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Colorado Secretary of State

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BEFORE COLORADO STATE TITLE SETTING BOARD

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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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:

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s/ Herminie Kall