

<p>SUPREME COURT OF COLORADO 1300 Broadway Denver, Colorado 80203</p>	
<p>Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Title Board</p>	<p>▪ COURT USE ONLY ▪</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 No. 126 (“Foreclosure Due Process”)</p> <p><b>Petitioner:           TERRY KEITH JONES;</b></p> <p><b>v.</b></p> <p><b>Respondents:       LISA BRUMFIEL AND                           PETER COULTER;</b></p> <p><b>and</b></p> <p><b>Title Board:        SUZANNE STAIERT, DAVID BLAKE,                           AND SHARON EUBANKS.</b></p>	<p>Case No. 2014SA145</p>
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<p><b>OPENING BRIEF OF PETITIONER TERRY KEITH JONES</b></p>	

## 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).

Choose one:

It contains \_\_\_\_\_ words.

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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, 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.

*s/ Hermine Kallman*  
\_\_\_\_\_  
Hermine Kallman  
*Attorney for Petitioner Terry Keith Jones*

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## **I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board erred by setting title to an Initiative it could not comprehend.
2. Whether Initiative 126, which requires a substantive evidentiary change and a distinct modification to existing procedural requirements for foreclosure, violates the single subject rule.
3. Whether the title set by the Title Board fails to reflect the central features of Initiative 126.

## **II. STATEMENT OF THE CASE**

Initiative #126 (the “Initiative” or “Initiative 126”) is confusing, and it is apparent that neither the Title Board, nor the Proponents themselves understand its purpose. It appears to be an attempt to create a new article within the Bill of Rights of the Colorado Constitution requiring filing and/or recording certain limited type of evidence before a secured party may foreclose on real property.<sup>1</sup>

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<sup>1</sup> In 2012, a substantially similar initiative—2011-12 Initiative #84—was proposed; however, for reasons unknown to the Petitioner, it was not placed on the 2012 ballot. There were numerous challenges raised with respect to Initiative #84, both on single subject grounds and based on the language of the title. This Court affirmed the Title Board’s action in setting a title for Initiative #84 without issuing a written opinion. Recognizing that the doctrine of *stare decisis* may be applicable here with respect to the single subject issue, the Petitioner respectfully requests that the Court revisit its holding on the basis that Initiative 126, like its predecessor, has proven to be entirely incomprehensible. As discussed in this brief, sound reasons exist to revisit the Court’s prior ruling and to reconsider whether the Title Board could set a title for the Initiative without properly ascertaining its single subject. *See In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No.29*, 972 P.2d 257, 262-63 (Colo. 1999) (“The rule of *stare decisis*

The record of the Title Board proceedings concerning Initiative 126 reveals that the Title Board did not comprehend the purpose of the Initiative. The Title Board members brushed aside the issue of whether the Initiative requires recording of evidence or just filing, admitting that they did not understand the difference between the two procedures, and proceeded to set a title which does not accurately reflect the key features of the Initiative. In doing so, the Title Board relied entirely on the Proponents' statements regarding their intent, notwithstanding the fact that the Proponents themselves took contradictory positions with respect to the single subject of the Initiative.

To the extent the text of Initiative 126 can be read to require recording of evidence, as well as filing, in addition to narrowly defining the type of evidence which may be used to foreclose on real property, Initiative 126 violates the single subject rule because the recording requirement—a procedural change in existing law—is not necessarily or properly connected to the second purpose of the

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has as its object the 'uniformity, certainty, and stability of the law and the rights acquired thereunder.' It is not an inflexible or immutable rule. . . . [The Court] must be willing to overrule a prior decision 'where sound reasons exist and where the general interests will suffer less by such departure than from a strict adherence.'"). Because there is a high danger that voters would be confused or misled by the title of the Initiative given the substantial uncertainty as to the meaning and single subject of the Initiative, the general interests of the public will suffer less by the departure from the Court's prior ruling than from a strict adherence to its prior decision to affirm the Title Board's setting of a title.

Initiative, which is changing the evidentiary requirements for foreclosure.

### III. STATEMENT OF FACTS

On March 21, 2014, Respondents Lisa Brumfiel and Peter Coulter (the “Proponents”) submitted Initiative 126 to the Office of Legislative Council and Legislative Legal Services. On April 4, 2014, Legislative Council and the Office of Legislative Legal Services held a review and comment hearing at which Proponents addressed technical and substantive questions and comments. That same day, Proponents submitted the Initiative to the Secretary of State for title setting.<sup>2</sup>

On April 17, 2014, the Title Board held a hearing to set a title for Initiative 126.<sup>3</sup> At that hearing, the Proponents were asked to state the single subject of the Initiative on the record:

[Title Board]: Do you want to just start again by telling us what you believe the single subject of the initiative to be?

[Proponent]: Requiring foreclosing parties to record competent evidence of the right to foreclose prior to foreclosure.<sup>4</sup>

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<sup>2</sup> See Final Text of Initiative 126, attached as **Exhibit A**.

<sup>3</sup> The audio recording of the Title Board’s April 17, 2014 hearing re Initiative 126 (“Apr. 17 audio”) is available at [http://www.sos.state.co.us/pubs/info\\_center/audioArchives.html](http://www.sos.state.co.us/pubs/info_center/audioArchives.html), Part 2 of April 17 hearing, at 9:54 through 17:19. An unofficial transcript of the audio file, attached as **Exhibit B**, is being submitted to facilitate the Court’s review. The Petitioner can also provide a CD of the audio recording, if necessary.

<sup>4</sup> Apr. 17 audio, at 9:59-10:13; Ex. B, 2:3-8.

The Title Board did not question the Proponents’ statement of the Initiative’s single subject and proceeded to review the staff draft prepared ahead of the hearing. The Board made some minor technical suggestions to the language of the staff draft, and clarified with the Proponents whether the documents defined as competent evidence have to be recorded prior to the commencement of the foreclosure:

[Title Board]: . . . And whether or not we also want to clarify that they have to – these documents have to be recorded prior to the commencement of the foreclosure.

[Proponent]: Yes.<sup>5</sup>

The Board suggested a further clarification to the language to state “in connection therewith defining competent evidence that must be recorded with the Clerk and Recorder.”<sup>6</sup> The Proponents accepted the language without objection.<sup>7</sup>

The Title Board set the following title for Initiative 126:

An amendment to the Colorado constitution requiring that a person seeking to foreclose a security interest in real property file competent evidence of the right to foreclose before foreclosure may occur, and, in connection therewith, *defining competent evidence that must be recorded with the county clerk and recorder.*<sup>8</sup>

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<sup>5</sup> Apr. 17 audio, at 12:10-12:19; Ex. B, 3:8-11.

<sup>6</sup> Apr. 17 audio, at 13:33-13:41; Ex. B, 4:5-9.

<sup>7</sup> Apr. 17 audio, at 15:43-15:48; Ex. B, 5:18-21.

<sup>8</sup> See the title set on April 17, 2014 (“April 17 title”), attached as **Exhibit C** (emphasis added).



The Petitioner, along with another objector, timely filed a motion for rehearing, arguing that, based on the Proponents' statements regarding the subject of the Initiative at the April 17 hearing and the language of the title set by the Title Board, Initiative 126 violates the single subject requirement because it requires recording of evidence—a new procedure that currently does not exist in Colorado—in addition to changing the evidentiary requirements for foreclosure.<sup>9</sup>

At the April 24, 2014 hearing, in response to the Petitioner's arguments,<sup>10</sup> the Proponents for the first time stated that, upon review of the Initiative #84's proponents' opening brief from 2012, they believed that the Initiative required only that the valid security interest be recorded, not all competent evidence of the right to foreclose:

[Proponent]: Also I want to state that I am the torchbearer for the people who did this before. I believe in the same cause and in the last meeting that we had I didn't speak upon it. I thought that the – that the initiative spoke for itself. But in reading the Opening Brief of the proponents, on page 6, they said that “competent evidence of the right to foreclose to be filed in the foreclosure proceeding while only the valid security interest would be recorded with the recorder of deeds before the foreclosure is commenced.”<sup>11</sup>

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<sup>9</sup> See Mot. for Reh'g, attached as **Exhibit D**.

<sup>10</sup> The audio recording of the Title Board's April 24, 2014 hearing re Initiative 126 (“Apr. 24 audio”) is available at [http://www.sos.state.co.us/pubs/info\\_center/audioArchives.html](http://www.sos.state.co.us/pubs/info_center/audioArchives.html), Part 3 of April 24 hearing, at 04:08:39 through 05:18:32. An unofficial transcript of the audio file, attached as **Exhibit E**, is being submitted to facilitate the Court's review. The Petitioner can also provide a CD of the audio recording, if necessary.

<sup>11</sup> Apr. 24 audio, at 04:32:13-04:33:09; Ex. E, 17:12-21.

It was apparent that the Proponents themselves did not understand what the single subject of the Initiative was, as they took radically different positions at the April 17 and April 24 hearings before the Title Board. Neither did the Title Board understand the measure, as it did not even attempt to question the Proponents regarding the issue of filing as opposed to recording, but once again took the Proponents' now different statement as to the single subject of the Initiative. Without expressly addressing and voting on the single subject argument raised by the objectors, the Title Board proceeded to change the title language to conform to the newly stated purpose. The Petitioner and the other objector argued that the Initiative was so vague that every time it had come up before the Office of the Legislative Council or the Title Board, it had been understood differently.<sup>12</sup> The Title Board simply brushed aside the issue of whether the Initiative requires only “filing” of evidence of the right to foreclose—which would not be a change to the current law—or “recording” of the evidence, a substantial change to the current law.<sup>13</sup> It did not address the fact that its own initial interpretation of the measure was that it would require recording of evidence, which would constitute a second subject of the Initiative, separate and distinct from the substantive change

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<sup>12</sup> Apr. 24 audio, at 04:40:54-04:41:29; Ex. E, 22:19-23:2; *see also id.*, 44:14-15.

<sup>13</sup> Apr. 24 audio, at 04:46:12-04:48:22; Ex. E, 25:16-26:17.

regarding the evidentiary requirements for foreclosure.

The Petitioner timely filed a petition for review before this Court.

#### **IV. SUMMARY OF THE ARGUMENT**

The Title Board erred by proceeding to set title when it was apparent that the Board did not comprehend the purpose of the Initiative to be able to determine if the Initiative violated the single subject rule or to be able to set a title that accurately reflected the central features of the Initiative so as not to confuse and mislead the voters. If the Title Board “cannot comprehend the initiatives well enough to state their single subject in the titles . . . the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 44*, 977 P.2d 856, 858 (Colo. 1999). Even though consideration of testimony from the proponent is appropriate, as generally the “proponent of the measure best understands the reasons for initiating the change,” see *In re Proposed Initiative on Unsafe Workplace Env’t*, 830 P.2d 1031, 1034 (Colo. 1992), the Title Board had the duty to properly understand the purpose of the measure and consider the public confusion that might result from misleading titles especially where, as here, it is apparent that the Proponents themselves do not understand what the Initiative is seeking to accomplish. See *In re Title, Ballot Title & Submission Clause, &*

*Summary for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999) (holding that the Title Board could not neglect its duty to ensure that it understood the single subject of the initiative to be able to set an accurate title). In addition, the title set by the Title Board fails to reflect the key features of the Initiative so as to allow the voters to make an informed choice. *In re No.29*, 972 P.2d at 266 (The Board’s titles must enable “informed voter choice.”).

## V. STANDARD OF REVIEW

Whether the Title Board has jurisdiction to set an initiative’s title is a question of law that this Court reviews *de novo*. See, e.g., *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #219*, 999 P.2d 819, 820-22 (Colo. 2000). While the Court does not address the merits of a proposed initiative or suggest how an initiative might be applied if enacted, it “must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated.” *Matter of Title, Ballot Title, & Submission Clause, Summary for 1997-98 No. 30*, 959 P.2d 822, 825 (Colo. 1998). In doing so, the Court must engage in some substantive inquiry to at least identify and characterize the proposals which proponents wish to place before the electorate. *Id.* at 825 n. 2.

