

<p>SUPREME COURT OF COLORADO  2 East 14<sup>th</sup> Avenue  Denver, Colorado 80203</p>	<p>FILED IN THE  SUPREME COURT</p> <p><b>MAY - 1 2013</b></p> <p>OF THE STATE OF COLORADO  Christopher T. Ryan, Clerk</p> <p><b>▲ COURT USE ONLY ▲</b></p>
<p>Original Proceeding  Pursuant to Colo. Rev. Stat. §1-40-107(2)  Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative 2013-  2014 #38 (“Right to Purchase and Possess  Ammunition Storage and Feeding Devices”)</p> <p><b>Petitioners: GEORGE KENNEDY and  DONALD MACALDY</b></p> <p>v.</p> <p><b>Respondents: TIM LeVIER and JT DAVIS</b></p> <p><b>and</b></p> <p><b>Title Board: SUZANNE STAIERT; DANIEL  DOMENICO; and JASON GELENDER</b></p>	<p>Case No. <u>13SA111</u></p>
<p>Attorneys for Petitioners:  Mark G. Grueskin, #14621  Heizer Paul Grueskin LLP  2401 15<sup>th</sup> Street, Suite 300  Denver, CO 80202  Telephone: 303-376-3703 (direct)  Telephone: 303-595-4747  Facsimile: 303-595-4750  Email: mgrueskin@hpgfirm.com</p>	
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-  2014 #38 (“RIGHT TO PURCHASE AND POSSESS AMMUNITION  STORAGE AND FEEDING DEVICES”)</b></p>	

George Kennedy and Donald Macalady (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), 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 2013-2014 #38 (“Right to Purchase and Possess Ammunition Storage and Feeding Devices”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #38**

Tim LeVier and JT Davis (hereafter “Proponents”) proposed Initiative 2013-2014 #38 (the “Proposed Initiative”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services on their predecessor initiative, Initiative 2013-2014 #8. They resubmitted a second measure, Initiative 2013-2014 #38, and the legislative staff provided them with a letter, stating that no substantial change had been made outside of the review and comment hearing on Initiative #8. Thus, the review and comment hearing on #38 was waived, and Proponents submitted a final draft of their measure to the Secretary of State so that a ballot title could be set.

A Title Board hearing was held on April 18, 2013 both to evaluate whether the initiative contained a single subject and, to the extent it did, set a title. The

Board set a title at that meeting. On April 24, 2013, Petitioners filed a Motion for Rehearing and alleged violations of the single subject requirement and that the title was unfair and misleading. The rehearing was held on April 26, 2013, at which time the Title Board granted in part and denied in part the motion for rehearing.

### **B. Jurisdiction**

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C. R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. §1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. §1-40-107(2).

As required by C.R.S. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the initiative filed by the Proponents; (2) the title and the submission clause set by the Title Board; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing. Petitioners are not satisfied with the Title Board's ruling on the Motion for Rehearing. Consequently, this matter is properly before the Colorado Supreme Court.

### **GROUND FOR APPEAL**

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Board is ambiguous, misleading, does not fairly and correctly express the true meaning of

the initiative, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. The ballot title fails to inform voters that the Proposed Initiative, by its express terms, applies to "gun magazines" and does not even mention "guns."
2. The ballot title does not state that the Proposed Initiative purports to create a "right" of unlimited access to ammunition storage and feeding devices which is being placed in the State of Colorado's Bill of Rights.

#### **PRAYER FOR RELIEF**

Petitioners respectfully request that:

- (a) this Court set a responsive briefing schedule that takes into consideration the fact that this measure cannot qualify for the 2013 ballot, as it does not arise under section 20 of Article X of the Colorado Constitution ("TABOR") as a tax, spending, or debt related measure; and
- (b) this Court determine that the ballot title and submission clause are ambiguous and misleading for one or more of the reasons stated, which requires invalidation of the existing titles and a prohibition

on petition circulation until such time as the Title Board corrects  
the issues presented in this appeal.

Respectfully submitted this 1<sup>st</sup> day of May, 2013.



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**ATTORNEYS FOR PETITIONERS**


**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of May, 2013, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #38 (“RIGHT TO PURCHASE AND POSSESS AMMUNITION STORAGE AND FEEDING DEVICES”)** was served via U.S. mail, postage prepaid, to the following:

Tim LeVier  
1691 W. Dry Creek Rd.  
Littleton, CO 80120

JT Davis  
1288 W. Hinsdale Dr.  
Littleton, CO 80120

LeAnn Morrill, Esq.  
Office of the Colorado Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, Colorado 80203

  
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# STATE OF COLORADO

DEPARTMENT OF  
STATE

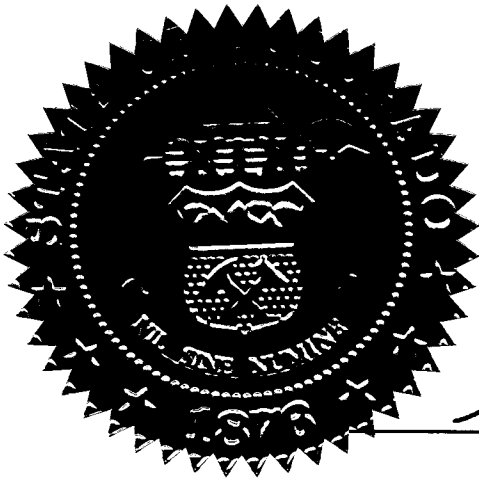
## CERTIFICATE

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 "2013-2014 #38 'Right to Purchase and Possess Ammunition Storage and Feeding Devices'".....



