

<p><b>SUPREME COURT, STATE OF COLORADO</b>  2 East 14<sup>th</sup> Avenue  Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to C.R.S. § 1-40-102(2)  Appeal from the Ballot Title Board</p>	<p>DATE FILED  April 22, 2026 8:53 PM</p>
<p>In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #241</p> <p><b>ROBERT BALINK,</b>  Petitioner,</p> <p>v.</p> <p><b>TANYA NATHAN and LINDSEY RASMUSSEN,</b></p> <p>and</p> <p><b>COLORADO BALLOT TITLE SETTING BOARD:</b> Michael Dohr, Theresa Conley, and Kurt Morrison  <b>Respondents.</b></p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>PETITIONER'S OPENING BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

**X** It contains 3,670 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

**The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).**

**X** For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/Scott E. Gessler  
Scott E. Gessler

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## I. ISSUES PRESENTED FOR REVIEW

A. Proposed Ballot Initiative 2005-2006 #241 removes authority for Colorado’s congressional Independent Redistricting Commission from the Colorado Constitution and places it in state statute. But #241 also mandates that the initiative will only become effective if another initiative (Proposed Ballot Initiative 2005-2006 #242) also passes by popular vote. Does this modification of the Colorado Constitution—which states that a measure will “become the law or a part of the constitution, when approved by a majority of the votes cast thereon, *and not otherwise*”<sup>1</sup>—constitute a separate subject?

B. The Title Board properly held that Proposed Ballot Initiative 2005-2006 #239 contained two separate subjects: moving Colorado’s congressional Independent Redistricting Commission from the Colorado Constitution to state statute, and creating a new congressional map. The same proponents split these two separate subjects into #241 (moving the commission) and Proposed Ballot Initiative 2005-2006 #242 (a new congressional map). But to become effective, each initiative requires passage of the other initiative. By requiring voters to simultaneously approve #242, does #241 combine two separate subjects, instead of standing on its own merits?

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<sup>1</sup> Colo. Const. art. V, § 1(4) (emphasis supplied).

C. The proposed initiative removes the constitutional requirement that the Colorado Supreme Court review any maps developed by the Independent Redistricting Commission and instead places that initial review with a district court. But the approved ballot title and submission clause do not inform voters of this change. Is the ballot title incomplete because it does not indicate this major change?

## II. NATURE OF THE CASE

This case is an appeal of the Title Board’s recent decision to set a title and submission clause for Proposed Ballot Initiative 2025-2026 #241. Petitioner Balink appeals the Title Board’s jurisdiction, arguing that the proposed initiative violates Colorado’s single subject requirement. He also appeals the title and submission clause, because they are incomplete and misleading.

Proponents Nathan and Rasmussen (the “Proponents”) submitted Proposed Initiative #241 to the General Assembly’s Legislative Council Staff and Office of Legislative Legal Services (“OLLS”) General Assembly on February 17, 2026.<sup>2</sup> The

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<sup>2</sup> Proposed Initiative 2025-2026 #241, initial draft. Available at [https://leg.colorado.gov/initiative\\_files/3243/download](https://leg.colorado.gov/initiative_files/3243/download). Last accessed April 20, 2026.

Legislative Council Staff and OLLS held a review and comment session and issued its' Memorandum on February 28, 2026.<sup>3</sup>

On March 6, 2026, the Proponents submitted the measure to the Title Board, and on March 18, 2026, the Title Board, by a 3-0 vote, found that the measure contained a single subject and proceeded to set a title and submission clause.

Petitioner Balink filed a *Motion for Rehearing*, challenging the Board's single subject determination, the Board's finding that the measure does not add to the Colorado Constitution, and the accuracy of the ballot title and submission clause.

The Title Board reconsidered the measure on April 1, 2026. The Board denied the *Motion for Rehearing* by a 2-1 vote, finding that the initiative contained a single subject. It also found that the proposed initiative only repeals, in whole or in part, a provision of the state constitution and therefore does not require a 55% majority for passage.

Balink timely appealed on April 7, 2026.

