

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p style="text-align: right;">DATE FILED May 8, 2026 3:56 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Petition for Review Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Setting Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #256 Petitioners: Curtis Hubbard and Valerie Beck</p> <p>v.</p> <p>Respondents: SUZANNE TAHERI and ELIZABETH CAVEN, Proponents</p> <p>and</p> <p>Ballot Title Board: MICHAEL DOHR, THERESA CONLEY, and KURT MORRISON</p>	
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<p>RESPONDENTS' OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the 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).

Choose one:

It contains 1,982 words.

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The brief complies with C.A.R. 28(k):

It contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.

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.

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Elizabeth Caven and Suzanne Taheri (“Respondents/Proponents”) hereby respectfully submit this Opening Brief in support of the Title Board’s decision for Proposed Initiative 2025-2026 #256 (the “Initiative” or “Measure”).

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Title Board correctly found that Proposed Initiative 2025-2026 #256 is a single subject.
2. Whether the ballot title set by the Title Board properly describes the purpose of Proposed Initiative 2025-2026 #256.

STATEMENT OF THE CASE

Initiative #256 repeals and reenacts Sections 44 through 44.6 of Article V of the Colorado Constitution. Each of the affected sections concerns the redistricting process in Colorado. The measure is designed to provide a for an independent redistricting commission. Specifically, Initiative #256 protects the rights of Colorado residents by re-establishing the redistricting commission including requirements for mid-cycle redistricting.

On April 15, 2026, the Title Board met to conduct an initial hearing on Initiative #256. The Board found that the initiative constitutes a single subject and proceeded to set title. Petitioners filed separate Motions for Rehearing. A rehearing was conducted on April 23, 2026, where the Title Board upheld its original

decision and made slight changes to the final ballot title.¹ Petitioners now appeal that decision.

SUMMARY OF ARGUMENT

Initiative #256 provides that once a final redistricting plan is adopted and approved, the plan cannot be modified except by approval of the congressional commission and adoption by the Colorado Supreme Court. Initiative #256 requires that before the congressional commission can make any mid-cycle plan change, three public meetings must be held. Lastly, the measure provides requirements which must be met for a plan to be approved. The requirements are to preserve whole communities of interest as much as reasonably possible and a prohibition on drawing any map purposely to favor any one political party.

Each of the requirements of Initiative #256 are necessary to ensure the integrity of the redistricting process mid-cycle. The changes are all necessarily and properly connected to the purpose of the initiative, and the ballot title established by the Board correctly describes the initiative and does not use a catch phrase. In

¹ 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.

order to affect these changes and ensure the preservation of the Independent Commission currently in the constitution the proponents of Initiative #256 chose to repeal and reenact portions of the Constitution.

STANDARD OF REVIEW

The Court’s role in reviewing Title Board actions is limited, and it must, “employ all legitimate presumptions in favor of the propriety of the Title Board's actions and ...overturn its finding that an initiative contains a single subject only in a clear case.” *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101, 103-04 (Colo. 2014); citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 565 (Colo. 2012); *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010). The Court must “also liberally construe the single subject requirement to ‘avoid unduly restricting the initiative process.’” *Id.*, quoting *Hayes v. Lidley (In re Title, Ballot Title and Submission Clause for 2009-2010 #24)*, 218 P.3d 350, 353 (Colo. 2009).

The Court affords the same presumption in favor of the Title Board in setting title, and the Board is afforded discretion in resolving problems of length, complexity, and clarity in designating a title and ballot title and submission clause. *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause for 2013-2014*

#90), 328 P.3d 155, 162 (Colo. 2014). The Board's duty is to summarize the central features of a proposed initiative. *Id.*

LEGAL ARGUMENT

I. Initiative #256 Meets the Single Subject Requirement

A. Provisions Must be Related to One Object or Purpose

The Colorado Constitution requires a measure proposed by petition to contain only one subject. Colo. Const. art. V, § 1(5.5). “To run afoul of the single subject requirement, the proposed initiative must have at least two distinct and separate purposes that are not dependent upon or connected with each other.” *Earnest*, 234 P.3d at 645, citing *Hayes*, 218 P.3d at 352.

The single subject of Initiative #256 is to provide for congressional redistricting. It establishes the independent redistricting process including the commission’s role in mid-cycle redistricting. The repeal and reenact is structurally similar to Proposed Initiative #241 which is currently before the Court. Both repeal and reenact the commission, except #241 reenacts it into statute and its approval is contingent upon the passage of another initiative. *26SA122*.

There is nothing coiled in the folds of Initiative #256. It continues the voter protections currently embedded in the Colorado Constitution by closing a loophole which would otherwise apply to mid-cycle changes in congressional districts.

B. Initiative #256 Does Not Implicate Dangers to be Prevented by Single Subject Requirement.

The purpose of the single-subject requirement for proposed voter initiatives is to prevent two “dangers” of multi-subject initiatives: first, it prevents the enactment of combined measures that would fail on their individual merits; second, it protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. Colo. Const. art. V, § 1(5.5); § 1-40-106.5, C.R.S. (2025).