Titles to a proposed initiative must “unambiguously state the principle of the

provision sought to be added, amended, or repealed.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 215*, 3 P.3d 11, 14 (Colo. 2000). When reviewing a challenge to a title set by the Board, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title & Submission Clause for 2009-2010#91*, 235 P.3d 1071, 1076 (Colo. 2010). However, if the title contains a material omission, misstatement, or misrepresentation, this Court remands the title to the Board for further proceedings. *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98#62*, 961 P.2d 1077, 1082 (Colo. 1998).

## VI. ARGUMENT

### **A. The Title Board should have returned Initiative 126 to the Proponents as it is apparent from the record that the Board did not comprehend the purpose of the Initiative.**

The Title Board bears the initial responsibility for ensuring that a proposed initiative comports with the single subject and the clear title requirements. *See In re Proposed Initiative for 1999–2000#25*, 974 P.2d at 465. While the Board must assist proponents in implementing their right to initiate laws, it also has the obligation to protect the “voters against confusion and fraud.” *Id.* Likewise, even though the Board must give deference to the intent of the proposal as expressed by its proponent, it cannot neglect its duty to consider the public confusion that might

result from misleading titles. *Id.* Thus, to be able to set a clear title, the Title Board must first ascertain the single subject of the Initiative. *Id.* at 468-69 (“Absent a resolution of whether the initiatives contain a single subject, it is axiomatic that the title cannot clearly express a single subject.”).

In *In re Proposed Initiative for 1999–2000 # 25*, this Court held that where the Board was unable to ascertain the meaning of the initiative well enough to address the question of whether it might have the consequence of reducing state spending on state programs, the Board was incapable of setting clear titles that would not mislead the electorate. *Id.*

Review of the two titles set on April 17 and April 24, 2014 makes clear that the Board failed to comprehend the single subject of Initiative 126.

The initial title for Initiative 126 stated:

An amendment to the Colorado constitution requiring that a person seeking to foreclose a security interest in real property file competent evidence of the right to foreclose before foreclosure may occur, and, in connection therewith, *defining competent evidence that must be recorded with the county clerk and recorder.*<sup>14</sup>

The revised title at the April 24, 2014 rehearing stated:

An amendment to the Colorado constitution requiring that a person seeking to foreclose a recorded security interest in real property file evidence of the right to foreclose before a

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<sup>14</sup> Ex. C (emphasis added).

foreclosure proceeding may occur, and, in connection therewith, changing the existing evidentiary requirements for foreclosure of real property; and specifying the evidence that must be filed to demonstrate the right to enforce the recorded security interest.<sup>15</sup>

Comparison of these two titles demonstrates that the Title Board's subsequent revisions are substantive changes that materially impact the meaning of the title. The record demonstrates that the Title Board simply accepted the Proponents' contradictory statements of the single subject of the Initiative, without engaging in an independent examination of the Initiative's purpose in order to set clear title.<sup>16</sup>

Furthermore, the Title Board's discussion during the April 24, 2014 rehearing confirms that the Board did not understand what the Initiative purports to accomplish:

[Title Board]: . . . I think that the measure constitutes a single subject so that we have jurisdiction. And probably *because I'm sort of brain dead in terms of the issue about being recorded – what's recorded versus what's filed, whether or not we need to make a change in that regard. And maybe I don't understand the issue completely.* But if I understand, perhaps the “in connection therewith” statement is incorrect because in terms of what the measure talks about being recorded whether – if it's filed versus recorded. And I know I'm not making myself very clear. . . .<sup>17</sup>

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<sup>15</sup> Attached as **Exhibit F**.

<sup>16</sup> See generally, Apr. 24 audio, at 04:08:39-04:48:44; Ex. E, pp. 2-26.

<sup>17</sup> Apr. 24 audio, at 04:46:12-04:47:24; Ex. E, 25:16-26:1 (emphasis added).

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[Title Board]: . . . And then, I don't – *I just don't think that the difference between "recorded" and "filed" is central.* I mean it may be central to draw people's attention that we're changing those requirements, but then to say "specifying the evidence that must be filed to demonstrate," I'm fine with that. Do you want to change "record" and "file?"<sup>18</sup>

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[Title Board]: And again, whether I understand the argument in terms of being recorded whether the opponents are claiming that that's a change in terms of the security interest being recorded with the Clerk and Recorder. Is that – I mean, the way I normally understand in terms of the example, very simplistic, my mortgage, is recorded so that it's reflected that someone else has a claim if I sell my property. And like I say, I'm very simplistic about this. So that's not a change?<sup>19</sup>

In fact, the Board actually adopted a third, alternative understanding of the Initiative, finding that it applies only to previously recorded security interests, but not unrecorded interests:

[Title Board]: . . . And based on the language, the way it's written, whether or not this whole requirement of filing evidence only applies to security interests that have been recorded. So that it's not necessarily requiring all security interests to be recorded but that this whole provision only applies to those security interests that have been recorded.

Mr. Hoke [objector]: I appreciate the ambiguity there. I think you are correct that it is ambiguous as to that point. I

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<sup>18</sup> Apr. 24 audio, at 05:07:13-05:07:37; Ex. E, 38:6-12 (emphasis added).

<sup>19</sup> Apr. 24 audio, at 05:08:41-05:09:23; Ex. E, 39:5-13.



think that it would be gross perversion if, in fact, we could just get around the purpose of this measure by not recording security interests, and then we wouldn't be subject to the measure at all. . . .<sup>20</sup>

This examination of the record demonstrates that the single subject of the Initiative remains unclear:

- Does Initiative 126 require filing of evidence prior to foreclosure, which is not a change in existing law, since under C.R.S. § 38-38-101, evidence of the right to foreclose must be filed with the Public Trustee in order to commence foreclosure proceedings?
- If Initiative 126 requires filing of evidence only with respect to previously recorded security interests, does it change the existing law to *not* require filing of evidence when foreclosing on unrecorded security interests?
- Does Initiative 126 require that evidence of the right to foreclose be recorded with the Clerk and Recorder?<sup>21</sup>
- Or is the single subject of Initiative 126 the changing of the existing evidentiary requirements in foreclosure?

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<sup>20</sup> Apr. 24 audio, at 05:10:54-05:11:43; Ex. E, 40:12-24.

<sup>21</sup> Notably, had the Petitioner and the other objector not moved for a rehearing, the April 17 title—stating that competent evidence must be recorded with the Clerk and Recorder—would be the title that would appear on the ballot.

The Title Board’s analysis—or lack thereof—of the Initiative’s purpose demonstrates that the Board did not comprehend the measure. The Title Board should have returned the Initiative to the Proponents.

**B. To the extent the Initiative requires recording of evidence of the right to foreclose, in addition to changing the evidentiary requirements, it violates the single subject rule.<sup>22</sup>**

The Title Board does not have authority to set the title for any initiative where the proposed “measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject . . . .” *See* Colo. Const. art. V, § 1(5.5); C.R.S. § 1-40-106.5(1). It is axiomatic that “in order to pass constitutional muster, a proposed initiative must concern only one subject—that is to say it must effect or carry out only one general object or purpose.” *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 238-39 (Colo. 2006). This Court reviews *de novo* the Title Board’s actions with respect to the single subject rule. *In re #219*, 999 P.2d at 820-22.

The single subject requirement has two important purposes: (1) it prevents voter fraud and surprise caused by items concealed within a lengthy or complex proposal, and (2) it ensures that multiple incongruous subjects are not combined “for the purpose of enlisting in support of the measure the advocates of each

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<sup>22</sup> Raised in Mot. for Reh’g., Ex. D, at p. 1.

measure, and thus securing the enactment of measures that could not be carried upon their merits.” *In re Proposed Initiative for 1999-2000* #29, 972 P.2d at 261. To evaluate whether an initiative effectuates or carries out only one general object or purpose, a court looks first to the text of the proposed initiative. *In re* #74, 136 P.3d at 239. The single-subject requirement is met if the “matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous.” *Id.*

Where, as here, an initiative advances separate and distinct purposes, the fact that those purposes “relate to a broad concept or subject is insufficient to satisfy the single subject requirement.” *In re* #91, 235 P.3d at 1076.

As the Proponents’ initial statement of the single subject of Initiative 126, as well as the April 17 title demonstrate, the Initiative can reasonably be read to require recording of all of the evidence of the right to foreclose prior to commencement of foreclosure proceedings.<sup>23</sup> At a minimum, there can be no dispute that the Initiative requires recording of any assignments of a security interest before a secured party may foreclose.<sup>24</sup> Such a recording requirement is a

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<sup>23</sup> See Ex. A.

<sup>24</sup> *Id.* (“Competent evidence includes: . . . (c) *duly recorded* assignments, if any, of the recorded security interest to the foreclosing party.”) (emphasis added).

procedural change to the current law, and it is separate and distinct from the Initiative's substantive change of limiting the type of evidence used to foreclose.

This Court has rejected, on single subject grounds, initiatives that proposed procedural changes to the law, while also proposing substantive changes. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 444-48 (Colo. 2002) (combining procedural changes in the initiative process and additionally seeking to prohibit referenda that would reduce private property rights); *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Petition (Amend Tabor 25)*, 900 P.2d 121, 125-26 (Colo. 1995) (combining procedural changes for future initiatives with the substantive changes in the form of tax cuts).

Here, the Initiative institutes a procedural change: requiring recording of the evidence of the right to foreclose, in addition to the existing requirement of filing the evidence with the Public Trustee. However, the Initiative contains a second central purpose—a substantive change in existing law—significantly limiting the type of evidence which may be used to foreclose on real property, eliminating the ability to foreclose on lost instrument bond, an attorney's affidavit, or through a certified copy of monetary judgment. *See C.R.S. § 38-38-101(1)*. These two purposes are not necessarily or properly connected to each other, but each could be

the single subject of separate initiatives. *See In re Amend Tabor* 25, 900 P.2d at 125-26. Accordingly, the Initiative violates the single subject requirement.

**C. The title does not reflect the key features of the Initiative.**

The title and submission clause of a proposed measure must fairly express the true intent and meaning of the initiative. C.R.S. § 1-40-106(3)(b); *Matter of Title, Ballot Title & Submission Clause, & Summary Adopted November 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 24 (Colo. 1996). The title must “convey to voters the initiative’s likely impact,” *see In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 No. 37*, 977 P.2d 845, 846 (Colo.1999), so as to enable “informed voter choice,” *In re No.29*, 972 P.2d at 266. It must properly “enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.” *In re Proposed Election Reform Amendment*, 852 P.2d 28, 33 (Colo. 1993).

Here, one of the purposes of the Initiative is to modify the evidentiary requirements for commencing a foreclosure proceeding by limiting the type of evidence which can be used to foreclose on real property. The Initiative states that foreclosure may not occur unless competent evidence of a foreclosing party’s right

to foreclose the security interest is filed and/or recorded.<sup>25</sup> Competent evidence in turn is defined as “(a) the evidence of debt; endorsements, assignments, or transfers, if any, of the evidence of debt to the foreclosing [sic] foreclosing [sic] party; and (c) duly recorded assignments, if any, of the recorded security interest to the foreclosing party.”<sup>26</sup> This very limited type of evidence that a secured party must present in order to foreclose is the essence of the Initiative. In response to Petitioner’s objection to the omission of this language from the title, the Title Board observed that these are simply technical details:

[Title Board]: And in terms of including the specifics of the types of evidence, to most people, they aren’t going to understand that and that’s why we usually don’t include those – that technical type of language of how it’s defined.<sup>27</sup>

The Petitioner and the other objector pointed out that the title did not give any indication as to the import of the measure, or how it was seeking to change the evidentiary requirements—whether it was broadening or limiting the type of evidence required to foreclose:

[Objector]: I just want to point out that the title as it stands on the screen right now could apply to the very statutory provision that they are trying to repeal. It gives absolutely no indication of the import of the measure. It doesn’t say that they are strengthening requirements; it doesn’t say they

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<sup>25</sup> Ex. A.

