SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 8, 2026 3:16 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #256 ("Congressional Redistricting") **Petitioner:** Curtis Hubbard, **v.** **Respondents:** Suzanne Taheri and Elizabeth Caven, **and** **Title Board:** Michael Dohr, Theresa Conley, Kurt Morrison	**▲COURT USE ONLY▲**
Attorneys for Petitioner: Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com nate@rklawpc.com	Case Number: 2026SA146
PETITIONER'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, the undersigned certifies that:

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

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X It contains 2,860 words.

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X For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s Mark G. Grueskin
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ISSUE PRESENTED

Whether the Proposed Initiative violates the single subject requirement by both: (1) authorizing, for the first time, mid-decade congressional redistricting; and (2) eliminating the voter-approved, non-federal protections in the Colorado Constitution for minority voting in the adoption of "any plan" during a 2028 mid-decade redistricting and all subsequent mid-decade redistrictings.

STATEMENT OF THE CASE

A. Statement of Facts.

Suzanne Taheri and Elizabeth Caven (hereafter "Respondents") proposed Initiative 2025-2026 #256 (the "Initiative" or "Initiative #256"). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Respondents submitted a final version of the Initiative to the Secretary of State for purposes of submission to the Title Board.

B. Nature of the Case, Course of Proceedings, and Disposition Below.

Initiative #256 repeals and reenacts the Independent Congressional Redistricting Commission in the Colorado Constitution. Its main additions to the existing structure of the Commission is to: (1) authorize mid-decade redistricting when no such mid-decade change in district lines has ever been permitted before;

and (2) after specifying that the Commission and this Court must approve a plan after the Commission holds at least three public meetings, subject only to the criteria that the district map does not have "the effect of dividing communities of interest" and also does not "purposefully favor[] one political party." *See* R. at 22 (Proposed Art. V, sec. 44(1.5)).

A Title Board hearing was held on April 15, 2026, at which time titles were set for 2025-2026 #256. On April 21, 2026, Petitioner Beck filed a Motion for Rehearing, alleging that Initiative #256 contained multiple subjects and the titles set were misleading. On April 22, 2026, Petitioner Hubbard filed a Motion for Rehearing, alleging that Initiative #256 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), the Board lacked jurisdiction to set titles, and that the Title Board set titles which are misleading, unfair, and inaccurate as they do not fairly communicate the true intent and meaning of the measure and will mislead voters.

Both motions were timely filed, and the Board held the rehearing on the two motions on April 23, 2026. As a result of the rehearing, the Title Board granted the motions only to the extent the Board made changes to the ballot title and submission clause, resulting in the following language:

Shall there be an amendment to the Colorado Constitution concerning congressional redistricting, and, in connection therewith, reenacting the current process for congressional redistricting in the Colorado Constitution and prohibiting modifications to a final map unless at least three public meetings are held, the modifications do not have the effect of dividing communities of interest or purposefully favoring one political party, and are approved by the congressional redistricting commission and the Colorado Supreme Court?

SUMMARY OF ARGUMENT

Thanks to the actions of Texas, California, Louisiana, and several other states, as well as a recent, high-profile decision of the U.S. Supreme Court, Congressional redistricting is a top-of-mind issue for many voters. This initiative dovetails with that national attention in two distinct and separate ways. First, it authorizes mid-decade redistricting, despite: (1) this Court's rejection of a remapping of Colorado Congressional districts after they are initially redrawn following the most recent national census; and (2) the voters' approval of Amendment Y, which establishes a bipartisan, independent redistricting commission for setting Colorado's Congressional seats. And second, it creates a new legal standard for determining the adequacy of a district map, most notably by eliminating the Colorado Constitution's specific protections for minority electoral influence. These are two separate subjects for which a single title should not have been set.

LEGAL ARGUMENT

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

A. Standard of Review.

A proposed initiative must contain no more than one subject. Colo. Const. art. V, sec. 1(5.5).

An initiative violates the single subject requirement "when it has at least **two distinct and separate purposes** which are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #64*, 960 P.2d 1192, 1196 (Colo. 1998) (citation and internal quotation marks omitted) (emphasis added). The single subject requirement's purpose is to "prevent[] surprise and fraud from being practiced upon voters." *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 12 (quoting C.R.S. § 1-40-106.5(1)(e)(II)). This is what is known as the "anti-fraud" objective of this constitutional mandate. *See id.* at ¶ 16.

A common thread between separate and distinct topics does not solve Respondents' single subject problem. "Where an initiative advances **separate and distinct purposes**, the fact that both purposes relate to a **broad concept or subject** is **insufficient to satisfy the single subject requirement**." *Id.* at ¶ 15 (emphasis added) (quoting *In re Title, Ballot Title and Submission Clause for 2009-2010 #*

91, 235 P.3d 1071, 1076 (Colo. 2010)). A "general theme" is not a single subject for constitutional purposes. *In re Title, Ballot Title and Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 16. As a result, such "umbrella proposals" are "unconstitutional." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 10.

