

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED May 15, 2026 4:41 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #256 (“Congressional Redistricting”)</p> <p><b>Petitioner:</b> Curtis Hubbard,</p> <p><b>v.</b></p> <p><b>Respondents:</b> Suzanne Taheri and Elizabeth Caven,</p> <p><b>and</b></p> <p><b>Title Board:</b> Michael Dohr, Theresa Conley, Kurt Morrison</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>PETITIONER’S ANSWER 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, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

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*/s Mark G. Grueskin*

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## LEGAL ARGUMENT

### I. Initiative #256 violates the Constitution's single subject limitation.

#### A. Respondents and the Title Board agree there is a single subject but disagree about what that subject is.

In setting the titles, the Board established the measure's single subject as "concerning congressional redistricting." R. at 15. On appeal, the Board states that the single subject is "new criteria for modifications to redistricting maps." Title Board Opening Brief ("Bd. Op. Br.") at 14. Respondents maintain Initiative #256 has the "single purpose of establishing an independent redistricting process through a repeal and reenact (clause)." Respondents' Opening Brief ("Resp. Op. Br.") at 7.

Respondents' portrayal of their measure misses the target, as an independent redistricting process already exists and would not be "established" by #256. "Amendment Y removed congressional redistricting authority from the General Assembly and placed it, instead, in the hands of a new Colorado Independent Congressional Redistricting Commission." *In re Colo. Indep. Cong. Redistricting Comm'n*, 2021 CO 73, ¶ 3. That independent process ran its full course in 2021, setting the districts now in effect. *Id.* at ¶¶ 16-17. Thus, in this appeal, Respondents misstate the subject of their own measure, as their measure does not "establish" a process that was put in place years ago and has been used since then.

Neither the Board's brief nor Respondents' brief attempts to justify "concerning congressional redistricting" as the measure's single subject. That is because it is an "umbrella topic" that the Board points out as a single subject violation. Bd. Op. Br. at 9, citing *In re Title, Ballot Title & Submission Clause & Summary Regarding Petitions*, 907 P.2d 586, 590 (Colo. 1995). The "subject" of "congressional redistricting" was cast to be broad enough to encompass: (1) changes to the existing Independent Congressional Redistricting Commission; (2) authorization of the never-before-permitted process of mid-decade redistricting; and (3) undermining the Colorado-specific standards relating to racial and minority language group electoral influence. It may be that the Board and Respondents avoid defending the titles' denomination of a single subject, given that this Court has determined "redistricting" is not a single subject when the proposed measure contains fundamental changes that would surprise voters. *In re Title, Ballot Title, & Submission Clause for 2015-2016 #132 and #133*, 2016 CO 55, ¶¶ 21-25.

The subjects in Initiative #256 relate to each other tangentially, but that tangent is not enough to require the conclusion that they are part of one subject. *Id.* Along a similar line, "the elimination of the single-subject requirement and procedural measures governing the process by which initiatives are placed on the ballot both relate to the initiative and referendum process" but served "separate and

discrete” purposes – one altering what was on the ballot and the other altering how ballot access was achieved. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43 and #45*, 46 P.3d 438, 446 (Colo. 2002). This same analysis applies to Initiative #256 which also violates the single subject requirement, as discussed below.

**B. This initiative’s authorization of mid-decade Congressional redistricting is an obvious subject of #256.**

According to Respondents, “the initiative does not ‘authorize’ mid-cycle redistricting.” Resp. Op. Br. at 7. The Respondents’ measure states, in Proposed art. V, sec. 44(1.5), “Upon adoption and approval of the final plan, *no plan may be modified* for the 2028 congressional election or thereafter *except* with the approval of the congressional commission and adoption by the Colorado Supreme Court.” R. at 22 (emphasis added). Evidently, Respondents view the exception to the prohibition on district plan modifications as something other than an authorization.