<sup>26</sup> *Id.*

<sup>27</sup> Apr. 24 audio, at 05:04:35-05:04:50; Ex. E, 36:17-21.

are tightening this up; it doesn't say that they are requiring original evidence of debt, which is not required now, it doesn't say –

[Title Board]: You know, I would almost change it, except that then all three of you would get back up again. I mean, seriously. Like, I would put in there an amendment – you know, I would put in the language from last time. But somewhere this has got to stop, this constant string of people just every time we change a word. So why don't we just work on it and you can all make your last comments and then we'll be done. Okay? This is getting extremely frustrating.<sup>28</sup>

Despite the fact that the Board agreed that it was central to the measure that the Initiative is limiting the type of evidence for foreclosure,<sup>29</sup> it omitted from the title the language which would alert the voters that without the specific three documents, no secured party will be able to enforce its right to foreclose should the Initiative pass. While not every detail and nuance must be reflected in the title, *see Matter of Title, Ballot Title, Submission Clause, & Summary, Adopted Aug. 26, 1991, Pertaining to Proposed Initiative on Educ. Tax Refund*, 823 P.2d 1353, 1355 (Colo. 1991), here, the new evidentiary requirements are *the* substantive change to the current law that the Initiative proposes. Simply informing the voters that there is a change does not sufficiently reflect the true intent and meaning of the Initiative and does not allow the voters to make an informed choice regarding the import of

---

<sup>28</sup> Apr. 24 audio, at 05:05:20-05:06:11; Ex. E, 37:7-24.

<sup>29</sup> Apr. 24 audio, at 05:08:27-05:08:29; Ex. E, 38:25-39:1.

the Initiative. *See In re Proposed Initiative for 1999–2000 # 25, 974 P.2d at 462* (“It will not do to say that the general subject of legislation may be gathered from the body of the act, for, to sustain the legislation at all, it must be expressed in the title.”) (quoting *In re Breene*, 24 P. 3, 4 (Colo. 1890)). The purpose of the title is to adequately educate the voter on the import of the initiative, not to simply direct the voter to the text of the initiative in search of answers as to its intent and meaning. *Id.*

## VII. CONCLUSION

For the foregoing reasons, the Board erred in setting a title without comprehending its single subject. To the extent the Initiative may be read to require recording of evidence, it violates the single subject requirement. Finally, the title does not accurately reflect the true intent and meaning of the Initiative as it omits its central features. The Petitioner, Terry Keith Jones, therefore, respectfully requests that this Court reverse the Title Board’s actions and remand to the Board for proceedings consistent with this Court’s holding.

DATED: May 15, 2014.

LEWIS ROCA ROTHGERBER LLP

*s/ Hermine Kallman*

Thomas M. Rogers III

Hermine Kallman

*Attorneys for Petitioner Terry Keith Jones*



**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2014, a true and correct copy of the foregoing **OPENING BRIEF OF PETITIONER TERRY KEITH JONES** was served via overnight mail on the following:

Lisa Brumfiel  
1499 S. Jasper Street  
Aurora, CO 80017

Peter Coulter  
151 Summer Street #654  
Morrison, CO 80465

*Proponents*

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LeeAnn Morrill, First Assistant Attorney General  
Office of the Colorado Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

*Attorneys for the Title Board*

*s/ Jonelle S. Martinez*  
Jonelle S. Martinez

Foreclosure Due Process Initiative 2014

Proponent representatives:

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ColoradoJusticeProject@gmail.com

2013-2014 #126

Foreclosure Process  
FINAL text

DATE FILED: May 15, 2014 4:36 PM

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APR 04 2014

Colorado Secretary of State

S.WARD 2:50 P.M.

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.** (1) 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 WITH THE RECORDER OF DEEDS, CREATED BY SECTION 8 OF ARTICLE XIV OF THIS CONSTITUTION, BEFORE THE FORECLOSURE IS COMMENCED, IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

COMPETENT EVIDENCE INCLUDES:

(a) THE EVIDENCE OF DEBT;

(b) ENDORSEMENTS, ASSIGNMENTS, OR TRANSFERS, IF ANY, OF THE EVIDENCE OF DEBT TO THE FORECLOSING FORECLOSING PARTY; AND

(c) DULY RECORDED ASSIGNMENTS, IF ANY, OF THE RECORDED SECURITY INTEREST TO THE FORECLOSING PARTY.

(2) **Self-executing - severability - conflicting provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

(3) **Effective Date.** UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

EXHIBIT A

SUPREME COURT OF COLORADO  
1300 Broadway  
Denver, Colorado 80203

DATE FILED: May 15, 2014 4:36 PM

Original Proceeding  
Under C.R.S. § 1-40-107(2)  
Appeal from the Title Board

^COURT USE ONLY

In the Matter of the Title, Ballot  
Title, and Submission Clause for  
Proposed Initiative 2013-2014  
No. 126 ("Foreclosure Due Process")

Case No. 2014SA145

Petitioner: TERRY KEITH JONES;

v.

Respondents: LISA BRUMFIEL AND  
PETER COULTER;

and

Title Board: SUZANNE STAIERT,  
DAVID BLAKE, AND SHARON EUBANKS.

PARTIAL DIGITAL RECORDING TRANSCRIPT  
April 17, 2014

This is a partial transcript of the Colorado  
Department of State Title Board meeting conducted on  
April 17, 2014, at the Colorado Department of State, 1700  
Broadway, Suite 200, Denver, Colorado 80290.

A P P E A R A N C E S

BOARD:  
Suzanne Staiert  
David Blake  
Sharon Eubanks

PROPONENT:  
Lisa Brumfiel

1           (The following proceedings were conducted and  
2 entered of record.)

3           MS. STAIERT: Do you want to just start again by  
4 telling us what you believe the single subject of the  
5 initiative to be?

6           MS. BRUMFIEL: Requiring foreclosing parties to  
7 record competent evidence of the right to foreclose prior  
8 to foreclosure.

9           MS. STAIERT: Anybody have any questions on the  
10 single subject?

11          MR. BLAKE: No.

12          MS. EUBANKS: I'll go ahead and move that we find  
13 that No. 126 contains a single subject and we proceed to  
14 set a title.

15          MR. BLAKE: Second.

16          MS. STAIERT: All those in favor?

17          MR. BLAKE: Aye.

18          MS. EUBANKS: Aye.

19          MS. STAIERT: All right. So the staff draft is up  
20 on the screen. Do you have any comments about the staff  
21 draft?

22          MS. BRUMFIEL: No, it seems fine to me.

23          MS. EUBANKS: I was wondering if we could simplify  
24 it a little bit by instead of "concerning of requirement" -  
25 because it's really establishing the requirement, just say

1 "requiring an amendment to the Colorado Constitution  
2 requiring that a person seeking to foreclose a security  
3 interest in real property to file competent evidence."  
4 Might just help... And then I would also suggest - no, yeah,  
5 you want to take "must." "File" is fine. Because they are  
6 required to file. And then in the last phrase, I think  
7 that it's important to insert the word "real" before  
8 "property" on line 5. And whether or not we also want to  
9 clarify that they have to - these documents have to be  
10 recorded prior to the commencement of the foreclosure.

11 MS. BRUMFIEL: Yes.

12 MS. EUBANKS: And to do so, I think after  
13 "located" at the end of line 5, we just insert "prior to  
14 commencement of a foreclosure."

15 MS. BRUMFIEL: Well, it's on line 3 "file  
16 competent evidence of the right to foreclose before  
17 foreclosure may occur."

18 MS. EUBANKS: And perhaps I'm overly technical in  
19 terms of "commencement of a foreclosure" --

20 MS. BRUMFIEL: Okay.

21 MS. EUBANKS: -- versus "a foreclosure occurring,"  
22 which means it's completed.

23 MS. BRUMFIEL: Okay.

24 MS. EUBANKS: But I don't know if I feel strongly  
25 one way or the other. I don't know what the other...

1           MR. BLAKE: I guess I think it's somewhat  
2 duplicative with the phrase on line 3, right?

3           MS. EUBANKS: Okay. Then we can take it out.  
4 Like I said, I don't -

5           MR. BLAKE: I was actually going to suggest trying  
6 to simplify that last sentence and say "in connection  
7 therewith defining competent evidence that must be recorded  
8 with the Clerk and Recorder" or "proper Clerk and  
9 Recorder." And the definition is what it is.

10          MS. EUBANKS: Yeah.

11          MR. BLAKE: And I think "in the County" is fine,  
12 but it's just proper - isn't it the Clerk and Recorder?  
13 There's no other place to...

14          MS. EUBANKS: No, that's fine.

15          MR. BLAKE: Which actually is more specific about  
16 what...

17          MS. EUBANKS: Yes.

18          MS. STAIERT: Well, I think to be recorded it's  
19 assumed it's --

20          MR. BLAKE: I mean, that's where I was going. I  
21 think you can almost get rid of the rest of it. If you  
22 wanted to, it's with the Clerk and Recorder in the  
23 jurisdiction but it's -- I don't want to get into all that.  
24 I'm fine with just saying - I was just simply trying to  
25 shorten it or simplify it, not...

1 MS. EUBANKS: Well, are you suggesting to get rid  
2 of about the reference to the county in which the property  
3 is located?

4 MR. BLAKE: Yes.

5 MS. EUBANKS: To take that all out? I'm good with  
6 that.

7 MR. BLAKE: Or with the County Clerk and Recorder.

8 MS. EUBANKS: No. I'm good with making the -  
9 including the reference to the Clerk and Recorder and if  
10 you want to strike the latter part of the phrase.

11 MR. BLAKE: Yeah, all I'm suggesting is if  
12 "county" is important, you can insert "county" after  
13 "recorded" or "county" before clerk.

14 MS. EUBANKS: That's probably helpful to most  
15 people, although most people may still not know what a  
16 Clerk and Recorder is. And then striking the rest of the  
17 language after "recorded."

18 MR. BLAKE: Then I guess is there any objection  
19 from you?

20 MS. BRUMFIEL: No, I'm fine with that. I think  
21 simplification is good.

22 MS. EUBANKS: So I'll go ahead and move the  
23 changes that are reflected on the screen.

24 MR. BLAKE: Second.

25 MS. STAIERT: All those in favor?

1 MS. EUBANKS: Aye.

2 MR. BLAKE: Aye.

3 MS. STAIERT: All right.

4 MS. EUBANKS: Before we - before you read it, I  
5 think there may be a typographical error in the text of the  
6 measure.

7 MS. BRUMFIEL: Okay.

8 MS. EUBANKS: And whether or not - I just want to  
9 confirm that with you.

10 MS. BRUMFIEL: Sure.

11 MS. EUBANKS: And I'm looking in what is  
12 subsection 1(b) that starts "endorsements."

13 MS. BRUMFIEL: Yes.

14 MS. EUBANKS: And whether the first - I don't - I  
15 think there's two references to "foreclosing party" and  
16 whether you just need the latter.

17 MS. BRUMFIEL: Oh, spelling.

18 MS. EUBANKS: Well, first - the first referenced  
19 is misspelled, but I think then you've got duplicative  
20 terms there. So it should only be one foreclosing party  
21 and to take the property -

22 MS. BRUMFIEL: Yes, I'm sorry about that.

23 MS. EUBANKS: Whether we can go ahead and have  
24 that corrected.

25 MS. STAIERT: Yeah, let's correct that.



1 MS. BRUMFIEL: I missed that.

2 MS. STAIERT: Okay. I'll go ahead and read it  
3 then.

4 "This is an amendment to the Colorado Constitution  
5 requiring that a person seeking to foreclose a security  
6 interest in real property file competent evidence of the  
7 right to foreclose before foreclosure may occur and in  
8 connection therewith, defining competent evidence that must  
9 be recorded with the County Clerk and Recorder."

10 MS. EUBANKS: I would move the title as you just  
11 read.

12 MR. BLAKE: Second.

13 MS. STAIERT: All those in favor?

14 MR. BLAKE: Aye.

15 MS. EUBANKS: Aye.

16 MS. STAIERT: All right.

17 \* \* \* \* \*

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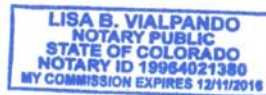
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## TRANSCRIBER'S CERTIFICATE

I, Lisa B. Vialpando, Court Reporter and Notary Public in and for the State of Colorado, duly requested to transcribe the within proceedings, certify that the proceedings were electronically recorded at the time and place hereinabove set forth and was thereafter reduced to typewritten form by the use of computer-aided transcription under my direct supervision; that the same is a complete, true, and correct transcription to the best of my ability of the electronic recording then and there taken.