In reviewing a challenge to the Title Board's single subject decision, the Supreme Court will "employ all legitimate presumptions in favor of the propriety of the [Title] Board's actions." *In re Title, Ballot Title, and Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010). In the first instance, the Court gives the decision of the Title Board great deference because "[t]he Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause." *In re 2019-2020 #315, supra*, 2020 CO 61, ¶ 6 (quoting *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 8).

B. Preservation of Issue Below

This issue was preserved in Petitioner's Motion for Rehearing before the Title Board. R. at 8-11.

C. Initiative #256 violates the single subject requirement in the Colorado Constitution.

1. The first subject: Allowing mid-decade redistricting.

The question of whether voters want district lines changed after the constitutionally authorized redistricting process has fully run its course is one subject in this initiative. Mid-decade redistricting is not a prerogative that has been recognized in Colorado as an accepted practice; in fact, it has expressly been rejected by this Court. *See People ex rel. Salazar v. Davidso*n, 79 P.3d 1221, 1238-39 (Colo. 2003). And even though there is a full-scale redistricting war that has been launched in other parts of the country,[1] the desire on the part of Colorado voters to redraw districts now and join in this controversy may well be mixed. Thus, the question of permitting mid-decade redistricting is its own subject.

This is not an inconsequential or neutral matter. Some voters may prize consistency in their own (or the state's) representation over the possibility of their national political party obtaining an advantage in the U.S. House of Representatives. This Court has recognized the value of ongoing representation.

The frequency of redistricting affects the stability of Colorado's congressional districts, and hence, the effectiveness of our state's

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[1] *National redistricting war reignites with Supreme Court's Voting Rights Act ruling*, The Hill (Apr. 29, 2026) (https://thehill.com/homenews/campaign/5856022-redistricting-supreme-court-voting-rights-act/) (last viewed May 4, 2026).

> **representation in the United States Congress**. When the boundaries of a district are stable, the district's representative or any hopeful contenders can build relationships with the constituents in that district. Furthermore, the constituents within a district can form communities of interest with one another, and these groups can lobby the representative regarding their interests. These relationships improve representation and ultimately, the effectiveness of the district's voice in Congress.

Id. at 1228 (emphasis added).

Of course, other voters may prefer inserting Colorado into the political battle in which even a single mid-decade redistricting could be impactful. The Court may take judicial notice of the fact that partisan passions are burning particularly brightly at this moment. The competing initiatives dealing with redistricting that are now before this Court are testimony to that. Even before these competing initiatives were introduced, this Court recognized, "Redistricting is an incredibly complex and difficult process that is fraught with political ramifications and high emotions." *Hall v. Moreno*, 2012 CO 14, ¶ 5. Such an intense undertaking will certainly attract voters who, without regard to local concerns, will be motivated to cast their ballots based on what a shift in the numbers of one political party's members of the House of Representatives will mean in the context of the debate over national issues. Thus, just the notion of mid-decade redistricting alone is enough to rivet voters' attention, and so is the partisan outcome of such an event.

Initiative #256 states that a redistricting map "may be modified for the 2028 congressional election ***or thereafter***." R. at 22 (Proposed Art. V, sec. 44(1.5) (emphasis added)). The inclusion of "or thereafter" means that voters will not be voting simply to create the possibility of change to Colorado's Congressional make-up in the next (2028) election cycle. Nor is "thereafter" limited to only 2030 (the one other election cycle that precedes the next census). This measure applies to every other election cycle that follows the current one. "'Thereafter' means 'after that.'" *In re Title, Ballot Title & Submission Clause, and Summary for 1997-1998 #62*, 961 P.2d 1077, 1088 (Colo. 1998) (Martinez, J., concurring). Without language in the proposed measure to limit its reach, this proposed constitutional amendment authorizes modifications of district maps after every census, in perpetuity.

Thus, Initiative #256 represents a marked departure from the existing provisions that limit Congressional redistricting to the Commission process that follows the year of the national census. It is also a departure from the redistricting tradition, noted by this Court in its previous decisions. *See Salazar, supra,* 79 P.3d at 1239-40. This will certainly have to be a subject that voters can adopt or reject on its own merits, one where they focus on this question and not ancillary matters.

2. The second subject: eliminating Colorado's protection of minority electoral influence in mid-decade redistricting.

The two tests for mid-decade redistricting map approval – that the district map does not have "the effect of dividing communities of interest" and also does not "purposefully favor[] one political party" – stand in contrast to the thorough regime for mapping now in the Colorado Constitution. And in the wake of *Louisiana v. Callais*, 598 U.S. ____ (2026), the question of minority voting protections, including in Colorado, is a high-profile topic for the Colorado electorate.

