting. At an April 18, 2012 hearing, the Title Board set the Initiative's title. On April 25, 2012, Petitioner filed a Motion for Rehearing and stated, in part, that the Title Board set a misleading title. The rehearing was held on April 27, 2012, at which the Title Board denied Petitioner's Motion for Rehearing except to the extent that the Board amended the title.

#### **II. Jurisdiction**

Petitioner is entitled to Colorado Supreme Court review of the Title Board's actions in setting the Initiative's title. C.R.S. § 1-40-107(1). Petitioner filed a

timely Motion for Rehearing, *see* C.R.S. § 1-40-107(1), and subsequently filed this timely Petition for Review within five days from the date of the rehearing, *see* C.R.S. § 1-40-107(2). Pursuant to C.R.S. § 1-40-107(2), attached to the instant Petition for Review are certified copies of: 1) the title and submission clause as set by the Title Board; 2) the Title Board's order denying Petitioner's Motion for Rehearing; 3) Petitioner's Motion for Rehearing; 4) Proponents' final draft of the Initiative; 5) Proponents' amended draft of the Initiative; and 6) Proponents' original draft of the Initiative. Petitioner objects to the Title Board's denial of her Motion for Rehearing. For these reasons, this matter is properly before the Colorado Supreme Court.

### **GROUND FOR APPEAL**

As grounds for appeal, Petitioner states:

The Title Board erred by setting a misleading title that does not accurately inform voters that—by its plain language—the Initiative unambiguously requires recording with the clerk and recorder of "competent evidence" of a party's right to enforce a valid security interest.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that this Court determine that:

1. The Initiative's title is misleading; and

2. Therefore, this Court should remand the Initiative to the Title Board with instructions to redraft the Initiative's title to accurately reflect its plain language.

DATED: May 2, 2012



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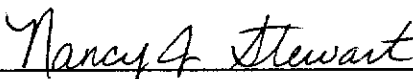
Thomas M. Rogers III  
Nathaniel S. Barker  
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nbarker@rothgerber.com  
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2012, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 NO. 84 ("FORECLOSURE PROCESS")** was served via U.S. mail on the following:

Edward Ramey, Esq.  
HEIZER PAUL GRUESKIN LLP  
2401 15th Street, Suite 300  
Denver, CO 80202  
*Attorney for Proponents*

Maurice G. Knaizer, Esq.  
Office of the Colorado Attorney General  
1525 Sherman Street, 7th Floor  
Denver, CO 80203  
*Attorney for the Title Board*

  
\_\_\_\_\_  
Nancy Stewart



**STATE OF COLORADO**

**DEPARTMENT OF  
STATE**

**CERTIFICATE**

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2011-2012 #84 'Foreclosure Process'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 30<sup>th</sup> day of April, 2012.

A handwritten signature in cursive script, appearing to read "Scott Gessler", is written over a horizontal line.

**SECRETARY OF STATE**

**Ballot Title Setting Board**

**Proposed Initiative 2011-2012 #84<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution changing the existing evidentiary requirements for foreclosure of real property, and, in connection therewith, requiring evidence be filed to sufficiently establish a party's right to enforce a valid recorded security interest prior to the foreclosure of any real property.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution changing the existing evidentiary requirements for foreclosure of real property, and, in connection therewith, requiring evidence be filed to sufficiently establish a party's right to enforce a valid recorded security interest prior to the foreclosure of any real property?

*Hearing April 4, 2012:  
Single subject approved; staff draft amended; titles set.  
Hearing adjourned 10:35 a.m.*

*Rehearing April 27, 2012  
Motion for rehearing denied except to the extent that the Board made changes to the title.  
Hearing adjourned 11:35 a.m.*

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<sup>1</sup> Unofficially captioned "**Foreclosure Process**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

**RECEIVED**

By Steven Ward at 4:54 pm, Apr 25, 2012

**BEFORE THE COLORADO STATE TITLE SETTING BOARD**

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**In re Ballot Title and Submission Clause for 2011-2012 Initiative No. 84 ("Foreclosure Process")**

**BARBARA M. A. WALKER, Objector.**

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**MOTION FOR REHEARING**

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Pursuant to C.R.S. § 1-40-107, Objector, Barbara M. A. Walker, a registered elector of the State of Colorado, by and through her legal counsel, Rothgerber Johnson & Lyons, LLP, hereby submits this Motion for Rehearing of the Title Board's April 18, 2012 decision to set the title of 2011-2012 Initiative No. 84 ("Initiative"), and states:

**I. The Initiative does not fall within a single subject because it repeals multiple, loosely related, provisions of law.**

The Initiative violates the single subject requirement. *See* Colo. Const., art. V § 1(5.5).

