

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th 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 May 6, 2026 6:00 PM</p>
<p>In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #241</p> <p>ROBERT BALINK, Petitioner,</p> <p>v.</p> <p>TANYA NATHAN and LINDSEY RASMUSSEN,</p> <p>and</p> <p>COLORADO BALLOT TITLE SETTING BOARD: Michael Dohr, Theresa Conley, and Kurt Morrison Respondents.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Petitioner:</i> Scott E. Gessler (28944) Geoffrey N. Blue (32684) Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050</p>	<p>Case Number: 2026SA122</p>
<p>PETITIONER'S ANSWER BRIEF</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 2,757 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

TABLE OF CONTENTS

Certificate of Compliance.....	ii
Table of Authorities	iv
I. Summary of the Argument.	1
III. Standard of Review and Preservation of Issue.....	1
IV. Argument.	2
A. Forcing voters to approve a package of two separate initiatives creates a separate subject.....	2
1. The additional requirement for approval of a second initiative amends the Colorado constitution.....	2
2. Legislative procedures under Art. V, § 19 have no bearing on the procedures for initiative approval under Art. V, § 1(4).....	5
3. Tying two initiatives together allows the proponents to evade the single subject requirement.....	7
4. New requirements for voter approval are not implementation features of a new congressional redistricting commission.....	9
B. Reallocation of review authority from this Court to District Court constitutes a material and significant change that should be reflected in the ballot title and submission clause.....	11
IV. Conclusion	12
Certificate of Service	14

TABLE OF AUTHORITIES

Cases	Pages
<i>Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)</i> 2022 CO 37	2
<i>In re Title, Ballot Title, Submission Clause for 1997-1998 No. 74</i> 962 P.2d 927 (Colo. 1998)	10
<i>In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 No. 200A</i> 992 P.2d 27 (Colo. 2000)	10, 11
<i>In re Title, Ballot Title, Submission Clause for 2007-2008</i> 184 P.3d 52 (Colo. 2008)	12
<i>Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)</i> 2016 CO 55	2
<i>Matter of Title, Ballot Title & Submission Clause for 2021-2022 #16</i> 2021 CO 55	10
<i>Sodexo Am., LLC v. City of Golden</i> 2017 COA 118	6
<i>Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)</i> 2017 CO 57	1
<i>Tabor Foundation v. Colorado Bridge Enterprise</i> 2014 COA 106	6
<i>Zaner v. City of Brighton</i> 917 P.2d 280 (Colo. 1996)	4
Constitutional Provisions	
Colo. Const. art. V, § 1(1).....	7

Colo. Const. art. V, § 1(4)..... 3, 4

Colo. Const. art. V, § 19 5

Other

Legislative Council of the Colorado General Assembly, *Research Publication*
No. 669-6 (2016)..... 3

I. SUMMARY OF ARGUMENT

Forcing voters to simultaneously approve Initiatives 241 and 242 creates two separate subjects. First, this change amends the constitutional requirement that statutory initiatives must only receive majority vote to become law. The new approval procedure amends Art. V, § 1(4)(a), just as the change in 2016 requiring a 55% majority for certain constitutional amendments amending Art. V, § 1(4). The analogy to the General Assembly’s practice is inapt, because procedures governing legislation passed by the General Assembly have no bearing on the unambiguous constitutional requirement for passage of an initiative. Furthermore, tying together proposed Initiatives 241 and 242 allows the Proponents to evade the single subject requirement, as evidenced by the Title Board’s single subject rejection of proposed Initiative 239—which was merely 241 and 242 combined. And the new voting requirement is not an implementation provision—the new voting requirement governs approval procedures well before the initiative itself becomes effective, and that same voting requirement is not directly tied to the substance of the initiative itself.

II. 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.¹ At the same time, this Court’s

¹ *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 2017 CO 57, 20.

“deference . . . is not absolute; [it has] an obligation to examine the initiative’s wording to determine whether it comports with the constitutional requirements.”² “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.”³

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

III. ARGUMENT

A. Forcing voters to approve a package of two separate initiatives creates a separate subject.

1. The additional requirement for approval of a second initiative amends the Colorado constitution.

The Proponents incorrectly claim that the new requirement (that voters approve two initiatives at the same time) does not conflict with Art. V, § 1(4)’s voter majority requirement. The argument takes two forms.