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<sup>3</sup> Memorandum, Legislative Council Staff and Office of Legislative Legal Services, February 28, 2026, [https://leg.colorado.gov/initiative\\_files/3283/download](https://leg.colorado.gov/initiative_files/3283/download) (last accessed April 20, 2026). *See also* <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2025-2026/241Original.pdf> (last accessed on April 20, 2026).

### III. SUMMARY OF ARGUMENT

The measure contains two violations of the single subject rule, both stemming from the effective clause provision within the measure. The measure essentially removes the Independent Congressional Redistricting Commission from the Colorado Constitution, and creates a new commission in statute. But the measure also states that it will only become effective upon the simultaneous passage of a separate initiative, which contains a new congressional map. This new requirement for passage creates two single subject violations. First, it modifies Colo. Const. art. V, § 1(4), which states that an initiative takes law upon majority vote “and not otherwise.” The new requirement governs the manner in which voters may approve of the initiative, which is a separate subject from the redistricting commission.

Second, the effective provision creates a separate subject, by connecting the measure to Proposed Ballot Initiative 2005-2006 #242. Instead of measure #241 standing on its own merits, the measure is instead presented to voters as a package deal, whereby both must be approved by voters, or else neither initiative becomes effective. Thus, the new requirement for passage binds the two subjects together, both legally and politically.

The measure also removes original jurisdiction from the Supreme Court to review maps created by the commission, and instead places initial review before the

district court. This is a major change, but the ballot title and submission clause does not mention it. This major omission makes the title and submission clause incomplete. Finally, the measure states that the new redistricting commission is “identical” to the previous commission. It is not, in large part because of the new appellate procedures. For this reason, the ballot title and submission clause is misleading.

#### **IV. STANDARD OF REVIEW AND PRESERVATION OF ISSUES**

In reviewing Title Board action, this Court “draw[s]” all legitimate presumptions in favor of the propriety of the Title Board’s decision and will only overturn the Board’s decision in a clear case.<sup>4</sup> At the same time, this Court’s “deference . . . is not absolute; [it has] an obligation to examine the initiative’s wording to determine whether it comports with the constitutional requirements.”<sup>5</sup> “In conducting this limited inquiry, [this Court] employ[s] the general rules of statutory construction and give words and phrases their plain and ordinary meaning.”<sup>6</sup>

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<sup>4</sup> *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 2017 CO 57, 20.

<sup>5</sup> *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, ¶ 9 (internal quotations and citations omitted).

<sup>6</sup> *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 11.

The issues in this appeal were set forth and preserved in Petitioner Balink's *Motion for Rehearing*.

## V. ARGUMENT

### A. This important issue should be resolved through written court opinion.

This Court resolves the large majority of appeals of Title Board action through summary affirmation. The Petitioner respectfully urges this Court, however, to carefully review this matter and issue a full analysis of its reasoning, for the following reasons.

*First*, the Title Board itself seeks guidance. At the conclusion of the hearing for the motion for rehearing on measure #241, the president of the Title Board stated “this would be an interesting one if the supreme court did comment on this, because I think it is [a] novel issue[.]”<sup>7</sup>

*Second*, this Court's guidance is sorely needed, because the Title Board has been divided over the single-subject objections raised by the Petitioner. The Board found that measures #241 (and #242 which contained the same contingent passage requirement) contained a single-subject, by a 2-1 vote. But two weeks later it found

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<sup>7</sup> Colorado Title Board hearing, April 1, 2026, at 5:19:38, available at [https://csos.granicus.com/player/clip/554?view\\_id=1&redirect=true](https://csos.granicus.com/player/clip/554?view_id=1&redirect=true) (last accessed April 22, 2026).

that a nearly identical measure (Proposed Ballot Initiative 2005-2005 #325), which also contained a contingent effective date paired with another measure, did *not* contain a single subject, again by a 2-1 vote. In other words, a split Board has reversed itself on the identical issue. Not only does this inconsistent treatment of the exact same issue show that this Court should provide guidance to the Title Board, but the Title Board's actions also create a serious equal protection violation.

