

SUPREME COURT
STATE OF COLORADO

DATE FILED: May 29, 2014 11:54 AM

2 East 14th Avenue
Denver, CO 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2013-2014 #126

Petitioner: Terry Keith Jones,

v.

Respondents: Lisa Brumfiel and Peter
Coulter,

and

Title Board: Suzanne Staiert, David Blake,
and Sharon Eubanks.

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Case No. 2014SA145

ANSWER BRIEF OF TITLE BOARD

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:

A. The brief complies with C.A.R. 28(g) because it contains 691 words.

B. The brief complies with C.A.R. 28(k) because, 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.

s/ LeeAnn Morrill
LeeAnn Morrill
Attorney for the Title Board

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Title Board members Suzanne Staiert, David Blake, and Sharon Eubanks (hereinafter “the Board”), by and through undersigned counsel, hereby submit the Answer Brief of Title Board.

ARGUMENT

I. This Court should reject the Petitioner’s single subject challenge.

A. Standard of review and preservation of the issue below.

The Board agrees with the Petitioner’s statements regarding the standard of review for, and preservation for appeal of, this issue.

B. Proposed Initiative 2013-2014 #126 contains a single subject.

The Petitioner argues that #126 must contain more than one subject because the Board was unable to comprehend the purpose of the measure. In support of this argument, the Petitioner cites to several portions of the transcript of the Board’s proceedings in which (1) the clearly fatigued Board candidly expressed its frustration with the *ad nauseam* nature of the proponents and objectors’ arguments; and (2) the

proponents made certain statements that conflict with the plain language of the measure. (*Opening Brief*, at p. 11-13).

The former basis should be rejected because fatigue and frustration do not equate to incomprehension on the part of the Board. Instead, this Court should compare the text of the measure with the text of the title actually set by the Board. Doing so reveals that the Board understood the “central features” of #126 and acted properly by setting a title. The latter basis also should be rejected because where proponents make incorrect statements about the purpose of their measure, this Court defaults to the plain language of the measure and does not rely on any inconsistent statements made in the proceedings before the Board. *In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 #75*, 138 P.3d 267, 271-72 (Colo. 2006).

In this case, #126 plainly requires that certain evidence of a party’s right to foreclose a recorded security interest be filed with the appropriate County Clerk and Recorder *before* the party may commence *judicial* foreclosure proceedings under Colorado law. See C.R.S. § 38-38-101; C.R.C.P. 120. The measure’s recording requirement constitutes

a single subject because it does not alter the type of evidence required to commence *judicial* foreclosure proceedings under existing legal provisions.

II. This Court should reject the Petitioner’s challenge to the substance of the title; the Board’s title is fair, clear, and accurate.

A. Standard of review.

The Board agrees with the Petitioner’s statements regarding the standard of review for, and preservation for appeal of, this issue.

B. The Board’s title is not misleading or confusing.

Petitioner argues that the new evidentiary requirements imposed by the measure “are *the* substantive change to current law” and, therefore, the Board’s title is deficient because it fails to specify the types of evidence the measure requires. (*Opening Brief*, at p. 19). This argument should be rejected because a proper title must only convey the ends of the proposed initiative, not the myriad means that may be used to accomplish those ends. Indeed, the Board is not required to set out every detail of the measure in the title. *In re Title, Ballot Title and*

Submission Clause for Proposed Initiatives 2001-02 #21 and #22, 44 P.3d 213, 222 (Colo. 2002). Instead, the Board must craft a title that conveys a “reasonably ascertainable expression” of the measure’s core purpose. *In re Title, Ballot Title, and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010), citing *In re Title, Ballot Title, and Submission Clause for 2009-2010, #24*, 218 P.3d 350, 356 (Colo. 2009).

That the measure in this case specifies *what* type of evidence must be recorded and *whom* the evidence must be recorded with is not essential to conveying the core purpose of the measure. Rather, the essence of #126 is the creation of a new recording requirement that must be satisfied before a person may initiate foreclosure proceedings on a recorded security interest. The Board’s title accurately conveys this core purpose while at the same time alerting voters that the measure does specify the types of evidence that it requires. By doing so, the title avoids surprise to or confusion on the part of the voter.

CONCLUSION

For the above-stated reasons, the Court should approve the Board's title for #126.

DATED: May 29, 2014.

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CERTIFICATE OF SERVICE

This is to certify that I duly served the foregoing **ANSWER BRIEF OF TITLE BOARD** upon all counsel of record via ICCES and upon all proponents by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, on May 29, 2014, addressed as follows:

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