IN WITNESS WHEREOF, I affix my Notarial Seal this 8th day of May, 2014.

  
\_\_\_\_\_  
Lisa B. Vialpando  
Certified Court Reporter and Notary  
Public



**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #126<sup>1</sup>**

DATE FILED: May 15, 2014 4:36 PM

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

An amendment to the Colorado constitution requiring that a person seeking to foreclose a security interest in real property file competent evidence of the right to foreclose before foreclosure may occur, and, in connection therewith, defining competent evidence that must be recorded with the county clerk and recorder.

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 requiring that a person seeking to foreclose a security interest in real property file competent evidence of the right to foreclose before foreclosure may occur, and, in connection therewith, defining competent evidence that must be recorded with the county clerk and recorder?

*Hearing April 17, 2014:*

*Single subject approved; staff draft amended; titles set. The Board made one technical correction to the final text of the measure.*

*Hearing adjourned 10:04 a.m.*

---

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

RECEIVED

APR 23 2014

Colorado Secretary of State

DATE FILED: May 15, 2014 4:36 PM  
SWARD 4:28 PM.

BEFORE COLORADO STATE TITLE SETTING BOARD

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In re Ballot Title and Submission Clause for 2013-2014 Initiative #126 ("Foreclosure Due Process")

TERRY KEITH JONES, Objector.

---

MOTION FOR REHEARING

---

Pursuant to C.R.S. § 1-40-107, Objector, Terry Keith Jones, a registered elector of the State of Colorado, through his legal counsel, Lewis Roca Rothgerber LLP, submits this Motion for Rehearing of the Title Board's April 17, 2014, decision to set the title of 2013-2014 Initiative #126 (the "Initiative"), and states:

**I. The Title Board Did Not Have Jurisdiction To Set Title to Initiative 126 Because Initiative 126 Violates the Single Subject Requirement of the Colorado Constitution**

The proposed language of the Initiative contains multiple and distinct subjects, in violation of the single subject rule. Colo. Const. art. V § 1(5.5). During the Title Board hearing the Proponents represented that the Initiative's single subject is to require that competent evidence of the right to foreclose be recorded in with the county clerk and recorder prior to the commencement of the foreclosure proceeding. However, there are several other distinct subjects included in the Initiative.

The Initiative also requires filing of competent evidence.

The Initiative seeks to eliminate alternative means of initiating foreclosure proceedings by substantially limiting the type of evidence which may be relied upon to commence foreclosure proceedings in effect repealing or rendering inoperative a large section of C.R.S. § 38-38-101 and C.R.C.P. 105.

The Initiative also seeks to prohibit foreclosure in case of lost or destroyed evidence of debt, endorsements or assignments.

Thus, the Initiative contains multiple independent subjects—a procedural change to existing law (the requirement that evidence be recorded with the county clerk and recorder prior to commencement of foreclosure proceedings) and several substantive changes (significantly curtailing the ability to initiate foreclosure proceedings in Colorado). Inclusion of these multiple distinct subjects violates Colo. Const. art. V § 1(5.5) and deprives this Board of jurisdiction to set title.

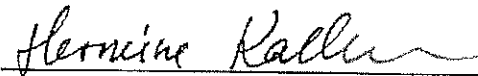
## **II. The Title and Submission Clause Do Not Fairly Express the True Meaning and Intent of the Proposed State Law.**

The title set by the Title Board does not fairly express and true intent and meaning of the proposed law and will likely create voter confusion as it does not include the following central features of the Initiative:

- 1) The title does not mention that Initiative 126 expands the Bill of Rights, set forth in Article II of the Colorado Constitution, by creating constitutional due process rights in traditionally statutory matters such as foreclosure;
- 2) The title does not include the definition of what is considered competent evidence;
- 3) The title does not reflect that Initiative 126 eliminates other forms of evidence which can currently be used to commence foreclosure proceedings;
- 4) The title does not reflect the fact that the proposed change in the law supersedes the otherwise comprehensive statutory framework governing foreclosure procedures in Colorado;
- 5) The title does not reflect the fact that Initiative 126 proposes a significant change in the law which currently allows commencement of foreclosure proceedings without recorded complete chain of assignments of the evidence of debt or the security interest by imposing the requirement that such complete chain be recorded prior to commencement of foreclosure;
- 6) The title does not reflect that the proposed change in the law that deprives the current holders of evidence of debt who do not have a recorded complete chain of assignments of the evidence of debt or the security interest of the ability to foreclose;
- 7) The title does not reflect that the proposed change in the law will make it impossible to foreclose on real property in cases of lost or destroyed evidence of debt or complete chain of assignments of the evidence of debt or the security interest;
- 8) The title does not reflect that the proposed change in the law strips all holders of opportunity to foreclose on a debt by filing a corporate surety bond *in lieu of* evidence of debt.

WHEREFORE, Objector respectfully requests that the Title Board set Initiative 126 for rehearing pursuant to C.R.S. 1-40-107(1).

DATED: April 23, 2014.



---

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Hermine Kallman  
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Denver, CO 80202  
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[hkallman@lrrlaw.com](mailto:hkallman@lrrlaw.com)

Address of objector:  
Terry Keith Jones  
6868 Vista Lodge Loop  
Castle Pines, CO 80108

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2014, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email and U.S. Mail as follows:

Lisa Brumfiel  
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Phone: 303.720.2730  
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151 Summer Street #654  
Morrison, CO 80465  
Phone: 303.720.1811  
Email: [ColoradoJusticeProject@gmail.com](mailto:ColoradoJusticeProject@gmail.com)

*Proponents*

*st. Herminie Kalle*

SUPREME COURT OF COLORADO  
1300 Broadway  
Denver, Colorado 80203

DATE FILED: May 15, 2014 4:36 PM

Original Proceeding  
Under C.R.S. § 1-40-107(2)  
Appeal from the Title Board

^COURT USE ONLY

In the Matter of the Title, Ballot  
Title, and Submission Clause for  
Proposed Initiative 2013-2014  
No. 126 ("Foreclosure Due Process")

Case No. 2014SA145

Petitioner: TERRY KEITH JONES;

v.

Respondents: LISA BRUMFIEL AND  
PETER COULTER;

and

Title Board: SUZANNE STAIERT,  
DAVID BLAKE, AND SHARON EUBANKS.

PARTIAL DIGITAL RECORDING TRANSCRIPT  
April 24, 2014

This is a partial transcript of the Colorado  
Department of State Title Board meeting conducted on  
April 24, 2014, at the Colorado Department of State, 1700  
Broadway, Suite 200, Denver, Colorado 80290.

A P P E A R A N C E S

BOARD:  
Suzanne Staiert  
David Blake  
Sharon Eubanks

PROPONENT:  
Lisa Brumfiel

OPPONENTS:  
Hermine Kallman, Esq.  
Michael Hoke, Esq.



1 (The following proceedings were conducted and  
2 entered of record.)

3 MS. STAIERT: We're back on the record. Colorado  
4 Title Setting Board and we are now on proposed Initiative  
5 2013-2014, No. 126. Let's see. WE have Mr. Rogers and  
6 I've been told we also have Mr. Grueskin, so who do we want  
7 to hear from first?

8 (Conversation on matters other than 2013-2014,  
9 No. 126.)

10 MS. STAIERT: Let's go with 126.

11 MS. KALLMAN: Thank you. Hermine Kallman, Lewis  
12 Roca Rothgerber representing Objector Terry Jones. We a  
13 timely Motion for Rehearing on Initiative 126 and we have  
14 raised two bases for our Motion.

15 The first is jurisdictional and deals with a  
16 single subject requirement. And I'll address that one  
17 first and then let the proponents perhaps respond and then  
18 we can move on to the title, if that works for the Board?

19 MS. EUBANKS: Sure.

20 MS. STAIERT: Well, why don't you do it all at  
21 once and then we'll hear from the..

22 MS. KALLMAN: That will work as well. Initiative  
23 126 appears very simple at first sight. It states that  
24 competent evidence should be recorded with the County Clerk  
25 and Recorder prior to the commencement of foreclosure

1 proceedings. That is, in fact, the stated purpose of the  
2 proponents of the initiative as they presented it to the  
3 Title Board on April 17th at the hearing. However, there  
4 are multiple distinct subjects included in the initiative,  
5 hidden within the initiative in such a way that the voters  
6 would be surprised to know how far reaching this  
7 initiative, in fact, is. Under Colorado law, of course,  
8 all initiative have to be limited to a single subject under  
9 Colorado Constitution, Article V, Section 1, subsection 5.5  
10 and corollary by statute §140-106.5. The single subject  
11 requirement prevents unrelated subject combining into one  
12 and one overarching topic does not save an initiative from  
13 a single subject challenge if, in fact, the multiple  
14 subjects are not necessarily or properly connected with one  
15 another.

16 The first stated subject I already mentioned,  
17 which is recording competent evidence with County Clerk and  
18 Recorder before commencement of foreclosure proceedings.  
19 But the initiative also has language that requires some  
20 type of filing and it's unclear where, but that's a second  
21 subject in the initiative. Further, the third subject in  
22 the initiative is defining what's "competent evidence."  
23 Definition of "competent evidence" which, in fact,  
24 significantly narrows down the current evidence that can be  
25 used to commence foreclosure proceeding is a subject that's

1 not necessarily or properly connected to the procedural  
2 changing law that the proponents are seeking to initiate  
3 here which is recording with the County Clerk and Recorder.

4 The voters will be surprised to learn that by  
5 voting to require recording evidence with the County Clerk  
6 and Recorder what they are, in fact, doing is significantly  
7 narrowing down the procedure by which foreclosure could be  
8 commenced within the State. We submit to the Board that  
9 that's a violation of single subject requirement because  
10 all these subjects are separate, distinct, and independent  
11 from one another and they are not necessarily or proper to  
12 the stated purpose that the proponents presented to the  
13 Board, which is recording.

14 I can go through the different types of evidence  
15 that is being excluded as a result of the definition and  
16 that's closely connected to the second challenge here to  
17 the language of the title which we submit to the Board has  
18 to include the definition of the competent evidence that  
19 the initiative is proposing here. The title does not  
20 mention -- first, before I get to the substance, the title  
21 doesn't mention that the initiative is actually making a  
22 change to the Bill of Rights in the Colorado Constitution.  
23 That's an important distinction because foreclosure -  
24 that's important information because foreclosure is a  
25 statutorily-defined framework and now we're talking about

1 foreclosure being - essentially given a due process status  
2 within the Bill of Rights. And that's something that the  
3 average voter should know before voting on this initiative.

4           Second, the title must include the definitions of  
5 "competent evidence" because it presents a significant  
6 change in the law as to what's currently being allowed to  
7 be used for commencement foreclosure and now it is being  
8 significantly curtailed. The title does not reflect that  
9 if you have lost or your evidence of debt is somehow  
10 destroyed let's say in a fire, you will never be able to  
11 commence foreclosure proceedings in the State. That's  
12 something that average voter - it's important to average  
13 voter and it should be reflected in the title.

14           Similarly, the title does not reflect the fact  
15 that a person, a party who would like to be able to  
16 commence foreclosure proceedings will now have to file  
17 under the proposed law a complete chain of recorded title  
18 or recorded - a complete recorded chain of assignments and  
19 endorsements of both the evidence of debt and the security  
20 interest. That's a significant change in the law that does  
21 - that the voters are entitled to know on what they are  
22 voting on.

23           The title does not reflect that it will be - that  
24 the law strips all holders of opportunity to foreclose on a  
25 debt by filing a corporate surety bond instead of evidence

1 of debt. In fact, the title does not reflect that you  
2 cannot have your debt reduced to money judgment and  
3 foreclose on that procedure currently allowed on the State  
4 - under the State statute. All of these changes are  
5 significant and they are included in the - to be able to  
6 reflect the true intent and meaning of the initiative,  
7 those changes must be reflected in the title.