The Title Board considered Initiative #256 and determined the initiative contained a single subject. The Court’s role is limited and prohibits “[a]ddressing the merits of a proposed initiative or suggesting how an initiative might be applied if enacted.” *Milo*, 333 P.3d 101, 104; citing *In re Title v. Respondents: Dennis Polhill & Douglas Campbell, Proponents, & Title (In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-2002 #43)*, 46 P.3d 438, 443 (Colo. 2002). “In determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted.” *Herpin v. Head (In re Title, Ballot Title & Submission Clause)*, 4 P.3d 485, 495 (Colo. 2000); citing *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause for Proposed Initiative 1997-98 # 64)*, 960 P.2d 1192, 1197

(Colo. 1998); *cf. In re Branch Banking Initiative*, 612 P.2d 96, 99 (Colo. 1980).

Concerns about the effects of an initiative, valid or not, are irrelevant to whether the proposed initiative contains a single subject. *Milo*, 333 P.3d at 105, citing *Kemper*, 274 P.3d at 568 n.2.

The single subject requirement also helps avoid “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative.” *Kemper v. Hamilton (In re Title, Ballot Title, & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 566 (Colo. 2012). (quoting *In re Title v. Respondents: Dennis Polhill & Douglas Campbell, Proponents, & Title*, 46 P.3d 438, 442 (Colo. 2002)).

The provisions of Initiative #256 carry out the single purpose of establishing an independent redistricting process through a repeal and reenact. The reenacted provisions also fill the gap in law regarding the commission’s role mid-cycle. The policy here is congruent. In establishing an independent redistricting process, the voters are taking it out of the hands of partisan interests and putting it in the hands of an independent commission. It follows that the same commission would be involved in mid-cycle redistricting.

Petitioner Hubbard claims the measure authorizes mid-cycle redistricting and then eliminates non-federal protections in the Colorado Constitution for

minorities. First, the initiative does not “authorize” mid-cycle redistricting. There is no trigger in the measure for mid-cycle redistricting. The measure only specifies the standards if there is a mid-year redistricting. Second, the criteria set for mid-year redistricting is a policy choice and it is within the proponents’ purview to choose among policy decisions. The mere fact that an initiative may change the law does not mean that it violates the single-subject requirement, even if it “makes policy choices that are not inevitably interconnected.” *Coulter* at 105, citing *In re #256*, 12 P.3d at 254.

The initiative is brief and direct, not “complex” nor “omnibus,” and there is no hidden or concealed provision that would cause voter surprise. *Earnest*, 234 P.3d at 647. Voter’s would more likely be surprised to learn that under the current process, the commission’s work could be set aside and they would play no role in a mid-cycle process.

II. The title set for #256 properly describes the purpose of the initiative.

A. It is not necessary to describe every detail of the initiative’s effects.

The title and submission clause should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal. *Cordero*, 328 P.3d 155 at 162. Thus, “[i]n setting a title, the title board shall consider the public confusion that might be

caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." § 1-40-106(3)(b), C.R.S. (2025). In addition, the title must "correctly and fairly express the true intent and meaning" of the initiative. *Id.*

In determining whether a title is clear, the Court does not consider whether the Title Board set the best possible title. *Cordero*, 328 P.3d at 162. But the measure must fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board. *Id.*

B. “Does not purposefully favor one political party” is not a catch phrase.

A catch phrase consists of "words that work in favor of a proposal without contributing to voter understanding." *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 # 45)*, 234 P.3d 642, 649 (Colo. 2010). The purpose of forbidding the use of catch phrases in an initiative is to "guard against inflammatory . . . words or phrases that promote prejudice in place of [voter] understanding [of] what is really being proposed", words that "merely describe the proposal are not impermissible catch phrases." *Id.* “Catch phrases” are words that work to a proposal’s favor without contributing to overall voter understanding.

Garcia v. Chavez (In re Title, Ballot Title & Submission Clause), 4 P.3d 1094, 1100 (Colo. 2000). The Court evaluates whether the titles include an impermissible catch phrase by considering the contemporary political debate. *Garcia v. Chavez (In re Title, Ballot Title & Submission Clause)*, 4 P.3d 1094, 1100 (Colo. 2000).

Here, the environment and conversation around redistricting are common topics of contemporary debate. There is much debate over whether partisan gerrymandering should occur, who started it and how to fight it. Other states have voted on these issues. As shown by the results, voters may well want a map drawn for partisan advantage to offset activities in another state. Other voters may want to preserve the Colorado model of an independent redistricting commission and vote against partisan gerrymandering. In this context, the use of the phrase is descriptive and contributes to voter understanding of the purpose of the initiative. The phrase is not simply an "appeal to emotion" or an attempt to "distract[] voters from consideration of the proposed initiative's merits," the evils that this prohibition seeks to prevent. *Ernest*, 234 P.3d at 649. The Board recognized that these terms are descriptive and do not provoke political emotion and or impede voter understanding.

CONCLUSION

Proposed Initiative #256 is a single subject. The title set by the Board adequately and fairly describes the central purpose of the initiative. The Court should uphold the Title Board's actions regarding the initiative.

Respectfully submitted this 8th day of May, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2026, a true and correct copy of the **RESPONDENTS' OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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