First, they argue that a 50% requirement is a minimum requirement, and no conflict occurs when initiatives add additional requirements. Neither text nor history supports this contention. Section 1(4)(a) states in relevant part “all such measures

² *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).

³ *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 11.

shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon or, if applicable the number of votes required pursuant to paragraph (b) of this subsection (4), and not otherwise.” Without authority, the respondents argue that the “and not otherwise” language means that a majority is necessary, “but it does not mean that approval by a majority of voters is *sufficient*.”⁴

This is absurd. A majority vote has *always* been sufficient. And a majority vote has *always* been necessary. For decades, Coloradans have passed initiatives through majority vote, only. Prior to 2016, Section 1(4) stated “all such measures shall become the law or part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise.”⁵ The “and not otherwise” language unambiguously created one necessary (and sufficient) requirement – a majority vote. But in 2016, two proponents wanted to change that—they thought that the constitution should contain an extra requirement for initiatives that added new language to the constitution. So, they qualified initiative 71 for the ballot, which “increase[d] the percentage of votes required to adopt changes to the constitution in most situations.”⁶ That same year voters approved Amendment 71, which added Art. V, § 1(4)(b), requiring a 55%

⁴ *The Title Board’s Opening Brief* (Initiative 241), pp. 8-9; *The Title Board’s Opening Brief* (Initiative 142), pp. 7-8.

⁵ Colo. Const. art. V § 1(4) (2016).

⁶ Legislative Council of the Colorado General Assembly, *Research Publication No. 669-6* (Bluebook), p. 31 (2016).

majority for additions to the constitution. That initiative also renumbered Section 1(4) to become Section 1(4)(a), and it inserted new language in Section 1(4)(a) to harmonize it with the new Section 1(4)(b).⁷ Thus, today all initiatives required either a 50% majority for passage “or, if applicable, the number of votes required pursuant to paragraph (b) of this subsection (4).”⁸

Citing *Zaner v. City of Brighton*,⁹ the Title Board secondarily argues that as a matter of general statutory interpretation, the 55% majority vote requirement (for provisions adding to the constitution) must “harmonized” with the 50% majority vote requirement (for all other provisions) Section 1(4)(a). Under this reasoning, the proposed initiative’s additional requirement of passage of a second initiative can be “harmonized” with the 50% requirement. But this argument ignores the explicit language in Section (1)(4)(a), which expressly carves out an exception for initiatives that seek to amend the constitution. There is no conflict or tension between the general 50% majority requirement, and the 55% majority requirement for additions to the constitution, because the plain language in Section (1)(4)(a) provides an exception to the 50% requirement. Importantly, both the proponents and voters who passed Amendment 71 recognized that the new 55% majority requirement for constitutional

⁷ *Id.* at p. 33 (2016).

⁸ Art. V, § 1(4)(a).

⁹ *Zaner v. City of Brighton*, 917 P.2d 280, 286 (Colo. 1996).

additions directly conflicted with the then-existing 50% majority requirement, and so they added language to Section 1(4)(a) to create an exception. The requirement that voters approve a second initiative likewise conflicts with the Section (1)(4)(a), and therefore it must be viewed as an amendment to that provision. Here, the proponents have sought to bury this new voting requirement in an “Effective Date” section, but the requirement remains – a majority must vote in favor of not one, but two initiatives at the same election.

2. Legislative procedures under Art. V, § 19 have no bearing on the procedures for initiative approval under Art. V, § 1(4).

The Respondents argue that “like the General Assembly with its legislation, the people may determine when and if an initiative becomes effective.”¹⁰ Specifically, they analogize to Art. V, § 19, which states in part “[a]n act of the general assembly shall take effect on the date stated in the act, or if no date is stated in the act, then on its passage.”¹¹ This line of reasoning suffers from multiple flaws.

To be sure, the proposed initiative places the second-initiative requirement in the section labeled “Effective Date.” But adding a new requirement for initiative approval has nothing to do with a “date.” The provision requiring approval of a

¹⁰ *Opening Brief of Respondents Tanya Nathan and Lindsey Rasmussen in Support of Proposed Initiative 2025-2026 #241*, p. 10; *Opening Brief of Respondents Tanya Nathan and Lindsey Rasmussen in Support of Proposed Initiative 2025-2026 #242*, p. 9.