8 If the Board has any questions, I'll be happy to  
9 address them. Otherwise...

10 MS. STAIERT: Do you have any questions?

11 MS. EUBANKS: No.

12 MR. BLAKE: I don't.

13 MS. STAIERT: Okay.

14 MS. KALLMAN: I'll reserve further comments if  
15 proponents have anything.

16 MS. STAIERT: You have something?

17 MR. HOKE: Yes. I'm here on behalf of Objector  
18 Don Childers. We also filed a Motion for Rehearing and  
19 just wondered if this is an appropriate time for me to  
20 raise some additional issues?

21 MS. STAIERT: Sure.

22 MR. HOKE: Like I said, Michael Hoke of  
23 Brownstein, Hyatt, Farber, Shreck, here on behalf of  
24 Elector Don Childers.

25 I think in addition to the issues that Ms. Kallman

1 raised, we have two additional potential jurisdictional  
2 issues that I would like to address. And in talking about  
3 this measure, I think it's important to keep in mind that  
4 we're talking, among other things, about residential  
5 mortgages which are typically and frequently offered for  
6 30-year terms. These things have been around for a long  
7 time and, you know, the documents that may be available on  
8 mortgages that are issued today may not be the same as the  
9 documents that were issued and available for mortgages  
10 issued 29 years ago, for example.

11 I think it's also important to recognize that what  
12 we're talking about is, you know, restricting the ability  
13 of rights holders, institutions that currently have a  
14 substantive right to foreclose, eliminating that right in  
15 instances where they may not have the original documents or  
16 original and appropriate assignments or transfers of the  
17 evidence of debt or of the recorded documents. Not  
18 surprisingly, there are a lot of reasons why a financial  
19 institution might not have those documents: Mergers,  
20 acquisitions, liquidations, fires. And, you know, you  
21 don't have to stretch your imagination very much to recall  
22 the upheaval in the financial industry in the past several  
23 years to understand that we're really talking about some  
24 substantive rights that are going to be restricted for  
25 financial institutions that may have gone through mergers

1 and acquisitions or liquidations or that sort of thing.

2 MS. STAIERT: But isn't that really an argument  
3 for the Blue Book or the initiative itself?

4 MR. HOKE: Absolutely. I just want to - I just  
5 want to be sure that when we are addressing the substantive  
6 rights that are being restricted, it's understood that we  
7 actually are talking about - you know, these aren't on the  
8 fringes. These are going to be common occurrences.

9 Ms. Kallman addressed some of the significant  
10 rights that will be curtailed through the adoption of this  
11 measure, and I think that those do absolutely constitute  
12 separate subjects. The Supreme Court has held on a couple  
13 of occasions that measure that address both procedural and  
14 substantive issues necessarily constitute separate  
15 subjects. And that's exactly what's going on here. You  
16 have a procedural requirement regarding the recording and  
17 filing of certain evidence, but you also have all these  
18 substantive effects. The removal of the right to foreclose  
19 that holders of that currently enjoy. And for that reason  
20 alone, you have a single-subject problem.

21 But I think the issue is worse, in that, I think  
22 that the measure is so ambiguous that an appropriate title  
23 cannot even be set. You just can't understand what the  
24 measure is actually trying to do. And I think the best way  
25 to see this is to recognize that this issue has come up

1 before and with regard to Initiative 2011-2012, No. 84, it  
2 was almost identical operative language in the initiative  
3 and the Board set a title that is directly contradictory to  
4 the one that was set on this measure. It indicated that  
5 only - the evidence only had to be filed. It didn't  
6 require recording of evidence and the title that was set  
7 for Initiative 126 here specifically notes that the  
8 evidence has to be recorded.

9 [Unrelated Interruption - Building Firm Alarm  
10 Test].

11 MS. STAIERT: Keep going.

12 [Unrelated Interruption - Building Firm Alarm  
13 Test].

14 MR. HOKE: You know, with regard to the title that  
15 was set on --

16 [Unrelated Interruption - Building Firm Alarm  
17 Test].

18 MR. HOKE: I just want to make sure, you know,  
19 that we preserve the clarity of the record, so I don't want  
20 to talk over the announcements.

21 The title that was set for Initiative 84 in the  
22 last cycle reflected I think what is - the current  
23 proponents have stated explicitly as their intent that the  
24 evidence needs to be recorded. The Title Board, when faced  
25 with the same language the last time, decided that that was



1 not the case. And, you know, legislative staff in review  
2 and comment understood - clearly understood that the  
3 measure required recording but that, again, was not  
4 reflected in the title set for No. 84 from the last cycle.

5 I think, you know, the text itself - just looking  
6 at the text of the measure itself, the ambiguity is  
7 apparent. You have a dependent adjectival phrase that  
8 starts "recorded with the recorder of deeds" and the noun  
9 phrase that that would modify would be "competent  
10 evidence." But a common sense reading suggests that  
11 evidence of the sort that they are talking about in the  
12 measure can't be recorded under current recordation  
13 statutes. You know, the text of the measure is ambiguous  
14 on this point to the point where I think you just can't  
15 confidently determine whether the measure would require  
16 recording the evidence or not and for that reason, I think  
17 the Board lacks jurisdiction to set a title.

18 We also have a potential argument regarding  
19 jurisdiction to the extent that any different  
20 interpretation is adopted at this hearing. That would have  
21 been a substantive change and certainly wasn't subject to  
22 review and comment. The purpose of the review and comment  
23 process is to allow the public early notice of the nature  
24 of the measure. And, to the extent that the Board adopts  
25 an understanding of the measure that is directly contrary

1 to that expressed throughout the memorandum for the review  
2 and comment process, I think is a substantive change that  
3 would require an additional review and comment period.

4 And, finally, I think, like I said, those are the  
5 main points for our jurisdictional arguments. If you would  
6 like to talk about the issues we have with the title that  
7 was actually set at the last hearing, I'm happy to do that  
8 as well.

9 MS. STAIERT: Yeah, if you could -- I think we'll  
10 hear all the issues together.

11 MR. HOKE: Again, I would incorporate Ms.  
12 Kallman's comments regarding the key elements that are  
13 missing from the title. One issue we have in particular is  
14 the phrase "competent evidence." The word "competent" has  
15 no business in the title. It plays no role in defining  
16 what the measure actually does. It's a phrase taken from  
17 the measure itself but that has no meaning except for it's  
18 a defined term in the measure. It suggests to somebody  
19 reading this that the current process allows foreclosures  
20 to be conducted on incompetent evidence or insufficient  
21 evidence and is designed, I think to sway voters toward a  
22 yes vote where it's not necessary or appropriate to have  
23 that to explain what the measure does. As a result, I  
24 think it's an improper catch phrase and should be  
25 eliminated from the title.

1           In addition to the elements that Ms. Kallman  
2 mentioned as missing from the title that was currently set,  
3 I think it's important to note that the current system that  
4 banks operate under allow them to specify the MERS system,  
5 the Mortgage Electronic Registration System, as the nominee  
6 on recorded documents relating to mortgages, so the  
7 security interests. And then transfers of that security  
8 interest are typically tracked by a private entity. The  
9 MERS system are not systematically recorded. It's  
10 typically only the last transfer that's recorded. It's  
11 widespread in the industry; it's common practice. And that  
12 would be burdened or eliminated through the measure. I  
13 think it's also worth noting that the measure would  
14 virtually eliminate the participation of Fannie Mae and  
15 Freddie Mac in loans related to Colorado property, in part  
16 because they would no longer be permitted to use the MERS  
17 system under this measure. Drying up of secondary markets  
18 would reduce credit available to consumers and, you know,  
19 would deny them the benefits of the federal statutes that  
20 establish Fannie and Freddie and I think that should be  
21 reflected in the title.

22           [Unrelated Interruption - Building Firm Alarm  
23 Test].

24           MR. HOKE: And one more issue that I think that is  
25 critical is that right now, individuals in Colorado enjoy

1 an expectation of privacy in bank records and certain  
2 financial documents. This measure would require an  
3 evidence of debt, typically a promissory note, to be  
4 recorded publicly. Those may contain Social Security  
5 numbers, driver's license numbers, dates of birth, and  
6 other personal financial data that is currently protected  
7 under state law. The loss of those protections, I think,  
8 is critical and should be reflected in the title.

9 MS. STAIERT: Any questions?

10 MR. BLAKE: I have one. So do you have a case  
11 that - I'm trying to drill down on your argument about  
12 procedural versus substantive.

13 MR. HOKE: Uh-huh.

14 MR. BLAKE: As being separate subjects.

15 MR. HOKE: Yes.

16 MR. BLAKE: And I don't think the case law  
17 delineates that when it's procedural versus substantive  
18 that it's always. In fact, I would say most of the time  
19 you change a procedure, you're probably impacting the  
20 substantive - it may not be a substantive right, but some  
21 sort of substantive - I will use the word "right" because I  
22 can't come up with anything else. So I would envision  
23 where they often times go together and see a single  
24 subject. But do you have a case that says - .

25 MR. HOKE: Yes.

1 MR. BLAKE: -- procedure versus substantive,  
2 particularly if that substantive right is held by, you  
3 know, a third party?

4 MR. HOKE: Yeah, I --

5 MR. BLAKE: {inaudible} is here, but, I mean, give  
6 me your best case on that.

7 MR. HOKE: So the citation I have for that is In  
8 Re 2003-2004, Nos. 32 and 33, that's 76 P.3d 460 and the  
9 specific language is at 463. More generically, there's a  
10 whole host.

11 MR. BLAKE: Can you give me a little more than the  
12 cite? Do you know what the...

13 MR. HOKE: Yeah. It was -

14 MR. BLAKE: Or at least - what's the cite? 76  
15 P.3d what?

16 MR. HOKE: It was 76 P.3d 460. And I don't - I  
17 don't have the actual case with me.

18 MR. BLAKE: Okay. I'll look that up.

19 MR. HOKE: That case addresses the dichotomy  
20 between substantive and procedural changes. Obviously, we  
21 also think that substantive changes here are not  
22 necessarily or properly connected to the procedural changes  
23 that are being affected. There's, you know, no reason that  
24 heightening evidentiary requirements in a foreclosure  
25 proceeding should necessarily impair substantive rights

1 that the parties currently hold. But that is explicitly  
2 the intent of the proponents here. They were asked at  
3 review and comment whether they wanted to add a clause that  
4 would make it apply only to foreclosures that were  
5 initiated after the effective date, for instance, and they  
6 said, no, we want to leave it the way it is. So it is  
7 explicitly intended to deprive current rights holders of  
8 substantive rights. I mean, I don't think there's any  
9 question about that and that deprivation of rights just  
10 isn't necessarily or properly connected to the idea of  
11 heightening an evidentiary requirement.

12 MS. KALLMAN: {inaudible} cases here {inaudible}.

13 MR. HOKE: Oh, yeah. Ms. Kallman, actually just  
14 provided some additional case citations regarding the  
15 substantive - the substance and procedure issue.

16 MR. BLAKE: I know there are some. And I'm - I  
17 mean, I'm just coming from a - I want to give you the  
18 chance to give me your best case. If you can tell me what  
19 it is, great. I'll look up the one you gave me.

20 MR. HOKE: Okay.

21 MR. BLAKE: I mean, I know there's a whole series  
22 of case law on this. My point is, I'm not aware that  
23 there's anywhere it says it's always separate. And when I  
24 say that, I think that would be improper because any time  
25 you have a procedural change, it's going to impact

1 something more substantive. So I'm just looking for the -

2 MR. HOKE: I think -

3 MR. BLAKE: -- the best case.

4 MR. HOKE: -- the case that I cited is probably  
5 the best one I've seen. There are certainly others that  
6 address the issue. And here, there's, you know, the  
7 additional problem that the impairment of substantive  
8 rights is retroactive. It's - you know, these are rights  
9 that may be in process of being vindicated in the courts  
10 right now and upon passage of this measure or adoption of  
11 the measure, those rights are gone. So that, I think  
12 heightens or increases the problem here.

13 MS. STAIERT: Okay. Any other questions?

14 MR. BLAKE: No.

15 MS. EUBANKS: No.

16 MS. STAIERT: Are there are there any other  
17 opponents? No? All right. Do you want to just - as the  
18 proponent, get up and tell us your name and just indicate  
19 the name of the other proponent for the record.