This Court has disagreed with Respondents’ interpretation when looking at comparable language in the Colorado Constitution. For example, the General Assembly is unable to pass multi-subject bills, with one exception. “No bill, *except general appropriation bills*, shall be passed containing more than one subject, which shall be clearly expressed in its title.” Colo. Const., art. V, sec. 21. As a result of this construct, the legislature is fully empowered to pass appropriation bills that address

multiple subjects. “[S]o far as the limitations of this section are concerned, the general appropriation bill may contain as many subjects as are properly within the power of the general assembly to make provision for.” *In re Constitutionality of an Act Entitled “An Act to Provide for the Assessment, Levy & Collection of a State Tax, for the Support & Maintenance of Certain State Educ. Insts., Mentioned Therein,”* 39 P. 1096, 1098 (Colo. 1895). Constitutional authority, based on this exception, extends even to “omnibus appropriation bills.” *Colo. Gen. Assembly v. Lamm*, 704 P.2d 1371, 1383 (Colo. 1985).

Thus, Respondents are clearly incorrect by contending that #256’s exception to the prohibition on map modification is not authority to engage in mid-decade redistricting. A prohibition may be generally effective, but where a constitutional exception is included, this Court recognizes that exception to be a source of affirmative authority to engage in the otherwise prohibited act.

Respondents’ discomfort with their position that mid-decade redistricting is not authorized by #256 is apparent. “The reenacted provisions also fill the gap in law regarding the commission’s role mid-cycle.... [T]he same commission would be involved in mid-cycle redistricting.” Resp. Op. Br. at 6. The Board, at least, forthrightly acknowledges that Initiative #256 “seeks to modify the redistricting criteria under the Colorado Constitution, setting forth a process for *modifying any*

*congressional redistricting map (including a mid-cycle redistricting map).*” Bd. Op. Br. at 2 (parenthetical in original) (emphasis added).

Authority for mid-decade redistricting is not a technical or procedural matter. It is not a detail or effect of Initiative #256. It is a radical departure from the legal norm of Congressional redistricting in Colorado. *See People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1238-39 (Colo. 2003) (invalidating mid-decade redistricting by the General Assembly after court set district lines).

Thus, the advent of mid-decade redistricting is a substantive change in the law that has the real potential to, among other things, change the Congresspeople for hundreds of thousands of Coloradans and to do so every two years. The frequency of map modifications is attributable to the initiative text that provides for modification of any districting plan for the 2028 election “and thereafter.” R. at 22 (Proposed Art. V, sec. 44(1.5)).

The “foundational goal of congressional redistricting” is “fair and effective representation,” which certainly qualifies as a substantive matter given its roots in “the democratic ideals of equality and majority rule.” *Hall v. Moreno*, 2012 CO 14, ¶ 43 (citing *Reynolds v Sims*, 377 U.S. 533, 565 (1964)). In this regard, stability in a district’s lines “improve[s] representation and ultimately, the effectiveness of the district’s voice in Congress.” *Salazar, supra*, 79 P.3d at 1228.

Thus, despite Respondents' protestations to the contrary, Initiative #256 does authorize mid-decade redistricting, and this substantive change in the law is at the core of this proposal. The authorization for mid-decade reconfiguration of Congressional districts is a newly approved redistricting rubric, occurring as often as every two years. That, too, is a significant change from the status quo.

**C. Eliminating constitutional protections for minority voting influence is a major change in the status quo that is hidden from voters.**

The newly limited criteria for mid-decade redistricting change how districts can be formatted mid-decade and, in so doing, eliminate a substantive protection that this Court has recognized for racial and language minority groups. But this latter change is so well concealed in Respondents' measure that it escaped notice of the Title Board until it was highlighted in Petitioner's motion for rehearing. "Concealed in the folds" has become something of a catchphrase in ballot title challenges before the Board and this Court. But it fits here.

The Board does not dispute that this measure excludes protection for racial and language minority electoral influence. "Initiative #256 sets forth new criteria for modifications to redistricting maps. As a matter of policy, the Initiative's proponents expressly declined to include those additional state protections for minority voters (similar federal protections would still apply)." Bd. Op. Br. at 14. The Board can

characterize this as merely a “policy” choice. The fact that it is far-reaching but hidden to voters is what makes this restrictive change a violation of the single subject requirement.

