COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	DATE FILED April 22, 2026 9:24 PM
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #241 ("Congressional Redistricting") **Petitioner:** Robert Balink **v.** **Title Board**: Theresa Conley, Michael Dohr, and Kurt Morrison. And **Initiative #241 Proponents:** Tanya Nathan and Lindsey Rasmussen	▲ **COURT USE ONLY** ▲ Case No. 2026SA122
PHILIP J. WEISER, Attorney General PETER G. BAUMANN,* #51620 Senior Assistant Attorney General 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6152 E-Mail: Peter.Baumann@coag.gov *Counsel of Record *Attorney for the Title Board*	

THE TITLE BOARD'S OPENING BRIEF

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, I certify that:

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

It contains 2,527 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).

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/ Peter G. Baumann
PETER G. BAUMANN,
Senior Assistant Attorney General

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

CONSTITUTION

OTHER AUTHORITIES

ISSUES ON REVIEW

I. Whether the Title Board correctly determined that 2025-2026 #241 does not contain multiple subjects.

II. Whether the Title Board set a clear title.

STATEMENT OF THE CASE

Under existing law, congressional redistricting in Colorado occurs every 10 years, after the federal census is conducted. *In re Colo. Indep. Congressional Redistricting Comm'n*, 2021 CO 73, ¶¶ 3-10. In 2018, Colorado voters enacted Amendment Y, codified as article V, sections 44-44.6 of the Colorado Constitution, which established an independent redistricting commission to draw maps following the census. *Id.* ¶ 3. Proposed initiative 2025-2026 #241 ("#241") is one of several measures that have been submitted to the Title Board this year to adjust the way Colorado enacts congressional district maps, when Colorado enacts those maps, or even the shape and structure of the maps themselves.

Specifically, #241 would repeal Amendment Y and move the language that Amendment placed in the constitution and re-position it in statute. Record at 16-31. In effect, this would result in transforming

the independent congressional redistricting commission from a creature of the constitution to a creature of statute. It does not adjust the language of Amendment Y in any way. It only deletes that language from the constitution and recreates it in statute. Finally, the measure only takes effect "if, at the November 2026 statewide election, a ballot issue . . . to create temporary new congressional districts to be used in the 2028 and 2030 election cycles is approved by the people." *Id.* at 31.

At its March 18, 2026, meeting, the Title Board concluded that the measure contained a single subject and set a title. *Hearing Before Title Board on Proposed Initiative 2025-2026 #241* (Mar. 18, 2026), at 6:27:54-6:28:33, https://tinyurl.com/589wfdn8.

Petitioner Robert Balink, through counsel, filed a motion for rehearing. Record at 2-7. Balink argued that (1) #241 did not contain a "single subject" because moving the commission from the constitution to statute was one subject and "[c]reating a new requirement for passage of an initiative," *id.* at 5, is a second subject; and (2) the title set by the Board is "misleading and incomplete," *id.*

The Board considered the motion at its April 1, 2026 meeting. *Rehearing Before Title Board on Proposed Initiative 2025-2026 #241* (Apr. 1, 2026), at 4:36:40-5:20:42, https://tinyurl.com/y9f399by. The Board denied the Motion for rehearing by a vote of two-to-one. Record at 15. Board member Michael Dohr held that connecting the passage of #241 to the passage of another measure constituted a second subject. *Id.* at 4:59:23-5:02:46.[1]

In full, the title fixed by the Board for #241 reads:

> 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.

Record at 15.

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[1] Although the two measures do not reference each other, discussion before the Board acknowledged that #241's "trigger" initiative was proposed initiative 2025-2026 #242, which is currently pending before this Court in 2026SA123. However, proposed initiative #242 is not the only initiative that was presented to the Title Board this cycle that would "create temporary congressional districts to be used in the 2028 and 2030 election cycles." Record at 31. *See also* 2026SA126 (addressing proposed initiative #240).

Before this Court, Petitioner Balink renews both his single subject and clear title challenges. Pet. for Review at 3-4 (April 7, 2026).

SUMMARY OF ARGUMENT

The Title Board set an appropriate title for #241. The title contains a single subject, the subject is stated clearly and not misleading, and neither the title nor the submission clause contains any impermissible catch phrase. This Court should deny the petition.