..... **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, 2013.



A handwritten signature in cursive script, reading "Scott Gessler".

SECRETARY OF STATE

Final text

(#38)

Proposed Constitutional Amendment for the State of Colorado  
To Establish a Right of the People to Purchase and Possess  
High Capacity Ammunition Storage and Feeding Devices  
To be Numbered as Article II, Section 32

**RECEIVED**

APR 04 2013

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

S. WARD

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

In the constitution of the state of Colorado, article II, **add** section 32 as follows:

**SECTION 32. GUN MAGAZINES – NO LIMITATION OR RESTRICTION.**

NO LAW, EXCEPT A LAW ENACTED BY A VOTE OF THE PEOPLE, SHALL RESTRICT OR LIMIT THE RIGHT OF THE PEOPLE TO PURCHASE OR POSSESS AMMUNITION STORAGE AND FEEDING DEVICES OF ANY CAPACITY.



**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #38<sup>1</sup>**

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

An amendment to the Colorado constitution prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law.

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 prohibiting any capacity-based restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction imposed by a voter-approved law?

*Hearing April 18, 2013:  
Single subject approved; staff draft amended, titles set.  
Hearing adjourned 10:31 a.m.*

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<sup>1</sup> Unofficially captioned “**Right to Purchase and Possess Ammunition Storage and Feeding Devices**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

**RECEIVED**

**APR 24 2013**

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

SWARD  
11:00 A.M.

Before the State Title Board

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In re Ballot Title and Submission Clause for Initiative 2013-2014 #38  
("Right to Purchase and Possess Ammunition Storage and Feeding Devices")

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**MOTION FOR REHEARING**

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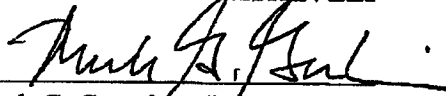
George Kennedy and Donald Macalady, registered electors of the State of Colorado, by and through their counsel, Heizer Paul Grueskin LLP, hereby seek review of the ballot title set by the Title Board as stated below:

- I. A hearing to set the ballot title for Initiative 2013-2014 #38 ("Initiative") was held on April 18, 2013. The Title Board found it had jurisdiction to set a title and the matter constituted a single subject, and the Board thereafter set a ballot title.
- II. The Title Board erred both in setting any title and in the title it actually sent.
  - A. The Title Board was precluded from setting a ballot title for the Initiative, as the final draft of the Initiative submitted to the Secretary of State included a "title," which contravenes the mandates of state law. C.R.S. §§1-40-102(10), -105(4).
  - B. Contrary to the requirements of C.R.S. §§1-40-106 and -107, the ballot title set for the Initiative is unfair, inaccurate, ambiguous, and misleading for reasons that include but are not limited to:
    1. The ballot title uses language – "prohibiting any... restriction... other than a restriction..." – that is ambiguous and would be inherently confusing to voters.
    2. The ballot title is unfair by failing to state that the Initiative's prohibitions on legislated restrictions or limitations apply to "guns" and "gun magazines."
    3. The ballot title is ambiguous and does not reflect the true intent of the measure, in that it incorrectly states that the Initiative's prohibitions apply to legislated restrictions or limitations that are "imposed" instead of "enacted."

4. The ballot title is misleading in stating that the Initiative's prohibitions on legislated restrictions or limitations are "capacity-based."
5. The ballot title is misleading in that it states that the Initiative's prohibitions apply to "restrict" purchase or possession of ammunition storage and feeding devices but makes no reference to the Initiative's stated prohibitions to also "limit" such purchase or possession.
6. The ballot title does not reflect that the Initiative's prohibitions on legislated restrictions or limitations, adopted as part of Article II of the Constitution, are a restriction on the general powers of the Colorado General Assembly as set forth in Article V.
7. The ballot title does not state that the Initiative's prohibitions on legislated restrictions or limitations are being placed in Colorado's Bill of Rights.
8. The ballot title is misleading and incomplete in failing to state that, according to the introductory text, the Initiative establishes a "right... to purchase and possess high capacity ammunition storage and feeding devices."
9. Based on the title of Section 32, the proponents intend "no limitation or restriction" on purchase and possession of ammunition and feeding devices, but this fact is not related by the ballot title.

Dated this 24<sup>th</sup> day of April, 2013.

HEIZER PAUL GRUESKIN LLP



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Petitioners' Addresses:

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Golden, CO 80403

Donald Macalady  
1945 Sage Drive  
Golden, CO 80401

**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #38<sup>1</sup>**

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

An amendment to the Colorado constitution prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law.

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 prohibiting any restriction on the purchase or possession of ammunition storage and feeding devices other than a restriction enacted by a voter-approved law?

*Hearing April 18, 2013:  
Single subject approved; staff draft amended, titles set.  
Hearing adjourned 10:31 a.m.*

*Rehearing April 26, 2013:  
Motion for Rehearing denied except to the extent that the Board made changes to the title.  
Hearing adjourned 11:39 a.m.*

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<sup>1</sup> Unofficially captioned “**Right to Purchase and Possess Ammunition Storage and Feeding Devices**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.