1. The Initiative is intended to require "qualified holders" to file evidence of debt, including a clear chain of recorded title and assignments, thus repealing provisions of current law allowing "qualified holders" to foreclose so long as they certify that they are entitled to enforce a debt. C.R.S. § 38-38-101(1), (6).

2. In so doing, however, the Initiative simultaneously strips all holders of the opportunity to foreclose on a debt by filing a corporate surety bond in lieu of evidence of debt. C.R.S. § 38-38-101(1)(b)(I).

Thus, although certain practices of "qualified holders," such as banks, are the target of the Initiative, its provisions necessarily affect all foreclosing parties in violation of the single subject requirement.

**II. The Initiative's title is misleading because it does not reflect the plain language of the Initiative that the proponents ask the voters to enact.**

At the Legislative Council Review and Comment hearing, the Initiative's proponents first stated that they intended for the Initiative to require a foreclosing party both to record with the county clerk and recorder and to file in foreclosure proceedings "competent evidence of its right to enforce a valid security interest." Then, at the Title Board Hearing, the proponents stated that the Initiative is intended merely to require a foreclosing party to file competent evidence *with its foreclosure papers*. At the April 18, 2012 Title Board hearing, the Board adopted proponents' amended position regarding the Initiative's intent and set the Initiative's title as, "An amendment



to the Colorado constitution requiring competent evidence be filed to establish a party's right to enforce a valid recorded security interest prior to deprivation of any real property in foreclosure."

However, as written, this is not what the Initiative requires. Consistent with the proponents' original position regarding intent, the plain language of proposed § 25a requires that the competent evidence *itself* be recorded with the recorder of deeds. Because courts will apply the plain language of the Initiative (if enacted), *see, e.g., CLPF-Parkridge One, LP v. Harwell Invs., Inc.*, 105 P.3d 658, 660 (Colo. 2005), the title does not accurately reflect the Initiative's effect.

A ballot title must fairly express the true intent and meaning of an initiative to avoid public confusion. C.R.S. 1-40-106(3)(b); *In re Ballot Initiative 1999-00 Nos. 245(b), 245(c), 245(d), & 245(e)*, 1 P.3d 720, 723 (Colo. 2000). Here, as noted above, the title adopts proponents' newly articulated position regarding the Initiative's requirements, which position is not supported by its plain language. Proponents were correct at the review and comment hearing: the Initiative unambiguously requires recording of competent evidence prior to foreclosure. Because the title currently states that competent evidence must be filed (presumably in foreclosure proceedings), the title must be changed to reflect that the Initiative requires recording.

WHEREFORE, Objector respectfully requests that the Title Board set Initiative 84 for rehearing pursuant to C.R.S. 1-40-107(1).

DATED: April 25, 2012.



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Address of objector:  
Barbara M. A. Walker  
1277 S. Vine St.  
Denver, CO 80210

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2012, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email as follows:

Ed Ramey  
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Fax: 303.595.4750  
email: eramey@hpgfirm.com  
*Attorney for Proponents*



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Nathaniel S. Barker

Foreclosure Due Process Initiative 2012

Proponent representatives:

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(303) 867-0302 (voice)  
(303) 832-6416 (facsimile)  
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Stephen A. Brunette  
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(719) 227-7779 (voice)  
(719) 328-0329 (facsimile)  
[stephen@gasperlaw.com](mailto:stephen@gasperlaw.com)

9:00 A.M.  
S.WARD

**RECEIVED**  
APR 06 2012  
ELECTIONS/LICENSING  
SECRETARY OF STATE

Proposed text:

Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, **add** section 25a to article II as follows:

**Section 25a. Foreclosure due process.** NO PERSON SHALL BE DEPRIVED OF REAL PROPERTY THROUGH A 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, RECORDED BEFORE THE FORECLOSURE IS COMMENCED WITH THE RECORDER OF DEEDS, CREATED BY SECTION 8 OF ARTICLE XIV OF THIS CONSTITUTION, IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED. COMPETENT EVIDENCE INCLUDES:

- (1) THE EVIDENCE OF DEBT;
- (2) ENDORSEMENTS, ASSIGNMENTS, OR TRANSFERS, IF ANY, OF THE EVIDENCE OF DEBT TO THE FORECLOSING PARTY; AND
- (3) DULY RECORDED ASSIGNMENTS, IF ANY, OF THE RECORDED SECURITY INTEREST TO THE FORECLOSING PARTY.

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APR 06 2012

9:00 A.M.

S.WARD

2011-2012 #84  
Foreclosure Process  
Amended Text

ELECTIONS/LICENSING  
SECRETARY OF STATE

Foreclosure Due Process and Fraud Prevention Initiative 2012

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stephen@gasperlaw.com

Proposed Bill Title: Foreclosure Due Process and Fraud Prevention

Proposed text:

Be it Enacted by the People of the State of Colorado:

An amendment to the Bill of Rights of the Constitution of the State of Colorado by the addition of Article II, § 25a. In the constitution of the state of Colorado, add section 25a to article II as follows:

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**Section 25a. Foreclosure due process.** NO PERSON SHALL BE DEPRIVED OF REAL PROPERTY THROUGH A FORECLOSURE UNLESS THE PARTY CLAIMING THE RIGHT TO FORECLOSE FILES IN THE FORECLOSURE PROCEEDING FILES COMPETENT EVIDENCE OF ITS RIGHT TO ENFORCE A VALID SECURITY INTEREST, RECORDED BEFORE THE FORECLOSURE IS COMMENCED; WITH THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED, IN ACCORD WITH THE CORDER OF DEEDS, CREATED BY SECTION 8 OF ARTICLE ARTICLE XIV, SECTION 8 OF THIS CONSTITUTION CONSTITUTION, IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED. COMPETENT EVIDENCE SHALL INCLUDES:

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- (1) THE EVIDENCE OF DEBT;
- (2) ENDORSEMENTS, ASSIGNMENTS, OR TRANSFERS, IF ANY, OF THE EVIDENCE OF DEBT TO THE FORECLOSING PARTY; AND
- (3) DULY RECORDED ASSIGNMENTS, IF ANY, OF THE RECORDED SECURITY INTEREST TO THE FORECLOSING PARTY. ANY STATUTES INCONSISTENT WITH THIS ARTICLE II, SECTION 25(A) ARE REPEALED ON THE EFFECTIVE DATE OF THIS SECTION.

Respectfully submitted:

Corrine Fowler

Stephen A. Brunette

Foreclosure Due Process and Fraud Prevention Initiative 2012

Proponent representatives:

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2011-2012 #84  
Foreclosure Process  
Original Text

9:00 A.M.  
S.WARD

**RECEIVED**

APR 06 2012

ELECTIONS/LICENSING  
SECRETARY OF STATE

Proposed Bill Title: Foreclosure Due Process and Fraud Prevention

Proposed text:

An amendment to the Bill of Rights of the Constitution of the State of Colorado by the addition of Article II, § 25a:

No person shall be deprived of real property through a foreclosure unless the party claiming the right to foreclose files in the foreclosure proceeding competent evidence of its right to enforce a valid security interest, recorded before the foreclosure is commenced, with the clerk and recorder of the county in which the real property is located, in accord with Article XIV, Section 8 of this Constitution. Competent evidence shall include (1) the evidence of debt; (2) endorsements, assignments, or transfers, if any, of the evidence of debt to the foreclosing party; and (3) duly recorded assignments, if any, of the recorded security interest to the foreclosing party. Any statutes inconsistent with this Article II, Section 25(a) are repealed on the effective date of this Section.

Respectfully submitted,

Corrine Fowler

Stephen A. Brunette