The Colorado Constitution now requires the Redistricting Commission to draw a map that addresses eight different factors.[2] The two that are relevant for

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[2] Those factors include:

(1) making a good-faith effort to achieve precise mathematical population equality between districts;
(2) complying with section 2 of the Federal Voting Rights Act;
(3) preserving whole communities of interest;
(4) preserving whole political subdivisions, such as counties, cities, and towns;
(5) ensuring that districts are as compact as is reasonably possible;
(6) to the extent possible, maximize the number of politically competitive districts;
(7) refusing to approve or give effect to a redistricting plan if it is drawn for the purpose of protecting one or more incumbent members, or one or more

purposes of this discussion are compliance with Section 2 of the Voting Rights Act ("VRA") and mapping in ways that do not deny or abridge the right of any citizen due to race or membership in a language minority group, including any dilution of such a group's electoral influence. *See In re Colo. Indep. Cong. Redistricting Comm'n*, 2021 CO 73, ¶¶ 41-42.

The relevance of the Constitution's reference to Section 2 of the VRA is marginal at best in the wake of the U.S. Supreme Court's decision in *Callais, supra*. But it is premature to determine if *Callais* will have an impact on the Colorado Constitution's separately stated protection against minority vote dilution in redistricting, set forth in Art. V, sec. 44.3(4)(b).

In fact, this Court already acknowledged that these two anti-dilution protections were placed in the Constitution to avoid a later judicial narrowing of the VRA protections that were in place as of the 2018 election.

> declared candidates of the United States house of representatives or any political party; and
> (8) refusing to approve or give effect to any map that was drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that racial or language minority group's electoral influence.

Colo. Const., art V, sec. 44.3.

> [T]he Commission argues that section 44.3(4)(b) does no more than incorporate the protections of the VRA into the Colorado Constitution **as those protections existed in federal statute and case law at the time of Amendment Y's enactment**. The Commission contends that the dilution of electoral influence is a concept that the U.S. Supreme Court has used when interpreting the VRA and that section 44.3(4)(b) merely incorporates that jurisprudence into Colorado law. In its view, the language of section 44.3(4)(b) is not idle; **by expressly incorporating those section 2 protections into the state constitution, the provision ensures that such protections cannot be eroded by further federal legislative or judicial developments**. For the following reasons, **we agree with the Commission**.

Id. at ¶ 62 (emphasis added).

According to the Brennan Center for Justice, the need for such protection has not abated, notwithstanding the *Callais* majority opinion's assertion that we have evolved to a post-racial era.[3] Understandably, then, this change in the standard for a map's legality will be a substantive issue of concern to many voters in 2026.

How this provision's expanded constitutional protection is applied in the future is beyond the single subject inquiry that this Court can make. The Court

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[3] Morris, K., *Finishing Off Voting Rights Act, Supreme Court Declares Racism Over – Again*, Apr. 30, 2026 (https://www.brennancenter.org/our-work/analysis-opinion/finishing-voting-rights-act-supreme-court-declares-racism-over-again) (last viewed May 6, 2026).

does not attempt to prognosticate about an initiative's "construction or future application." *See In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶8, 413 P.3d 151, 153 (citations omitted). But given the Court's decision in *In re Colo. Indep. Cong. Redistricting Comm'n, supra*, the inclusion of the anti-dilution language was clearly intended to prevent erosion "by further legislative or judicial developments." And an evisceration of the VRA's recognized protection, due to *Callais* and its progeny, would be just such an erosion arising from a "judicial development"—in other words, it will matter to voters as a fundamental consideration about this measure that also approves unlimited, mid-decade redistricting.

The Court's precedent is clear that a "complex and subtly worded" initiative that includes a significant change in legal standards reflects multiple subjects that cannot be presented to voters in a single measure. In *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2007-2008 #17*, 172 P.3d 871, 875-76 (Colo. 2007), the measure created a new state Department of Environmental Conservation and also established a public trust standard for agency decision-making. This amalgamation represented two subjects, the latter being the one that was "coiled in the folds" of the measure, even though it related to the new agency

created by that measure. The public trust standard was simply too great a departure from existing law to warrant being combined with the formation of a new structure for environmental protection.

Similarly, Initiative #256 authorizes a new interval for redistricting (a map can be "modified" every two years after a redistricting map is established). It also limits the standards by which the legal adequacy of redistricting is to be measured. These, too, are separate subjects because the frequency of redistricting and the elimination of the standards used to determine the fairness of the resulting maps are separate topics for voters that are crammed under the same umbrella concept of redistricting. As such, Initiative #256's narrowed ground for finding a new district map to be legal "runs the risk of surprising voters with a surreptitious, significant change" to a central legal standard and thus violates the single subject requirement. *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 27 (change to definition of "fee" was a separate subject from continuing and future treatment of fees).

It is no defense for Respondents to argue that this is a mere effect of the measure. "The single-subject rule also serves to **prevent voter surprise by prohibiting Respondents from hiding effects** in the body of a complex

proposal…. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent." *In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010) (emphasis added).

Eliminating minority voter protections in a measure that plays into the rhetoric of participating in the current redistricting wars is too different to be treated as part of a single subject. Therefore, the Title Board erred by setting titles for Initiative #256.

CONCLUSION

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

Respectfully submitted this 8th day of May, 2026.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 8, 2026, to the following:

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