ARGUMENT

I. The Title Board had jurisdiction to set a title.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). The Court will "overturn the Board's finding that an initiative contains a single subject only in a clear case." *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). "In reviewing a challenge to the Title Board's single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the

Title Board's actions." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8.

In doing so, the Court does "not address the merits of the proposed initiative" or "suggest how it might be applied if enacted." *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court "determine the initiative's efficacy, construction, or future application." *In re 2013-2014 #76*, ¶ 8. Instead, the Court "must examine the initiative's wording to determine whether it comports with the constitutional single-subject requirement." *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. To satisfy the single-subject requirement, the "subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous." *In re 2013-2014 #76*, ¶ 8.

The Title Board agrees that Petitioner preserved his single-subject objection in his motions for rehearing.

B. The measure has a single subject

The single subject of #241 is to move the independent congressional redistricting commission from the state constitution and place it, instead, in statute. Under current law, congressional maps are

drawn by the Colorado Independent Redistricting Commission every ten years, following the decennial census. *See* Colo. Const. art. V §§ 44-44.6. That process is entrenched in the Colorado Constitution, put there by voters just under a decade ago in Amendment Y. *Id.*

Proposed Initiative #241 takes the entirety of Amendment Y, deletes it from the state constitution, and moves it into statute. One effect of that choice is that legislators may decide to alter that process in the future. Whether that choice is wise is a decision for the voters. *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 9 ("In our limited review of the Title Board's actions, we do not address the merits of the proposed initiatives."). It is undeniable, though, that it is a single subject.

Petitioner alleges that the measure violates the single subject requirement because it "amends the constitutional standards that govern how the ballot measure must be approved." Pet. for Review at 3. Not so. Approval of the measure remains the same as for any other proposed initiative: it is approved "by a majority of the votes cast thereon[.]" Colo. Const. art. V, § 1(4)(a).

Before the Board, Petitioner argued that subsection 1(4) of article V of the Colorado Constitution prohibits voters from placing conditions on whether a measure that has been *approved* by voters can become law. Record at 4. That subsection reads in relevant part: ". . . 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." Colo. Const. art. V, § 1(4)(a). The Board understands Petitioner's argument to be that "and not otherwise" in this sentence means that every measure which receives a majority of votes must become the law.

But that is not what the clause says. "In interpreting a constitutional provision . . . [the Court's] starting post . . . is the ordinary and popular meaning of the plain language of the constitutional provision." *Markwell v. Cooke*, 2021 CO 17, ¶ 33 (citations and quotations omitted). When it does so, it must also read the law's "words and phrases in context and in accordance with the rules of grammar and common usage." *In re People ex rel. S.G.H.*, 2025 CO 59, ¶ 24.

Here, "and not otherwise" refers to the conditions under which a proposed initiative can become law. It can only become law if it is "approved by a majority of the votes cast thereon." Colo. Const. art. V, § 1(4)(a). In other words, it is necessary for a majority of voters to have supported the measure. But it does not mean that bare approval by a majority of voters is *sufficient*. "And not otherwise" modifies only the preceding clause ("when approved by a majority of the votes cast thereon,"). There is no possibility for a measure to become law if it does not receive a majority of the votes cast.

The constitution itself makes clear that a majority of votes is necessary, but not sufficient, for a proposal to become law. In the very next subsection, the constitution states that "an initiated constitutional amendment shall not become part of this constitution unless the amendment is approved by at least fifty-five percent of the votes cast thereon." Colo. Const. art. V, § 1(4)(b). This limitation is incompatible with Petitioner's interpretation of subsection 1(4)(a), which would hold that a measure is automatically law once it is approved by a majority of voters. The only way to harmonize these two provisions is to recognize

that subsection 1(4)(a) provides a condition that is necessary, but not sufficient, for enactment. *See Zaner v. City of Brighton*, 917 P.2d 280, 286 (Colo. 1996) ("[I]n construing all constitutional provisions, a court should endeavor to adopt a construction that harmonizes those provisions with other constitutional provisions").

Against this backdrop, proposed initiative #241's "trigger" provision is not a second subject. Rather, it is an "[i]mplementing provision[] . . . directly tied to the initiative's central focus." *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). Such provisions are not separate subjects. *Id.*

Nor, as Petitioner suggested before the Board, is this provision likely to result in "logrolling." The anti-logrolling concern exists to prevent "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." *In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 7 (quotations omitted). Before the Board, Petitioner

argued this concern was implicated because a voter who "supports the removal of the constitutional redistricting commission but does not like the new congressional map in another initiative, faces a difficult choice." Record at 5.