20 MS. BRUMFIEL: Sure. Hello, my name is Lisa  
21 Brumfiel and Peter Coulter. We are both proponents for  
22 this initiative and are both present.

23 MS. STAIERT: Do you have any comments on the  
24 statements made by either opponent?

25 MS. BRUMFIEL: I do. I do. First of all, the

1 opponents have admitted that it's virtually identical to  
2 Ballot Initiative 84 which passed two years ago through the  
3 Title Board here and also through the Supreme Court. It  
4 was found to be single subject and in all of the elements  
5 brought forth here were brought forth two years ago and  
6 overturned by the Supreme Court. So, basically, it's  
7 already been decided. The text itself is virtually  
8 identical and one sentence was changed. The way that the  
9 sentence reads just by suggestion of the Board - the  
10 legislative council at the review and comment meeting for  
11 more clarification. And that was the only change.

12 Also I want to state that I am the torchbearer for  
13 the people who did this before. I believe in the same  
14 cause and in the last meeting that we had I didn't speak  
15 much upon it. I thought that the - that the initiative  
16 spoke for itself. But in reading the Opening Brief of the  
17 proponents, on page 6, they said that "competent evidence  
18 of the right to foreclose to be filed in the foreclosure  
19 proceeding while only the valid security interest would be  
20 recorded with the recorder of deeds before the foreclosure  
21 is commenced." This would, in fact, alleviate their  
22 concerns about privacy issues and that.

23 And as far as the title that was set with you,  
24 it's not very different from what - it's just a minor  
25 clarification, but the primary purpose remains the same.



1 Also, two years ago, this Board concluded that just because  
2 a measure is subject to differing interpretations, I don't  
3 think that makes it vague or that it makes - that the Title  
4 Board cannot set a title. I would think that the vast  
5 majority of measures that come before the Title Board are  
6 subject to probably more than one interpretation and I  
7 don't believe that that alone prevents us from setting a  
8 title in the terms of looking at the language of the  
9 measure itself. To me, I go with the language and right  
10 now I'm comfortable with the language. First of all, it is  
11 not so vague that we can't proceed to set a title.

12 The function of the Title Board is not to disclose  
13 every possible interpretation of the language and it's  
14 quite effectively - the text of the measure does not sink  
15 to the level of incomprehensibility that it would  
16 altogether prevent setting a title. So all that was  
17 already discussed and decided.

18 Also, the Title Board is neither obligated nor  
19 authorized to construe the future legal effects of an  
20 initiative as part of the ballot title. The inner play of  
21 a ballot initiative with various provisions of existing law  
22 is an issue for post-election litigation and not the basis  
23 for a ballot title challenge. And so we are not permitted  
24 to in our review to determine the legal meaning or  
25 application of the initiative when reviewing the title for

1 defects. That's In re: -- In re: Title - Ballot Title and  
2 Submission Clause for 2009-2010, No. 45, 234 P.3d at 648.  
3 I'm not a lawyer. I probably messed that up. But you get  
4 the point.

5 So, essentially, you know, there is a minor  
6 clarification it seems on one specific issue and that is  
7 competent evidence the right to foreclose be filed in the  
8 foreclosure proceeding while only the valid security  
9 interest would be recorded with the recorder of deeds  
10 before the foreclosure is commenced. Other than that, this  
11 is clearly a single issue and it is clear enough for the  
12 voter to understand what they're doing. And the rights that  
13 they keep talking about that are being overturned are the  
14 same rights that were overturned in 2006 by 3838101 and  
15 that's the rights of the homeowner. So I don't think that  
16 that's an issue here for you all to decide on. But who is  
17 more important? The banks and financial institutions for  
18 their due process and their rights? Or the Colorado  
19 homeowner?

20 MS. STAIERT: Well, that's actually not for us to  
21 determine.

22 MS. BRUMFIEL: Right. Exactly. But I just thought  
23 I'd inject that. So that's all I have to say.

24 MS. STAIERT: Did you want to respond briefly?

25 MS. KALLMAN: Briefly, key word there. Yes,

1 please.

2 Contrary to what the proponents argued just now,  
3 even though the text of this Initiative 126 is virtually  
4 identical to 84, their stated purpose is radically  
5 different. As they mentioned that they - the position they  
6 took in their - when they were briefing and representing to  
7 the Board last time regarding 84 was the filing of the  
8 evidence. So the title said last time - and I have a copy  
9 if the Board would like to refresh it's memory of what the  
10 title set last time, was dealing only with the evidentiary  
11 issues that the initiative was purposing, meaning  
12 curtailing or downsizing or essentially defining much more  
13 narrowly the type of evidence that can be used to initiate  
14 foreclosure proceedings in the state.

15 Here, they took a different position. I have  
16 almost verbatim their statement in response to the Title  
17 Board's question of what's the single subject of the  
18 initiative which was "requiring recording of competent  
19 evidence before commencement of foreclosure proceedings."  
20 This is almost verbatim and that's on a transcript of April  
21 17th hearing, part II, at minute 9:59, if the Board would  
22 like to listen to it again. And that position is  
23 significantly different and contrary to the position they  
24 took last time. Now, in an attempt to go back to that  
25 position they had taken last time with 84, they say, no,

1 no, no, the recording is about the valid security interest,  
2 it doesn't extend to competent evidence. Yet they  
3 presented those words, exact same words, to the Title Board  
4 when asked what the single subject is. And they accepted  
5 the title that the Title Board set which specifically  
6 states, as the Board is aware, in connection - the second  
7 clause "in connection therewith, defining competent  
8 evidence that must be recorded with the county clerk and  
9 recorder." It does not say "defining valid security  
10 interest" or "requiring valid security interest be  
11 recorded." It says, "competent evidence that must be  
12 recorded." And that's the title that proponents accepted  
13 and agreed with. Now they are taking a position that the  
14 recording requirement only deals with a valid security  
15 interest and that is incorrect.

16 This initiative, as opposed to 84, does have a  
17 separate procedural change in the law which is requiring  
18 recording of evidence with a county clerk and recorder  
19 before commencement of foreclosure proceedings. That is a  
20 separate - that's the single subject that they said it was.  
21 And that's a separate and distinct subject from the  
22 evidentiary issues that the initiative also tries to  
23 introduce. Those are two separate subjects. As Mr. Hoke  
24 mentioned, one is procedural and one is substantive and  
25 they are not related. They are separate and distinct. One

1 is not necessarily or properly connected with the other.  
2 And that's what makes the 84 inapplicable here; 84 dealt  
3 only with one subject which was evidentiary issues which  
4 is, in fact, the subject here. But in addition to those  
5 issues here, there is the issue of requiring recording. A  
6 brand new procedure that does not exist in Colorado law  
7 right now. Colorado Revised Statute §38-38-101 which  
8 governs foreclosure proceedings does not require recording.  
9 It requires filing with the public trustee and that's a  
10 brand new change in the law and that's a procedural change  
11 not connected with evidentiary issues.

12 Now the proponents are trying to make - to take a  
13 different position and state that recording does not  
14 require to be for all competent evidence but for valid  
15 security. The fact of the matter is they accepted Title  
16 Board title and title explicitly states that it should be  
17 competent evidence that's being recorded, not just a valid  
18 security interest. Thank you.

19 MR. HOKE: If I could just add a couple of items.  
20 We now have the legislative staff misunderstanding what the  
21 proponents are saying this measure represents, twice. We  
22 have the Title Board misunderstanding what the proponents  
23 are now saying the measure means, twice. We have two sets  
24 of proponents themselves apparently misunderstanding what  
25 the measure means, twice. If that's not a sign that it's

1       incomprehensible, I don't know what would be - what would  
2       show a measure to be incomprehensible.

3               Under precedent from the United States Supreme  
4       Court, the interpretation of this measure, the grammatical  
5       structure of the measure suggests that the evidence does  
6       indeed have to be recorded. As written, the phrase  
7       "competent evidence of its right to enforce a valid  
8       security interest" is a noun phrase that identifies a  
9       single entity, "the evidence." It's followed by a couple  
10      of serial adjectival phrases that are set off by commas.  
11      I don't know what those commas are doing there, but they're  
12      there. And under the interpretative principles set forth  
13      by the Supreme Court in *Nobleman v. American Savings Bank*,  
14      which is 508 U.S. 324 and the relevant text is at 327 and  
15      328, they interpreted a bankruptcy code provision that had  
16      virtually the identical structure and they decided that the  
17      adjectival phrases modify the entire noun phrase. The  
18      language that they were interpreting was "modify the rights  
19      of holders of secured claims other than a claim secured  
20      only by a security interest in real property," and they  
21      decided that the "other than a claim" modifies "the rights"  
22      and not the "secured claims."

23              The exact same reasoning would apply here and  
24      suggests that this measure does, in fact, require recording  
25      of the competent evidence. The fact that the proponents

1 have now backpedaled from their own prior interpretation I  
2 think suggests, at the best, the measure is ambiguous as to  
3 whether the recording is required. And I'll just finish by  
4 noting that the Supreme Court has recognized that where  
5 measures are incomprehensible, they have to be returned to  
6 the proponents. And I can give you a cite on that if you  
7 would like. I have 99-2000, No. 44, that's 977 P.2d 856.  
8 And there's a couple other cases that mention that as well.

9 MS. BRUMFIEL: Lisa Brumfiel here. Just a quick  
10 rebuttal. What we had agreed to was an amendment to the  
11 Colorado Constitution requiring -

12 MS. STAIERT: We know what we agreed to, so you  
13 can just... I mean...

14 MS. BRUMFIEL: Well, basically, essentially, the  
15 word "file" is in there and then the word "record" is in  
16 there. And that's exactly the way that the initiative  
17 reads. The only thing that would be - you know, the  
18 opposition would have issue with is not having the words  
19 "valid security interest" in there, which is again a detail  
20 of implementation. It does not take away from the primary  
21 purpose which remains the same. And also this did already  
22 go through to the Supreme Court. They have already decided  
23 single subject and that it's not vague and  
24 incomprehensible. Thank you.

25 MS. STAIERT: Anyone want to start?

1 MR. BLAKE: No.

2 MS. STAIERT: Okay. Sharon, can you start? Or  
3 I'll start.

4 MS. EUBANKS: Can we put the title language up.

5 MR. BLAKE: I guess I should since I asked the  
6 jurisdictional question and I wasn't sure {inaudible}. I  
7 did look up the case and I don't think that it says that -  
8 it doesn't fold where I was looking for about procedural  
9 versus substantive. It talks to the measure involving what  
10 I at least {inaudible} very distinct -- what I would agree  
11 are distinct subjects. That just didn't - didn't persuade  
12 me that there isn't - well, I guess I should say, I still  
13 believe there is a single subject in light of that. And I  
14 also don't think it's retroactive. But I'll let you make  
15 you make your {inaudible}.

16 MS. EUBANKS: And I'm in agreement. I think that  
17 the measure constitutes a single subject so that we have  
18 jurisdiction. And probably because I'm sort of brain dead  
19 in terms of the issue about being recorded - what's  
20 recorded versus what's filed, whether or not we need to  
21 make a change in that regard. And maybe I don't understand  
22 the issue completely. But if I understand, perhaps the "in  
23 connection therewith" statement is incorrect because in  
24 terms of what the measure talks about being recorded  
25 whether - if it's filed versus recorded. And I know I'm



1 not making myself very clear. But in terms of the language  
2 of the measure, talking about "to enforce a valid security  
3 interest recorded with the recorder of deeds," whether or  
4 not -

5 MS. STAIERT: Well, I think we can probably just  
6 add another line, right, that says requiring competent  
7 evidence of its right to - of a right to enforce a valid  
8 security interest. And then say, "in defining the  
9 competent evidence."

10 MS. EUBANKS: And I think I am persuaded in terms  
11 of the use of the term "competent evidence" that perhaps it  
12 might be more meaningful to talk about filing - you know,  
13 whether we say "certain documents evidencing" or something  
14 like that, because that term isn't terribly meaningful.  
15 And I know we say "defining," but then again it doesn't  
16 really get the concept across that we're really talking  
17 about documents.