¹¹ Art. V, § 19.

second measure constitutes a new, substantive requirement for passage; it determines *whether* the initiative becomes law or part of the constitution, not what date the initiative goes into effect. The tactical placement of the requirement in the initiative’s “Effective Date” section does not change the nature and function of the new requirement. And courts properly look to the plain meaning of statutory language, not to a label attached to a provision for tactical purposes.¹²

Meanwhile, the provisions under Art. V. § 19, which govern the effective date of legislation passed by the General Assembly are wholly separate and apart the requirements for voter approval of an initiative under Section 1(4). Section 19 governs the date when legislation, passed by the General Assembly, takes effect. But Section 1(4) governs the initiative process, not the General Assembly’s lawmaking process. Under Section 1(4) an initiative receives voter approval upon majority vote (or a 55% majority, if the initiative adds to the Colorado constitution). In short, the two provisions govern two entirely separate processes – the legislature’s lawmaking ability, compared to the ability of voters to pass laws and constitutional amendments through the initiative process.

Because the Colorado Constitution sets forth very different procedures, the General Assembly’s decision to condition aspects of a bill on passage of another law

¹² See, e.g., *Tabor Foundation v. Colorado Bridge Enterprise*, 2014 COA 106 ¶ 30; *Sodexo Am., LLC v. City of Golden*, 2017 COA 118, ¶ 26 n. 9, *aff’d*, 2019 CO 38.

does not, and cannot, contradict or violate Section 1(4). And the people of the state of Colorado do not “step into the shoes of the legislature.”¹³ Rather, they have “reserve[d] to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls *independent* of the general assembly.”¹⁴ Accordingly, the power of the initiative is exercised under separate and different—indeed, *independent*—constitutional provisions.

Finally, the voters certainly *can* condition passage of an initiative on approval of a second initiative, or in fact condition passage on any other requirement. But doing so requires (1) an amendment to Art. V, § 1(4), of the Colorado Constitution, and (2) adherence to the single subject requirement in Art. V, § 5.5. Here, the new condition mandating passage of a second initiative contains a separate subject that is unrelated to the removal and replacement of the Congressional independent redistricting commission or a new congressional map. And by conditioning approval on a separate initiative that contains a wholly separate subject (as the Title Board itself determined rejecting single-subject jurisdiction over ballot initiative #239) itself presents voter with one package, containing two separate subjects.

3. Tying two initiatives together allows the proponents to evade the single subject requirement.

¹³ *Opening Brief of Respondents* (Initiative 241), p.10.

¹⁴ Art. V, § 1(1) (emphasis supplied).

The Proponents' effort to bind together two initiatives, with separate subjects, is a matter of first impression. Accordingly, this Court has not provided guidance.

As practical matter, by requiring simultaneous majority votes for both Proposed Initiative #241 and #242, Proponents have successfully evaded the single subject requirement to pass one initiative, voters must also pass the other initiative. Voters are presented with a package deal. This is not a hypothetical evasion of the single subject requirement. The same proponents advanced Proposed Initiative #239, which combined 241 and 242. Under the Title Board's own reasoning, initiatives 241 and 241 contain separate subjects.

The Title Board does not directly disagree with the point. But rather it argues that the new voting requirement and the new redistricting process (or new congressional map) "point in the same direction."¹⁵ This is a big, and wholly unsupported, presumption. In effect, the Title Board wishes to simply wave away any conflict between the provision. But this presumption has no factual or reasoned basis. Indeed, voters frequently distinguish the ends from the means, and political discussion regularly features voters and commentators who may like a particular outcome, but who disapprove of the way to achieve that outcome. The current conflict in Iran is a rough, but appropriate analogy. Many (likely most) Americans disapprove of the current authoritarian government in Iran and would like to see it

¹⁵ *Title Board Opening Brief* (Initiative 241) p. 10; *Title Board Opening Brief* (Initiative 242) p. 10.

replaced. But many (perhaps a majority) of those same Americans do not approve of the use of military action to achieve that goal. By the same token, many Coloradans may approve moving the redistricting commission to statute or approve creating a new congressional map. But they do not approve of forcing voters to choose both as part of a take-it-or-leave-it package deal.