As addressed in Petitioner’s Opening Brief, this Court held in its review of the 2021 Congressional redistricting map that Amendment Y had incorporated minority voting protections that were in place as of the date of that voter approval. The Court agreed that these state protections were written into the Constitution to protect against judicial or legislative decisions that could undermine them. *See* Petitioner’s Opening Brief at 10-11; *In re Colo. Indep. Cong. Redistricting Comm’n*, *supra*, at ¶ 62.

Given the events in recent weeks that depart from the Voting Rights Act’s goal of minority representation in Congress, the drafters of Amendment Y presciently wrote their measure to protect against this eventuality. Truth be told, the decision in *Louisiana v. Callais*, 598 U.S. \_\_\_\_ (2026), was foreseeable. Despite the then-acknowledged (and later eviscerated) role of Section 2 of the Voting Rights Act, “in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns

about the constitutionality of the Act.” *Shelby Cnty. v. Holder*, 570 U.S. 529, 556-57 (2013).

The only restrictions on modified plans “for the 2028 congressional election or thereafter” are that they cannot have “the effect of dividing communities of interest or purposefully favoring one political party,” *See* R. at 22 (Proposed art. V, sec. 44(1.5)). Therefore, every map modification, after the initial mapping plan adopted in the wake of the national census, can be approved even if it does not meet the more demanding, Colorado-specific legal standards for a post-census Congressional map. If that were not the case, Initiative #256 would be written to require mid-decade maps to meet those additional existing standards, including the standards that are in Const., art. V, sec. 44.3(4) relating to the prohibition on maps drawn to or resulting in abridgement or denial of the right to vote by minority groups. But because section 44.3 of article V is not incorporated into the provisions that relate to mid-decade district modifications, the standards set forth there do not apply mid-decade, as acknowledged by the Board.

Accordingly, under Initiative #256, Colorado would be permitted to limit or eliminate the electoral influence and representation of minority voters in one or more districts when modifying redistricting maps. That is a stark change that Respondents have tucked neatly into their “subtly worded” initiative. *In re Title, Ballot Title, and*

*Submission Clause for Proposed Initiative 2007-2008 #17*, 172 P.3d 871, 875-76 (Colo. 2007).

The single subject requirement was enacted to protect the electorate from significant changes that are found only in the fine print of a measure. A previous redistricting initiative's change to the function of the Supreme Court Nominating Commission was also "coiled up in the folds of a complex proposal" and violated the single subject requirement. *In re #132 and #133, supra*, at ¶ 26.

The change to minority voting protections is also a major deviation that will surprise voters if this measure is adopted, allowing a 2028 redistricting map to be found to be sufficient without meeting the standards that voters adopted in 2018 and saw implemented in 2021. *See In re Breene*, 24 P. 3 (Colo. 1890) (a person affected by a new state law, subject to the single subject requirement for legislation, "should not be left to discover, 'coiled up in the folds' of an act apparently in no way concerning him, a provision affecting his most important interests"); C.R.S. § 1-40-106.5(3) (single subject requirement for initiatives should be applied in the same manner as single subject requirement for legislation).

Notably, "voters must be presumed to know the existing law" when they vote on a constitutional amendment that changes that law. *Siewiyumtewa v. State*, 2015 CO 58, ¶ 19. The titles set for Initiative #256 will reinforce misunderstanding by

telling voters that it “reenact[s] the current process for congressional redistricting in the Colorado Constitution.” R. at 15. Given voters’ expectations for redistricting based on their presumed knowledge of current law, the deliberate rejection of minority protections in #256 is a particularly harsh example of an element that’s been “coiled in the folds” of an initiative. Respondents’ contention that their measure contains “no hidden or concealed provision that would cause voter surprise” is flatly incorrect. Resp. Op. Br. at 7.

Therefore, the Board erred in setting titles for this measure.

### **CONCLUSION**

This decision of the Title Board should be reversed, and Initiative #256 should be returned to its Respondents.

Respectfully submitted this 15th day of May, 2026.

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**CERTIFICATE OF SERVICE**

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