18 MS. STAIERT: Did you say you brought the last  
19 question? A copy of what the last question was?

20 MS. BRUMFIEL: Yeah. Well, I wanted you - this is  
21 what the last proponent had said.

22 MS. STAIERT: I know. But do you have the  
23 question? The language?

24 MS. BRUMFIEL: The question?

25 MS. STAIERT: I thought you said you had the

1 language from what we did two years ago.

2 MS. BRUMFIEL: Oh, yeah.

3 MR. HOKE: That's in the Motion for Rehearing.

4 MS. STAIERT: Oh, okay.

5 MR. HOKE: It's attached to the Motion for  
6 Rehearing.

7 MS. EUBANKS: The longer one?

8 MS. BRUMFIEL: I have it. Did you find it?

9 MS. STAIERT: Yeah. I mean, we could do something  
10 like that.

11 MS. EUBANKS: And whether it's just evidence or  
12 whether it's documents versus competent. We keep switching  
13 back.

14 MR. BLAKE: I'm sorry. I'm investigating another  
15 issue with a filing as we're doing this, so I will switch  
16 it in a moment.

17 MS. EUBANKS: I mean, if we want to just go, "to  
18 file evidence" and drop the "competent?"

19 MS. STAIERT: Yeah. I think we can drop the  
20 "competent" and then talk about changing the "existing" and  
21 then that it has to be recorded with the clerk.

22 MS. EUBANKS: And I guess that's the issue of the  
23 confusion as to whether it's actually recorded or whether  
24 the competent evidence is filed.

25 MS. BRUMFIEL: It is -

1 MS. STAIERT: You have to get up to the microphone  
2 if you want to talk, because we're trying to make a record.

3 MS. BRUMFIEL: Sorry. I apologize. Competent  
4 evidence of the right to foreclosure to be filed in the  
5 foreclosure proceeding while only the valid security  
6 interest would be recorded with the recorder of deeds  
7 before the foreclosure is commenced. So the filing is the  
8 competent evidence with the definition and only the valid  
9 security interest recorded in the recorder of deeds.

10 MS. EUBANKS: And so that's why, I think the  
11 argument is, if I understand, that the last statement  
12 perhaps is incorrect because the measure isn't requiring  
13 the competent evidence to be recorded with the Clerk and  
14 Recorder?

15 MS. KALLMAN: If I may?

16 MS. STAIERT: Let me take care of a housekeeping  
17 matter first because I just don't see us doing 104 tonight.

18 [Proceedings unrelated to Proposed Initiative  
19 2013-2014, No. 126.]

20 MS. STAIERT: So back to clarification.

21 MS. KALLMAN: Yes. Regarding changing the  
22 language. Our challenge is not necessarily with this  
23 particular - with respect to this particular issue, I  
24 guess, is not about the language. It's about the position  
25 that the proponents have taken and represented to the

1 Board, on the record, what their stated purpose in bringing  
2 this initiative is. Now, they are changing that position  
3 radically; in fact, 180 degrees. That is our objection  
4 that I would like to preserve on the record. They stood up  
5 on the record before a Title Board hearing and they said  
6 the single subject of this initiative is requiring  
7 recording of competent evidence before commencement of  
8 foreclosure proceeding. Now they are talking about valid  
9 security interest. I'd just like that on the record. It's  
10 not about the language of the title - we have challenges  
11 with the language of the title that we have preserve and  
12 would like to raise and hopefully have them addressed, but  
13 as far as the single subject, the single subject stated was  
14 recording of competent evidence. It's different than  
15 filing competent evidence. In fact, we submit to the Board  
16 that it's two different subjects included arguably in the  
17 text of the initiative.

18 MS. STAIERT: Well, I guess my response to that is  
19 that it doesn't much matter, as we found out today, what  
20 someone's intent is as much as it is the words on the  
21 paper. So I'm not sure, you know, if it says that in the  
22 measure then, you know, that's what it says and what the  
23 proponents can come up and say they intend is not all that  
24 relevant.

25 MS. KALLMAN: I'm sorry. One more comment on

1 that. In fact, in citizen-initiated amendments,  
2 legislative history does include what the proponents state  
3 here during these hearings on the record. That's part of  
4 the legislative history that gets preserved and examined  
5 when any ambiguities in those citizen-passed initiatives  
6 ever come up in litigation.

7 MS. EUBANKS: Understood. And if I could ask the  
8 proponent one question?

9 MS. BRUMFIEL: Sure.

10 MS. EUBANKS: So when you talk about filing the  
11 competent evidence, with whom is it filed with?

12 MS. BRUMFIEL: The competent evidence is filed  
13 into the foreclosure proceeding, whereas the recording is  
14 just the valid security interest.

15 MS. EUBANKS: Okay. And that's why I think the  
16 title right now is incorrect because the phrase after "in  
17 connection therewith" talks about the "competent evidence  
18 being recorded with the clerk and recorder" and I believe  
19 that's incorrect.

20 MS. BRUMFIEL: All right.

21 MS. EUBANKS: So thank you. And I'm sorry I'm  
22 slow. This is complicated subject matter. So whether or  
23 not to just remove the whole "in connection therewith" and  
24 defining - or we can - like I say, I'm inclined to change  
25 the language on line 2 to drop the "competent" and then

1 maybe all we want to say "in connection therewith" is  
2 saying - and whether you say it as defining or specifying  
3 the evidence that must be filed to "evidence the right to  
4 enforce the security interest" or something along those  
5 lines. I think that would be an accurate statement. And I  
6 think you need the right to enforce on line - right to  
7 enforce the security interest.

8 MR. BLAKE: I just have one other - on line 3  
9 after the word "foreclosure," I think you need {inaudible}.

10 MS. STAIERT: Then you need "a" or -

11 MS. EUBANKS: Or make it plural.

12 MS. STAIERT: Yeah. Foreclosure proceedings.

13 MS. EUBANKS: Since everything else is singular,  
14 maybe an "a" makes sense.

15 MR. BLAKE: I have a question. I said I didn't  
16 find it retroactive. What was your - and it has an  
17 effective date in it and I understand, I think, your  
18 argument that it impacts potentially evidence currently  
19 held nullifying it because it doesn't satisfy whatever  
20 competent evidence means. Is that your argument about it  
21 being retroactive?

22 MR. HOKE: It doesn't just nullify the evidence;  
23 it nullifies the right to foreclose.

24 MR. BLAKE: But that's your argument about  
25 retroactivity?

1 MR. HOKE: Absolutely.

2 MR. BLAKE: It's really a contract clause  
3 argument.

4 MR. HOKE: It's a contract clause argument,  
5 definitely.

6 MR. BLAKE: {inaudible}.

7 MR. HOKE: No. I recognize that.

8 MR. BLAKE: But I'm just trying to make sure I'm  
9 understanding what you're -

10 MR. HOKE: But it is explicit intent of the  
11 measure to impair those rights and I think that should be  
12 reflected. It is a key provision of the measure. It's a  
13 key element. It's the whole purpose of the measure to  
14 impair those rights and I think it needs to be reflected in  
15 the title in addition to having some constitutional issues.

16 MS. EUBANKS: And I think that goes to effect and  
17 that's not something that we deal with. That's not our  
18 function, you know, in terms of - because a lot of the  
19 arguments that have been made is in terms of how this going  
20 to affect current proceedings, foreclosure proceedings.  
21 And I don't think we - we can't go there. I don't know  
22 that I would even understand everything in terms of all the  
23 potentials. But in terms of what the effect is, I don't  
24 think that that's something that we can concern ourselves  
25 with and that the title can't go there.

1           MR. BLAKE: That's why I asked the question. I'm  
2 happy to develop the record. But I want to make sure I'm  
3 not missing something. But I think those are arguments  
4 that will have be made in a different place than - than we  
5 can in considering setting the title, but you've answered  
6 my questions.

7           MR. HOKE: Would it be an appropriate time to make  
8 some comments on the changes that have been made or...

9           MR. BLAKE: Yep.

10          MS. STAIERT: Yes.

11          MR. HOKE: Well, the first thing I note is the  
12 filing doesn't - isn't required before foreclosure occurs.  
13 The measure says "before the foreclosure is commenced."  
14 And I think that the measure is ambiguous there because I  
15 don't know how you file something before it's commenced,  
16 but that's actually what the measure says. The use of the  
17 word "occur" here, I think, because it interprets the  
18 measure in a way that is inconsistent with the plain  
19 language of the measure itself. So I would suggest  
20 changing "occur" to "commence."

21          MR. BLAKE: I'm not in favor of that because I  
22 think "foreclosure proceeding" and "foreclosure" are  
23 different in the timeline of the foreclosure process. You  
24 guys are the foreclosure experts, so maybe I'm wrong about  
25 that. But when you bring it, you have to file, but the



1 foreclosure commencing is not the filing of the evidence.  
2 That's the actual taking of the property or, you know, the  
3 objection process. You know, this is a fairly long drawn  
4 out process. But I think "commencement" would be a - I  
5 read it to be occurring after the filing occurs. So I  
6 wouldn't -

7 MR. HOKE: So I just don't know what the word  
8 "commenced" in the measure means then, because the  
9 foreclosure would occur when it's presumably completed not  
10 when it is commenced. And so I think the use of the word  
11 "occur" here interprets the measure - like I said, I don't  
12 understand what "commence" means in the measure, but it  
13 certainly doesn't mean "occur."

14 MR. BLAKE: There, but, again, not something that  
15 we can consider here, I don't think.

16 MR. HOKE: One other thing I want to mention is  
17 that the measure does not just require somebody to file  
18 evidence. It changes the evidentiary requirement. And  
19 that key fact is - was reflected in the title set on  
20 Measure 84 from the last cycle; it needs to be reflected  
21 here that the current standard - the evidentiary standard  
22 is being heightened or strengthened and requiring more  
23 evidence than is currently required or a more limited set  
24 of evidence is being required by the measure. It is not  
25 just saying that evidence is required. Evidence is already

1 required. It's changing the law. And I think as it was  
2 reflected in the title set for 84, it should be reflected  
3 in the title for 126.

4 MS. STAIERT: If you want to comment on our  
5 changes, that's fine, but beyond that, that's what we're  
6 talking about.

7 MS. BRUMFIEL: Well, I just wanted to clarify what  
8 he was saying about the commencement - it just says  
9 "recorded before the foreclosure is commenced" not "the  
10 filing." So that's two separate - that's a different  
11 issue. He's talking about the filing. So you were correct  
12 in that, it would have to be in a foreclosure proceeding.  
13 The recording is prior to the commencement.

14 MR. BLAKE: We're there, more or less. I just  
15 don't - Ms. Eubanks, when you said "filed to evidence" did  
16 you actually mean evidence or did you just mean to  
17 demonstrate? Because the way it reads is "specifying the  
18 evidence that must be filed." The evidence...

19 MS. EUBANKS: No, that's -

20 MR. BLAKE: You weren't talking about evidence -

21 MS. EUBANKS: No, no, no.

22 MR. BLAKE: -- in its legal proper term of art  
23 here. Right? Is to demonstrate the right?

24 MS. EUBANKS: I'm agreeable to that change.

25 MR. BLAKE: I think with that, I don't have

1 anything else.

2 MS. KALLMAN: If I may? Well, now we have dropped  
3 the recording language altogether. It's a central feature  
4 that has certainly generated enough discussion, a central  
5 feature of this initiative that should be included, in our  
6 opinion, and also the types of evidence that needs to be  
7 filed. That's a central feature of this initiative. What  
8 is competent evidence or evidence of the right to foreclose  
9 is. It spells it out with rather ambiguous including -  
10 language included in there, but what evidence must be filed  
11 and/or recorded, which is still unclear to me, must be  
12 included in the title because that's important to the  
13 voter. The voter should know what evidence should be filed  
14 or recorded if - before - or during foreclosure  
15 proceedings, before commencement of foreclosure, et cetera.  
16 Those are essential features of this initiative.

17 MS. EUBANKS: And in terms of including the  
18 specifics of the types of evidence, to most people, they  
19 aren't going to understand that and that's why we usually  
20 don't include those --- that technical type of language of  
21 how it's defined.