*Third*, if successful here, one can expect future proponents to employ the same tactic of pairing two separate ballot initiatives by making approval of one initiative contingent upon approval of a different initiative. Here, measures #241 and #242 together combine the two subjects that appeared in #239 (which was rejected by the Board). Now and in the future proponents will be log roll initiatives that would not otherwise violate the single subject requirement, by making approval of seemingly separate measures contingent upon one another.

In short, measure #241, through its contingent approval process, creates a new procedure that allows proponents to connect disparate measures, by modifying Colorado's initiative approval methods. This approach changes the constitutional approval framework and creates a pathway for proponents to submit multiple, connected initiatives to voters, effectively defeating Colorado's single-subject requirement.

**B. The measure improperly combines two separate matters; a new Independent Redistricting Commission and an additional requirement for passage of the initiative.**

Under well-trod standards, proponents may not combine “subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests.”<sup>8</sup> Most importantly, this requirement “is intended to ensure that each proposal depends upon its own merits for passage.”<sup>9</sup> Thus, the Court must ask “whether there is a danger of logrolling: Have measures been combined to secure the enactment of one that could not be carried out on its own.”<sup>10</sup> “Logrolling” is the “practice of combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—[in order to] lead to the enactment of measures that would fail on their own merits.”<sup>11</sup>

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<sup>8</sup> *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13.

<sup>9</sup> *Id.*

<sup>10</sup> *Matter of Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 15.

<sup>11</sup> *Matter of Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 7.

Proposed initiative #242 contains two distinct and unrelated subjects. First, it eliminates the constitutionally mandated redistricting commission and replaces it with a new, statutorily authorized commission. This is a separate subject, and much of the proposed measure is devoted to making this change.

But this measure contains a second, unconnected subject. It modifies the procedures by which an initiative must be approved. Here, the measure contains a provision that requires (1) majority approval *and* (2) approval of a second initiative, before it becomes law.

Under the Colorado Constitution,

All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and *all* such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, *and not otherwise*.<sup>12</sup> Accordingly, the Colorado Constitution unambiguously sets forth one, and

only one, requirements for passage of an initiative. Namely, a majority vote.

Importantly, the Colorado Constitution expressly states that a majority vote is the *only* requirement. This sole criterion applies to all initiatives and referenda.

But measure #241 modifies this single requirement. Specifically, it amends the Colorado Constitution by adding a second requirement for passage. The measure states:

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<sup>12</sup> Colo. Const. art. V, § 1(4) (emphasis supplied).

## **SECTION 18. Effective Date.**

*This measure takes effect only if, at the November 2026 statewide election, a ballot issue amending section 2-1-105, Colorado Revised Statutes, to create temporary new congressional districts to be used in the 2028 and 2030 election cycles is approved by the people.*

(emphasis supplied). Thus, even if a majority of voters approve the initiative, it will not go into effect unless another, separate condition is met; voters must approve a separate initiative.

In determining the meaning of an initiative, Courts “employ the usual rules of statutory construction.”<sup>13</sup> Here, the plain language makes clear that the measure changes the rules to enact an initiative. Couched within the “Effective Date” section, the measure states that it will take effect “only if” another measure also receives approval. This is new, additional mandate modifies the existing constitutional language in Colo. Const. art. V § 1(4). Legally, this new requirement is no different than a statement that the initiative will only become law if Congress takes some action, or if 50% of voters from each congressional district must approve of the initiative, or if there is a new constitutional amendment. In all cases, the language

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<sup>13</sup> *Matter of Title, Ballot Title, & Submission Clause, Summary for 1997-98 No. 30, 959 P.2d 822, 825 (Colo. 1998).*

amends the constitutional majority vote requirement by adding a second legal requirement.

