

SUPREME COURT OF COLORADO 1300 Broadway Denver, Colorado 80203	
Original Proceeding Under C.R.S. § 1-40-107(2) Appeal from the Title Board	<b>▪ COURT USE ONLY ▪</b>
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 No. 126 (“Foreclosure Due Process”)  <b>Petitioner:           TERRY KEITH JONES;</b>  <b>v.</b>  <b>Respondents:       LISA BRUMFIEL AND</b> <b>                              PETER COULTER;</b>  <b>and</b>  <b>Title Board:         SUZANNE STAIERT, DAVID BLAKE,</b> <b>                              AND SHARON EUBANKS.</b>	Case No.
<i>Attorneys for Petitioner</i> Thomas M. Rogers III, #28809 Hermine Kallman, #45115 LEWIS ROCA ROTHGERBER LLP 1200 Seventeenth Street, Suite 3000 Denver, CO 80202 Phone: 303.623.9000 Fax: 303.623.9222 Email: trogers@lrrlaw.com hkallman@lrrlaw.com	
<b>PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD                  CONCERNING PROPOSED INITIATIVE 2013-2014 NO. 126                  (“FORECLOSURE DUE PROCESS”)</b>	

Petitioner Terry Keith Jones, a registered elector of the State of Colorado,  
 through his counsel Lewis Roca Rothgerber LLP and pursuant to C.R.S. § 1-40-

107(2), respectfully petitions this Court to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2013-2014 No. 126 (“Foreclosure Due Process”), and states:

### **STATEMENT OF THE CASE**

#### **I. Procedural History of Proposed Initiative No. 126**

On March 21, 2014, Lisa Brumfiel and Peter Coulter (“Proponents”) submitted Initiative 2013-2014 No. 126 (“Initiative”) 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. Later that same day, Proponents submitted the Initiative to the Secretary of State for title setting. On April 17, 2014 hearing, the Title Board set the Initiative’s title. On April 23, 2014, Petitioner filed a Motion for Rehearing and stated, in part, that the Initiative contained multiple subjects in violation of the single subject rule and that the Title Board set a misleading title. The rehearing was held on April 24, 2014, at which the Title Board denied Petitioner’s Motion for Rehearing except to the extent that the Board amended the title.

## **II. Jurisdiction**

Petitioner is seeking review of the Title Board's actions in setting the Initiative's title. C.R.S. § 1-40-107(1). Petitioner filed a timely Motion for Rehearing, *see* C.R.S. § 1-40-107(1), and subsequently filed this timely Petition for Review within seven days of the rehearing, *see* C.R.S. § 1-40-107(2). Pursuant to C.R.S. § 1-40-107(2), attached to the instant Petition for Review are certified copies of: (1) the title and submission clause as set by the Title Board and the Title Board's order denying Petitioner's Motion for Rehearing; (2) Petitioner's Motion for Rehearing; (3) the title and submission clause originally set by the Title Board on April 17, 2014; (4) Proponents' final draft of the Initiative; (5) Proponents' amended draft of the Initiative; and (6) Proponents' original draft of the Initiative. Petitioner objects to the Title Board's denial of his Motion for Rehearing. For these reasons, this matter is properly before the Colorado Supreme Court.

### **GROUND FOR APPEAL**

As grounds for appeal, Petitioner states:

(1) The Title Board erred by setting title to the Initiative where it was apparent that the Initiative was so vague and ambiguous that the Title Board itself did not comprehend the single subject of the Initiative to be able to set a clear and accurate title.

(2) The Initiative contains multiple subjects in violation of the single subject rule, as it can be read (a) to require recording of evidence prior to commencement of foreclosure proceedings; and (b) to change existing law with respect to type of evidence which can be used to commence foreclosure proceedings.

(3) The title set by the Title Board does not reflect the true intent and meaning of the Initiative as it omits certain key features of the Initiative, such as the type of evidence necessary to be able to foreclose on real property.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that this Court determine that:

1. The Title Board erred in setting title to the Initiative when it did not comprehend the single subject of the Initiative, instead the Tile Board should have returned the Initiative to the Proponents;

2. The Initiative contains multiple subjects in violation of the single subject rule;

3. The Initiative's title is misleading as it omits key features of the Initiative; and

4. Therefore, this Court should remand the Initiative to the Title Board with instructions to return the Initiative to the Proponents; or, in the alternative, redraft the Initiative's title to accurately reflect its key features.