22 MS. KALLMAN: And respectfully I submit that this  
23 is not a technical detail; this is a central feature. It  
24 defines very narrowly the kind of evidence that you can  
25 have - you must have before you can foreclose and that's a

1 central feature -

2 MS. EUBANKS: And the central feature that  
3 evidence is specified is included. The voters have that  
4 and there will be other sources of information if they want  
5 more details as to what that evidence is.

6 MS. KALLMAN: Fair enough.

7 MR. HOKE: I just want to point out that the  
8 title as it stands on the screen right now could apply to  
9 the very statutory provision that they are trying to  
10 repeal. It gives absolutely no indication of the import of  
11 the measure. It doesn't say that they are strengthening  
12 requirements; it doesn't say that they are tightening  
13 things up; it doesn't say that they are requiring original  
14 evidence of debt, which is not required now; it doesn't  
15 say -

16 MS. STAIERT: You know, I would almost change it,  
17 except that then all three of you would get back up again.  
18 I mean, seriously. Like, I would put in there an  
19 amendment - you know, I would put in the language from last  
20 time. But somewhere this has got to stop, this constant  
21 string of people just every time we change a word. So why  
22 don't we just work on it and you can all make your last  
23 comments and then we'll be done. Okay? This is getting  
24 extremely frustrating.

25 I would propose that we put in there that it's an

1 amendment requiring that a person, you know, seek this -  
2 and then we say "changing the evidence of a right to  
3 foreclose and in connection therewith changing the existing  
4 evidentiary requirements for foreclosure of real property;  
5 specifying the evidence that must be" so leave - that's  
6 fine. And then, I don't - I just don't think that the  
7 difference between "recorded" and "filed" is central. I  
8 mean it may be central to draw people's attention that  
9 we're changing those requirements, but then to say  
10 "specifying the evidence that must be filed to  
11 demonstrate," I'm fine with that. Do you want to change  
12 "record" and "file?"

13 MR. BLAKE: No. No. I was a little - I won't say  
14 frustrated, but surprised at one of the arguments that now  
15 it didn't include recorded because I thought that was the  
16 original argument that recording was somehow misleading  
17 because it was filing. I thought that was Sharon's -  
18 Ms. Eubank's change and I thought it was a good one. So I  
19 don't have an objection to this because it does, in fact,  
20 change it, but I thought it was captured in "specifying the  
21 evidence." I didn't want to get into the specifics of it.  
22 I don't think this necessarily helps or hurts, but if it's  
23 clarifying to you, then I'm for it.

24 MS. STAIERT: Well, it was the language upheld  
25 last time around. I think it's central to the measure that

1 they are tightening it. So I think to draw people's  
2 attention that they are changing it is fine.

3 MR. BLAKE: I'm fine with that.

4 MS. STAIERT: Do you have any comment?

5 MS. EUBANKS: And, again, whether I understand the  
6 argument in terms of being recorded whether the opponents  
7 are claiming that that's a change in terms of the security  
8 interest being recorded with the Clerk and Recorder. Is  
9 that - I mean, the way I normally understand in terms of  
10 the example, very simplistic, my mortgage, is recorded so  
11 that it's reflected that someone else has a claim if I sell  
12 my property. And like I say, I'm very simplistic about  
13 this. So that's not a change?

14 MS. STAIERT: And if it is, then please suggest  
15 some language. Telling us that we don't understand it  
16 doesn't help us get to a question. I mean, if you have  
17 language that you want to suggest, then, you know, we're  
18 happy to hear that. But we're not getting anywhere.

19 MR. HOKE: First to answer the question posed. I  
20 do believe it is a substantive change in the current law.  
21 It may be typical practice that security interests are  
22 recorded but I had searched for a statutory requirement  
23 that they be recorded, I couldn't find one. So I believe  
24 under current law, you are allowed to foreclose on an  
25 unrecorded security interest. It is apparently a change in

1 substantive law.

2 But I think, you know, we should just put in  
3 "specifying the evidence that must be filed to demonstrate  
4 the right to enforce the security interest" comma or  
5 semicolon "and requiring that the security interest be  
6 recorded before the foreclosure is commenced."

7 MS. STAIERT: Okay. So that's at the very end?  
8 So semicolon "and requiring."

9 MS. EUBANKS: Okay. Before we go there -- I'm  
10 glad that I at least understood your argument, but I don't  
11 know that I read the language of the measure in terms of a  
12 requirement of recording the security interest. And based  
13 on the language, the way it's written, whether or not this  
14 whole requirement of filing evidence only applies to  
15 security interests that have been recorded. So that it's  
16 not necessarily requiring all security interests to be  
17 recorded but that this whole provision only applies to  
18 those security interests that have been recorded.

19 MR. HOKE: I appreciate the ambiguity there. I  
20 think you are correct that it is ambiguous as to that  
21 point. I think that it would be gross perversion if, in  
22 fact, we could just get around the purpose of this measure  
23 by not recording security interests, and then we wouldn't  
24 be subject to the measure at all. But I'm --

25 MS. EUBANKS: My problem, in terms of what

1 you've - the language you've suggested, makes us conclude  
2 that your interpretation is correct; whereas, I'm probably  
3 more comfortable to talk about up in the single subject  
4 perhaps where we talk about "before a foreclosure  
5 proceeding may occur involving a security," you know "a  
6 recorded security interest." Something like that. Because  
7 I don't know if your interpretation is correct. I think  
8 there's - and so I'm more comfortable relying on the  
9 language of the measure rather than agreeing with your  
10 conclusion and your interpretation.

11 MS. STAIERT: How is that different than what we  
12 said above? "Evidence of the right to foreclose." I mean  
13 I'm asking either - how's that different than what we've  
14 said -

15 MS. EUBANKS: And I'm so much a fish out of water  
16 on the subject matter, but I'm doing my best. But my  
17 understanding is that what's filed, in terms of evidence of  
18 the right to foreclose, in terms of the specific types of  
19 documents that are listed in the measure, that that's  
20 different than the actual recorded security interest.

21 MR. HOKE: Correct. Evidently.

22 MS. EUBANKS: Thank you.

23 MR. HOKE: Yes, that's what evidently the Board  
24 has decided.

25 MS. EUBANKS: And I think there is a difference.



1 MS. STAIERT: Okay.

2 MS. EUBANKS: But like I say, this is not a  
3 subject matter that I'm terribly familiar with.

4 MS. STAIERT: Then why don't you go ahead then.  
5 Just use the language of the measure.

6 MS. EUBANKS: Then I would suggest on line 3 after  
7 "occur" to insert "involving a recorded security interest."  
8 And I think maybe that's the only change - and whether on  
9 line 6 we talk about - we could insert "recorded security  
10 interest" to make it consistent.

11 MS. STAIERT: Look at you getting into the title.

12 MS. EUBANKS: Yes.

13 MR. BLAKE: Seeking clarity.

14 MS. BRUMFIEL: May I make a suggestion?

15 MS. STAIERT: Sure.

16 MS. BRUMFIEL: You're using "security interest"  
17 twice on the second and the third line and it sounds  
18 repetitive. Can we it out of the second line and just say  
19 "an amendment to the Colorado Constitution requiring that a  
20 person seeking to foreclose a real property"?

21 MS. EUBANKS: No. I would be more inclined - and  
22 I missed that that reference is up there, but I would make  
23 the change to recorded security interest there.

24 MS. BRUMFIEL: Okay.

25 MS. EUBANKS: And then we can drop the new

1 language that I had just inserted there on line 3.

2 MS. BRUMFIEL: Okay.

3 MS. EUBANKS: But I'm so glad you pointed that  
4 out. Thank you.

5 MS. BRUMFIEL: Okay.

6 MS. EUBANKS: Like I say, I'm about done.

7 MS. STAIERT: Okay.

8 MS. EUBANKS: So to insert "recorded" before  
9 "security interest" on line 2. And then drop everything  
10 that we inserted there involving - and then you can restore  
11 your "may occur." I'm sorry. I'm comfortable with that  
12 clarification without going further in terms of whether  
13 that - in terms of the effect of the language.

14 MR. HOKE: My concern is that makes the title  
15 read to support the other interpretation that you proposed.  
16 It favors that interpretation. It says this only applies  
17 to recorded security - or efforts to foreclose a recorded  
18 security interest. And so I guess we would just preserve  
19 our objection on that issue.

20 MS. EUBANKS: And I'm not advocating any  
21 particular interpretation other than I'm basing it on the  
22 language of the measure, so it's a textual basis and not  
23 necessarily that I'm advocating a particular  
24 interpretation. I think this language reflects the  
25 language of the measure. What that affect has, I'm not

1 going there.

2 MS. KALLMAN: This is Hermine Kallman. I also  
3 would like to preserve our objection that, in fact, in the  
4 measure the language of the measure also includes recorded  
5 assignments of security interests and I would like to note  
6 that in the record.

7 MS. EUBANKS: But just for clarification in terms  
8 of that objection, that's terminology within the definition  
9 of "competent evidence."

10 MS. KALLMAN: Yes. And we have raised it in our  
11 Motion that we believe that all of that terminology should  
12 be included and we would like to preserve that objection.

13 MS. EUBANKS: Okay. Thank you.

14 MS. KALLMAN: We'd also like to incorporate all  
15 the arguments that Mr. Hoke has raised today.

16 MR. BLAKE: I'm good. Want to make your motion?

17 MS. STAIERT: We got to read it.

18 MS. EUBANKS: Who knows what we'll think after we  
19 read it out loud.

20 MS. STAIERT: So right now, it's "An Amendment to  
21 the Colorado Constitution requiring that a person seeking  
22 to foreclose a recorded security interest in real property  
23 file evidence of the right to foreclose before a  
24 foreclosure proceeding may occur and, in connection  
25 therewith, changing the existing evidentiary requirements

1 for foreclosure of real property and specifying the  
2 evidence that must be filed to demonstrate the right to  
3 enforce the recorded security interest."

4           Anyone want to make a last...

5           No? All right.

6           MS. EUBANKS: Okay. Then I would move that the  
7 Board deny both motions for rehearing on Proposed  
8 Initiative 126, except to the extent that the title has  
9 been changed as you've read it.

10          MR. BLAKE: Second.

11          MS. STAIERT: All those in favor.

12          MS. EUBANKS: Aye.

13          MR. BLAKE: Aye.

14          MS. STAIERT: All right. That passes and takes us  
15 to our final proposed initiative for the day.

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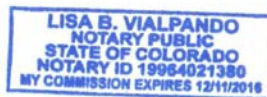
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## TRANSCRIBER'S CERTIFICATE

I, Lisa B. Vialpando, Court Reporter and Notary Public in and for the State of Colorado, duly requested to transcribe the within proceedings, certify that the proceedings were electronically recorded at the time and place hereinabove set forth and was thereafter reduced to typewritten form by the use of computer-aided transcription under my direct supervision; that the same is a complete, true, and correct transcription to the best of my ability of the electronic recording then and there taken.

IN WITNESS WHEREOF, I affix my Notarial Seal this 8th day of May, 2014.

  
\_\_\_\_\_  
Lisa B. Vialpando  
Certified Court Reporter and Notary  
Public



**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #126<sup>1</sup>**

DATE FILED: May 15, 2014 4:36 PM

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

An amendment to the Colorado constitution requiring that a person seeking to foreclose a recorded security interest in real property file evidence of the right to foreclose before a foreclosure proceeding may occur, and, in connection therewith, changing the existing evidentiary requirements for foreclosure of real property; and specifying the evidence that must be filed to demonstrate the right to enforce the recorded security interest.

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 requiring that a person seeking to foreclose a recorded security interest in real property file evidence of the right to foreclose before a foreclosure proceeding may occur, and, in connection therewith, changing the existing evidentiary requirements for foreclosure of real property; and specifying the evidence that must be filed to demonstrate the right to enforce the recorded security interest?

*Hearing April 17, 2014:*

*Single subject approved; staff draft amended; titles set. The Board made one technical correction to the final text of the measure.*

*Hearing adjourned 10:04 a.m.*

*Hearing April 24, 2014:*

*Motion for Rehearing denied except to the extent that the Board made changes to the titles.*

*Hearing adjourned 6:55 p.m.*

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