This Court has recognized that “when provisions seeking to accomplish one purpose are coupled with provisions proposing a change in governmental powers that bear no necessary or proper connection to the central purpose of the initiative, the initiative violates the single-subject rule.”<sup>14</sup> Here, the initiative changes the manner by which the people of the State of Colorado may exercise their initiative powers. Rather than modifying the constitution or creating new law by majority vote, Colorado voters can only pass this initiative by majority vote *and* a separate, additional majority vote approving a different initiative.

This is a meaningful change to the Colorado Constitution, and it constitutes a subject separate and apart from removing Colorado’s Independent Redistricting Commission from the constitution and creating a new commission in statute. Furthermore, the two subjects are not connected. One involves the people’s ability to exercise their power of initiative—in this case the manner by which voters may approve of an initiative. The other involves re-creating a redistricting commission in statute. The change to the redistricting process does not require a change to the

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<sup>14</sup> *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1077 (Colo. 2010).

procedure by which voters can enact an initiative. One establishes an agency responsible for redistricting, while the other governs the requirements for passage of an initiative. The two are plainly separate.

Accordingly, the measure “seek[s] to accomplish one purpose,” but is “coupled with [a] provision[] proposing a change in governmental powers that bear[s] no necessary or proper connection to the central purpose of the initiative.” Therefore, “the initiative violates the single-subject rule.”<sup>15</sup>

**C. The measure improperly combines separate matters; a new Independent Redistricting Commission and a new congressional map.**

This Court has repeatedly expressed concerns that proponents will connect disparate subjects to use existing voter support of one subject as a way to enlist political support for a separate matter. The single subject requirement combats this type of political manipulation. It “prevents the proponents from combining multiple subjects to attract a ‘yes’ vote from voters who might vote ‘no’ on one or more of the subjects if they were proposed separately.”<sup>16</sup> Thus, the requirement “is intended to ensure that each proposal depends upon its own merits for passage” and forbids the

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<sup>15</sup> *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1077 (Colo. 2010).

<sup>16</sup> *Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 14.

“practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.”<sup>17</sup> Likewise, this Court has rejected efforts to combine “measures that would fail on their individual merits. By combining unconnected subjects, proponents may be able to shore up support from groups with different, or even conflicting, interests. The single subject requirement, however, prevents such a result by ensuring that each initiative must pass on its own merits.”<sup>18</sup> Likewise, “the single subject requirement precludes the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions.”<sup>19</sup>

Proponents may not combine multiple subjects “for the purpose of . . . securing the enactment of measures that could not be carried upon their merits.”<sup>20</sup>

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<sup>17</sup> *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13 (internal quotes and citations omitted).

<sup>18</sup> *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 13.

<sup>19</sup> *Matter of Title, Ballot Title, & Submission Clause, Summary for 1997-98 No. 30*, 959 P.2d 822, 825 (Colo. 1998).

<sup>20</sup> *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1077 (Colo. 2010).

The Court has frequently expressed concerns about the political tactic of “log rolling;” “the single subject requirement for ballot initiatives prevents proponents from engaging in ‘log rolling’ tactics, that is, combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests.”<sup>21</sup> In short, “[t]he requirement that an initiative be limited to a single subject is intended to ensure that each proposal depends upon its own merits for passage.”<sup>22</sup>

By making passage of measure #241 contingent upon measure #242 (and vice versa), the proponents explicitly engage in log rolling by seeking to use one initiative as a tool to garner support for another. The contingency approval clause in measure #241 contains a separate subject because it combines two subjects, in direct contravention of the single subject requirement.

The Title Board has properly determined that measures #241 and 242 cover separate subjects. Indeed, Proposed Ballot Initiative 2005-2006 #239 combined measures #241 and #242 into a single initiative, and the Title Board rejected that

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<sup>21</sup> *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13.

<sup>22</sup> *Matter of Title, Ballot Title, Submission Clause, & Summary Adopted Apr. 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rts. in Waters II*, 898 P.2d 1076, 1078 (Colo. 1995), *as modified on denial of reb’g* (July 31, 1995).

measure as violating the single subject clause. But here, the same proponents have split the two subjects in measure #239 into measures ##241 and 242. Nonetheless, the effective date clause binds the two initiatives together:

This measure takes effect only if, at the November 2026 statewide election, a ballot issue amending section 2-1-105, Colorado Revised Statutes, to create temporary new congressional districts to be used in the 2028 and 2030 election cycles is approved by the people.