DATED: May 1, 2014

s/ *Hermine Kallman*

Thomas M. Rogers III  
Hermine Kallman

*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2014, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 NO. 126 (“FORECLOSURE DUE PROCESS”)** was served via U.S. mail on the following:

Lisa Brumfiel  
1499 S. Jasper Street  
Aurora, CO 80017

Peter Coulter  
151 Summer Street #654  
Morrison, CO 80465

*Proponents*

John W. Suthers, Colorado Attorney General  
Office of the Colorado Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

*Attorney for the Title Board*

s/ *Jonelle S. Martinez*

Jonelle S. Martinez



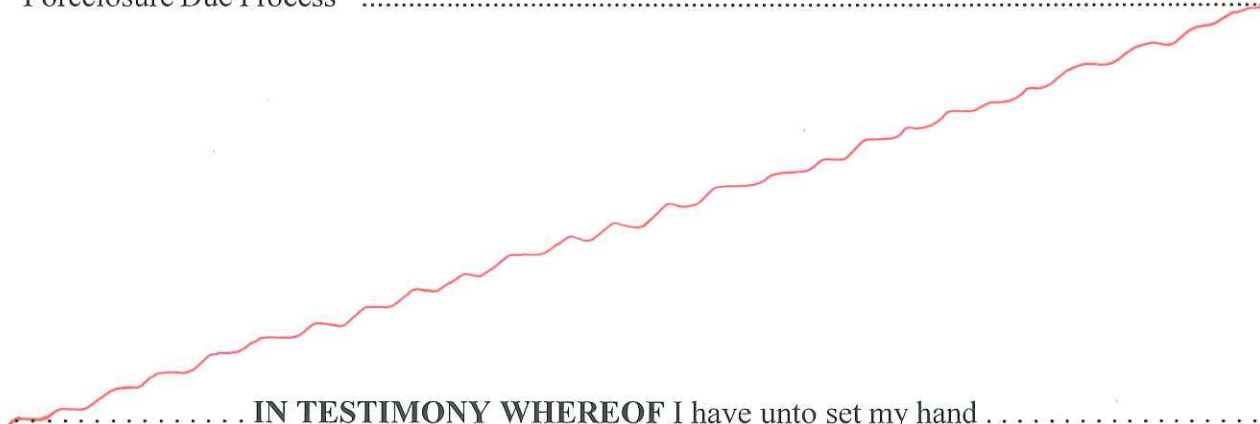
# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

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

the attached are true and exact copies of the original text, amended text, final text, motions for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #126 'Foreclosure Due Process'".....



..... IN TESTIMONY WHEREOF I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 28<sup>th</sup> day of April, 2014.



A blue ink signature of Scott Gessler, written in a cursive style.

SECRETARY OF STATE

**Ballot Title Setting Board**

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

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.

RECEIVED

APR 23 2014

Colorado Secretary of State

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.

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MOTION FOR REHEARING

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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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Thomas M. Rogers III  
Hermine Kallman  
LEWIS ROCA ROTHGERBER LLP  
1200 Seventeenth St., Suite 3000  
Denver, CO 80202  
Phone: (303) 623-9000  
Fax: (303) 623-9222  
Email: [trogers@lrrlaw.com](mailto:trogers@lrrlaw.com)  
[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  
1499 S. Jasper Street  
Aurora, CO 80017  
Phone: 303.720.2730  
Email: [indoorad@yahoo.com](mailto:indoorad@yahoo.com)

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

*Proponents*

*st. Hernie Kalle*

**Ballot Title Setting Board**

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

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.*

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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.

Foreclosure Due Process Initiative 2014

Proponent representatives:

Lisa Brumfiel  
1499 S. Jasper St.  
Aurora, CO 80017  
(303)720-2730  
indoorad@yahoo.com

Peter Coulter  
151 Summer Street #654  
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(888)698-2967  
ColoradoJusticeProject@gmail.com

2013-2014 #126

Foreclosure Process  
FINAL text

RECEIVED

APR 04 2014

Colorado Secretary of State

S.WARD 2:50P.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.

FORCLOSURE Foreclosure Due Process Initiative 2014

Proponent representatives:

Lisa Brumfiel  
1499 S. Jasper St.  
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(303)720-2730  
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ColoradoJusticeProject@gmail.com

2013-2014 #126  
Foreclosure Process  
AMENDED text

RECEIVED

APR 04 2014

Colorado Secretary of State

S.WARD 2:50 P.M.

**TEXT OF THE MEASURE**

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

COMPETENT EVIDENCE INCLUDES:

- (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.

~~SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS.~~ **(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.

~~EFFECTIVE DATE.~~ **(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.

FORCLOSURE DUE PROCESS INITIATIVE 2014

Proponent representatives:

Lisa Brumfiel  
1499 S. Jasper St.  
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ColoradoJusticeProject@gmail.com

2013-2014 #126

Foreclosure Process  
ORIGINAL text

RECEIVED

APR 04 2014

Colorado Secretary of State

SWARD 2:50p.m.

TEXT OF THE MEASURE

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. FORCLOSURE DUE PROCESS. NO PERSON SHALL BE DEPRIVED OF REAL PROPERTY THROUGH A FORECLOSURE UNLESS THE PARTY CLAIMING THE RIGHT TO FORECLOSE IN THE FORECLOSURE PROCEEDING FILES COMPETENT EVIDENCE OF IT'S RIGHT TO ENFORCE A VALID SECURITY INTEREST, RECORDED BEFORE THE FORECLOSURE IS COMMENCED WITH THE RECORDER OF DEEDS, CREATED BY SECTION 8 OF ARTICLE 14 OF THIS CONSTITUTION, IN THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED. COMPETENT EVIDENCE INCLUDES:

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

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.

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.