

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED April 22, 2026 9:29 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #242 (“Congressional Redistricting”)</p> <p><b>Petitioner:</b> Robert Balink</p> <p>v.</p> <p><b>Title Board:</b> Theresa Conley, Michael Dohr, and Kurt Morrison.</p> <p>And</p> <p><b>Initiative #242 Proponents:</b> Tanya Nathan and Lindsey Rasmussen</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <p>Case No. 2026SA123</p>
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<p style="text-align: center;"><b>THE TITLE BOARD’S OPENING BRIEF</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, 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 2,261 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*

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## TABLE OF CONTENTS

ISSUES ON REVIEW .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	4
I.    The Title Board had jurisdiction to set a title.....	4
A.    Standard of review and preservation.....	4
B.    The measure has a single subject. ....	5
II.   The title set by the Board satisfies the clear title standard. ....	10
A.    Standard of review and preservation.....	10
B.    The proposed initiative’s title is neither incomplete nor misleading. ....	11
CONCLUSION .....	13

## TABLE OF AUTHORITIES

	PAGE(S)
<b>CASES</b>	
<i>In re Colo. Indep. Congressional Redistricting Comm’n</i> , 2021 CO 73.....	1
<i>In re People ex rel. S.G.H.</i> , 2025 CO 59.....	7
<i>In re Title, Ballot Title &amp; Submission Clause for 2007-2008 #62</i> , 184 P.3d 52 (Colo. 2008) .....	12
<i>In re Title, Ballot Title &amp; Submission Clause for 2009-2010 #45</i> , 234 P.3d 642 (Colo. 2010) .....	8, 9
<i>In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #76</i> , 2014 CO 52.....	4, 5
<i>In re Title, Ballot Title, &amp; Submission Clause for 2013-2014 #90</i> , 2014 CO 63.....	10, 11
<i>In re Title, Ballot Title &amp; Submission Clause for 2017-2018 #4</i> , 2017 CO 57.....	9
<i>In re Title, Ballot Title, &amp; Submission Clause for 2019-2020 #3</i> , 2019 CO 57.....	4, 5
<i>In re Title, Ballot Title &amp; Submission Clause for 2019-2020 #3</i> , 2019 CO 107.....	10
<i>In re Title, Ballot Title &amp; Submission Clause for 2019-2020 #315</i> , 2020 CO 61.....	12
<i>In re Title, Ballot Title, &amp; Submission Clause for 2021-2022 #16</i> , 2021 CO 55.....	4, 10
<i>Markwell v. Cooke</i> , 2021 CO 17.....	7
<i>Zaner v. City of Brighton</i> , 917 P.2d 280 (Colo. 1996) .....	8

**CONSTITUTION**

Colo. Const. art. V, § 1..... 4, 6, 7, 8  
Colo. Const. art. V, §§ 44-44.6..... 5

**OTHER AUTHORITIES**

*Hearing Before Title Board on Proposed Initiative 2025-2026 #242* (Mar. 18, 2026), <https://tinyurl.com/589wfdn8>..... 2  
*Rehearing Before Title Board on Proposed Initiative 2025-2026 #242* (Apr. 1, 2026), <https://tinyurl.com/y9f399by> ..... 2, 3

## ISSUES ON REVIEW

- I. Whether the Title Board correctly determined that 2025-2026 #242 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 #242 (“#242”) 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, #242 would create a new congressional district map that would be in effect for any congressional election that occurs between when the measure becomes effective and when new maps are

drawn following the 2030 decennial census. Record at 15-48. The measure also includes a provision indicating that it takes effect “only if, at the November 2026 statewide election, a ballot issue repealing [Amendment Y] is approved by the people.” Record at 47.

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 #242* (Mar. 18, 2026), at 6:33:47-6:34:02, <https://tinyurl.com/589wfdn8>.

Petitioner Robert Balink, through counsel, filed a motion for rehearing. Record at 2-6. Balink argued that (1) #242 did not contain a “single subject” because creating a new map was one subject and “creating a new requirement for passage of an initiative,” *id.* at 4, 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 #242* (Apr. 1, 2026), 5:20:43-6:08:24, <https://tinyurl.com/y9f399by> (“Apr. 1 Reh’g”). The Board denied the Motion for rehearing by a vote of two-to-

one. Record at 14. Board member Michael Dohr held that connecting the passage of #242 to the passage of another measure constituted a second subject. Apr. 1 Reh’g at 4:59:23-5:02:46.<sup>1</sup>

In full, the title fixed by the Board for #242 reads:

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

Record at 14.

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 #242. The title contains a single subject, the subject is stated clearly and not

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<sup>1</sup> This discussion occurred during the Board’s consideration of a similar provision in a separate measure. Although the two measures do not reference each other, discussion before the Board acknowledged that #242’s “trigger” initiative was proposed initiative 2025-2026 #241, which is currently pending before this Court in 2026SA122.

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 #242 is the establishment of a new congressional district map that will be used for any congressional election between the effective date of the measure and when new maps are drawn following the decennial census. 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.* If Amendment Y is repealed at the November

2026 general election, #242 would establish a new map to be used until the next map is drawn.

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 3. 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 #242’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 new congressional map but does not like the change to the redistricting process in another initiative faces a difficult choice.” Record at 4.

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 #242, 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 Title, Ballot Title, & Submission*

*Clause for 2013-2014 #90*, 2014 CO 63, ¶ 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 Petitioner preserved his challenge to the clear title set by the Board.

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

Petitioner Balink argues that #242’s title is “incomplete and misleading” because it does not specify that the new map will apply to special elections in addition to regularly scheduled elections. Pet. for Review at 4.

“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. In doing so, it shall describe “the central points of a proposed measure,” but “need not refer to every effect that the measure may have on the current statutory scheme.” *Id.* at ¶ 36. The Board is also prohibited from engaging in speculation about the effects of the measure if

enacted. *See, e.g., In re Title, Ballot Title & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008).

Here, the primary effect of #242 would be to establish new maps for the congressional elections that will happen in 2028 and 2030. To be sure, in the event that a vacancy occurs in any Colorado congressional districts between the measure's effective date and when maps are next drawn, #242's map would govern the special election for that seat. But the Board's decision not to speculate about that possibility in the measure's title is well within its considerable discretion.

Before the Board, Petitioner encouraged the Board to pull language directly from the measure that the map would apply to "every Colorado Congressional election" until the new maps are drawn. Record at 4-5. But the Board correctly determined that such language might obscure the true import of the measure: that the 2028 and 2030 elections would occur on the new map.

This Court will overturn the Board's title only if the titles are "insufficient, unfair, or misleading." *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 6. The Board's

choice to highlight existing elections for which the new map would apply does not qualify under this high standard.

## CONCLUSION

For these reasons, this Court should affirm the title set by the Title Board on 2025-2026 #242.

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

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*s/ Peter G. Bauman*

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**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*

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Peter G. Baumann