Any voter who supports moving the redistricting commission from the constitution to statute, but does not like the new congressional map contained in another initiative, faces a difficult choice. If she votes in favor of this proposed initiative, her vote will not matter if the other initiative fails. Therefore, she faces strong pressure to vote for a new congressional map, even if she opposes that map. By tying measure #241 to a proposed map in a separate initiative, the measure explicitly engages in a form of logrolling, whereby one must vote for a separate initiative in order to gain passage of this initiative.

By binding the two initiatives together legally and politically, the effective date clause creates a separate subject in measure #241, and this Court should reject this surreptitious combination of two separate subjects. No longer does the redistricting commission change in measure #241 stand on its own merits, because the measure itself requires voters to approve a package of different subjects. Measure #241 is

connected to #242 as a complete package, and the two must be enacted together, or not at all.

**D. The title fails to identify a major provision of the initiative; the limitation on the Supreme Court’s original jurisdiction.**

The ballot title and submission clause for measure #241 is as follows:

Shall there be an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes replacing the constitutional independent congressional redistricting commission with an identical statutory independent congressional redistricting commission if a ballot measure creating a new temporary congressional district map to be used in 2028 and 2030 congressional elections is approved by a vote of the people?

The title fails to note that measure #241 removes direct appellate review to the Colorado Supreme Court and replaces it with review by a district court. This is a big deal. One reason for creating the constitutional redistricting commission was to end lengthy court battles through direct appeal to the Colorado Supreme Court. To that end, the initiative creating the new commission created original jurisdiction for this Court to directly review congressional maps. Measure #241 initiative reverses that, removing original jurisdiction for appeals of congressional redistricting maps and opening the door to district court factfinding and two layers of appeals. The title improperly fails to notify voters of this change.

Legally a change of this constitutional magnitude is an important matter. This Court held that a “proposal to remove [] constitutional authority for congressional redistricting

from the General Assembly and transfer it to the newly created Redistricting Commission” was a distinct subject. Importantly, the Court did not limit its analysis to merely a transfer of authority from the General Assembly to a commission. Rather, it focused on the upending of the constitutional framework; shifting authority from the legislative branch to a new, constitutional body, “affect[ed] separate redistricting processes *derived from different sources of constitutional authority*.”<sup>23</sup> In short, the proposed initiative effectuated a “fundamental reallocation of the power to draw the districts for Colorado’s seats in the U.S. Congress.”<sup>24</sup>

Here, the initiative also engages in an important reallocation of power, in this case affecting judicial review. While the objectors recognize that the change in this Court’s jurisdiction does not constitute a separate subject, that change in judicial review is still important, and it forms a critical part of the initiative. Therefore, this major change in judicial review should appear in the ballot title.

**E. The new statutory commission is not identical to the constitutional commission.**

The Title states that the new commission is identical to the prior commission. It is not. As noted above, the new commission has new appellate procedures, it is an entirely new commission, placed in statute, no longer deriving its authority from the Colorado

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<sup>23</sup> *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 30 (emphasis supplied).

<sup>24</sup> *Id.*, ¶ 19.

Constitution. The word “identical” misleadingly indicates that everything involving the redistricting process will be the same, and therefore that word should be removed.

## **VI. CONCLUSION**

This Court should reverse the Title Board’s finding that Proposed Ballot Initiative 2005-2006 #241 is limited to a single subject and find that the Title Board did not have jurisdiction to set a title. Alternatively, it should remand the measure the Title Board to modify the ballot title and submission clause.

Respectfully submitted this 22<sup>nd</sup> day of April 2026,

GESSLER BLUE LLC

*s/ Scott E. Gessler*  
Scott E. Gessler

## CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2026, I electronically filed the foregoing with the Clerk of the Court using the CCES system, which notified all parties and their counsel of record.

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