SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to C.R.S. § 1-40-102(2) Appeal from the Ballot Title Board	~~DATE FILED~~ May 6, 2026 6:01 PM
In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #242 **ROBERT BALINK,** Petitioner, v. **TANYA NATHAN** and **LINDSEY RASMUSSEN,** and **COLORADO BALLOT TITLE SETTING BOARD**: Michael Dohr, Theresa Conley, and Kurt Morrison **Respondents**.	▲ COURT USE ONLY ▲
Attorneys for Petitioner: 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	Case Number: 2026SA123
PETITIONER'S ANSWER BRIEF	

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 2,787 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. 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.

Finally, the ballot title and submission clause should accurately reflect what the initiative actually does. It creates maps that apply to all elections in the 2028 and 2030 election cycles. This would accurately reflect the initiative, and it is an important aspect of the initiative, rather than an insignificant detail.

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 "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.

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

[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.

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 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

[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).

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% 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

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

[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).

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 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

[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.

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 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%

[11] Art. V, § 19.

[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.

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 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

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

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

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.

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 Initiatives #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

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

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 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 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

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

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 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]

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[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.

- "Animal cruelty" included implementation details clarifying that slaughtering livestock would not qualify as animal cruelty if certain conditions were met;[21]
- "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 congressional redistricting commission, cannot be an implementation detail. First, the approval mechanism takes effect *before* the new congressional maps, and the new approval requirement will have no lingering effects on the initiative (or any law) after the two initiatives have been approved.

Second, in its decision on Proposed Initiative 239, the Title Board already rejected that argument and held that the subject in 241 is separate from the subject in

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[21] *Id.*

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

[23] *Id.*

242. Because the two are wholly separate, passage of one or the other cannot be an implementation provision of the other.

Third, adding an entirely new requirement for passage of the initiative does not in any way "implement" new congressional maps. It is a new, wholly separate procedure for initiative approval that goes into effect before the actual substance of the initiative. Logically, it cannot be "directly tied" to the actual congressional maps.

B. The ballot title and submission clause incorrectly states that the maps only apply to the 2028 and 2030 elections, when in fact they apply to all congressional elections in those cycles.

The Title Board argues that if the ballot title and submission clause were to state that the new congressional maps apply to "every Colorado Congressional election" until new maps are drawn after the 2030 decennial census, it would "obscure the true import of the measure."[24] But in fact this language would reflect the *exact* language of the measure. It is difficult to understand how following the measure's exact language somehow "obscure[s] the "true import." Meanwhile, the Proponents argue that application to "all potential Congressional elections held during 2028 and 2030 is just a detail."[25] Notifying voters that the initiative also applies to special elections for our representatives to Congress is more than "just a detail." Special elections, like all elections, determine representation in Congress for hundreds of

[24] *Title Board Opening Brief* at 12.

[25] *Opening Brief of Respondents* at 14.

thousands of voters. This critical function of our representative government is more than mere detail and should be reflected in the ballot title and submission clause.

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
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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.

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