But Petitioner points to no authority, and undersigned counsel is aware of none, holding that the anti-logrolling concern applies not only within a measure but across multiple measures. The relevant question, under Petitioner's framing of the multiple subjects in #241, is whether voters who would normally support moving the redistricting process from the constitution to statute are likely to oppose the measure because of a provision adding a condition to whether that enactment takes effect, or vice-versa. Petitioner offers no reason why that would be the case.

If anything, the two provisions "point in the same direction." *In re 2021-2022 #16*, ¶ 33 (observing that in such cases, "[t]he risk of logrolling is low"). A voter who is interested in moving the redistricting process from the constitution to statute presumably is in favor of a more flexible approach to redistricting. And such flexibility is reflected, in one

way, by the adoption of a new map for the 2028 and 2030 election cycles.

II. The title set by the Board satisfies the clear title standard.

A. Standard of review and preservation.

When considering a challenge to a title, the Court does not "consider whether the Title Board set the best possible title." *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re 2013-2014 #90*, ¶ 24. The Board "is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause." *Id.* The Court will reverse the title set by the Board "only if a title is insufficient, unfair, or misleading." *Id.* ¶ 8.

The Board agrees that Petitioners preserved their challenge to the clear title set by the Board.

B. The proposed initiative's title is neither incomplete nor misleading.

Petitioner Balink argues that #241's title is "incomplete and misleading" because it (1) "fails to identify a new legal process for

redistricting controversies," and (2) "misleadingly states that the statutory commission is identical to the former constitutionally-authorized commission." Pet. for Review at 4.

As to the latter, Petitioner objects to the Title Board's decision to describe the measure as "replacing the constitutional independent congressional redistricting commission with an *identical* statutory independent congressional redistricting commission." Record at 15 (emphasis added); *Id.* at 6. Specifically, Petitioner argues that the new commission is not "identical" to the existing commission in two ways. First because it establishes "new appellate procedures," and second because the commission is now a creature of statute rather than the constitution. *Id.* at 6.

With one exception, discussed below, #241 simply takes the language establishing the redistricting commission from the constitution and moves it into the Colorado Revised Statutes. The Title Board's decision to describe that process as creating an "identical" commission is well within its considerable discretion. Petitioner's concern that doing so obscures the effects of moving the commission

ignores that the title expressly informs voters that the "constitutional" commission is being "replac[ed]" by a "statutory" commission. Record at 15; *see also In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 8 (holding that in assessing clear title, the Court reviews the Titles "as a whole").

The single difference between the constitutional commission and the statutory commission established by #241 does not affect the appropriateness of the Board's decision. Under Amendment Y, the redistricting commission's maps are subject to review in this Court. Colo. Const. art. V, § 48.3. Proposed initiative #241 provides for such review in Denver District Court, and expressly contemplates an appeals process. Record at 30-31. The reason for this change is that this Court's original jurisdiction is established by the state constitution and cannot be expanded by statute. Colo. Const. art. VI, § 3; *see also People v. Carter*, 527 P.2d 875, 877 (Colo. 1974) (holding that "the original jurisdiction of this Court cannot be expanded by the legislature beyond the limits expressly set forth in the constitution").

Contrary to Petitioner's argument, this minor adjustment in judicial review is not so substantial as to make the word "identical" misleading in the title. After all, the measure still provides for judicial review, up to and including in this Court.

Second, the Board's decision not to include the venue for judicial review in the title does not render the title "misleading." "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re 2013-2014 #90*, ¶ 24. The initial venue for judicial review is not a "central feature" of the #241.

CONCLUSION

For these reasons, this Court should affirm the title set by the Title Board on 2025-2026 #241.

Respectfully submitted on this 22nd day of April, 2026.

PHILIP J. WEISER
Attorney General

s/ Peter G. Bauman
PETER G. BAUMANN #51620*
Senior Assistant Attorney General
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, CO 80203
Telephone: (720) 508-6152
Email: peter.baumann@coag.gov;

Attorneys for the Title Board

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record electronically via CCEF this 22nd day of April.

/s/ Peter G. Baumann
Peter G. Baumann