Finally, the Proponents argue that because the new requirements only apply to Initiatives 241 and 242, voters are not required to choose between the change in redistricting processes and a “general change to the timing of the effective date.”¹⁶ This misses the mark. The new requirement is not about “timing,” and the new requirement is not a “general change.” Rather, the initiative requires voters to choose both a change to the redistricting process, and a change to the manner in which this particular initiative is approved. Connecting the two provisions forces voters to make a choice among the two.

4. New requirements for voter approval are not implementation features of a new congressional redistricting commission.

Finally, the Proponents and Title Board argue that the new double-initiative approval requirement is merely an “implementation provision” or “spells out details

¹⁶ *Opening Brief of Proponents* (Initiative 241), p. 11; *Opening Brief of Proponents* (Initiative 142), p. 11.

relating to its implementation.”¹⁷ But the new requirement for double-initiative approval is not an “implementation” detail.

The new approval requirement is not a provision that “provides a mechanism to administer the details”¹⁸ of a new redistricting commission or new congressional map. Implementation details must be “directly tied” to the initiative's “central focus.”¹⁹ And this Court’s rulings show that the examples must be closely related:

- “Limiting housing growth” included implementation details such as designating who has authority to enact housing regulations and establishing a signature requirement for housing regulation proposals;²⁰
- “Animal cruelty” included implementation details clarifying that slaughtering livestock would not qualify as animal cruelty if certain conditions were met;²¹

¹⁷ *In re Title, Ballot Title & Submission Clause for 1997-1998 #74*, 962 P.2d 927, 929 (Colo. 1998).

¹⁸ *Id.*

¹⁹ *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30–31 (Colo. 2000); *Matter of Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 29.

²⁰ *Id.*, ¶ 32.

²¹ *Id.*

- “Limiting pollution from hog farms” included implementation details of provisions for reporting hog farm waste disposal information to the Health Department;²² and,
- “Rules governing petitions” included implementation procedures for authorizing citizen lawsuits to ensure compliance with those rules.²³

By contrast, the provision requiring passage of a second initiative that changes the creates new congressional maps, cannot be an implementation detail. First, the approval mechanism takes effect *before* the redistricting commission change, and the new approval requirement will have no lingering effects on the initiative (or any law) after the two initiative are been approved.

Second, in its decision on Proposed Initiative #239, the Title Board already held that the subject in 241 is separate and apart from the subject in 242. Because the two are wholly separate, passage of one cannot be considered an implementation provision of the other.

Third, adding an entirely new requirement for passage of the initiative does not in any way “implement” how the new congressional redistricting commission operates, nor does it implement the new congressional map. It is a new, wholly

²² *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30–31 (Colo. 2000).

²³ *Id.*

separate procedure for initiative approval that goes into effect before the actual substance of the initiative. Logically, it cannot be “directly tied” to the new congressional redistricting commission.

B. Reallocation of review authority from this Court to District Court constitutes a material and significant change that should be reflected in the ballot title and submission clause.

The Title Board explains that the initiative provides for review of the new commission’s map in Denver District Court, rather than by original jurisdiction in this Court, because this Court’s original jurisdiction cannot be expanded by statute. True as that may be, it still represents a major change and that must be reflected in the ballot title and submission clause. This Court has held that reallocation of power from the General Assembly was such a major change that it constituted a separate subject.²⁴ Thus, under this Court’s precedent, the failure to include in the title and submission clause the initiative’s reallocation of constitutional authority for direct review of a new map certainly constitutes a “material and significant omission, misstatement, or misrepresentation.”²⁵ And at a minimum, glossing over such an important change—by stating that the statutory commission is “identical” to the constitutional commission—is an outright misrepresentation of the new commission.

²⁴ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 30.

²⁵ *In re Title, Ballot Title, Submission Clause for 2007-2008*, 62, 184 P.3d 52, 58 (Colo. 2008)

IV. 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 6th day of May 2026,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 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.

Tanya Nathan
Lindsey Rasmussen
Martha Tierney, Esq.
Tierney Lawrence Stiles, LLC
225 E. 16th Avenue, Suite 350
Denver, CO 80203

mtierney@TLS.legal

Counsel for Proponents/ Respondents Tanya Nathan and Lindsey Rasmussen

Kyle Holter, Esq.
Colorado Attorney General's Office
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203

kyle.holter@coag.gov

Counsel for Title Board

By: s/ Joanna Bila
Joanna Bila, Paralegal