SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 14, 2026 2:53 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 #325 ("Congressional Redistricting Criteria") **Petitioner:** Curtis Hubbard, **v.** **Respondents:** Kathleen Chandler and Rick Enstrom, **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: 2026SA151
PETITIONER'S ANSWER 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:

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/s Mark G. Grueskin
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I. Initiative #325 violates the Constitution's single subject limitation.

A. The measure directly and expressly impedes fundamental rights, even though the Title Board and the Respondents deny that the text says what it says.

In response to the contention that Initiative #325 restricts the rights of initiative, the right to speech and debate for legislators, and the rights of free speech and association, the Title Board and the Respondents have the same reaction. They both assert that #325 is just silent on the issue, and this is really Petitioner asserting what the effects of this measure might be.

According to Respondents, "the proposed initiative ***does not in any way address*** the right to initiative, the Speech and Debate Clause, or free speech and assembly." Respondents' Opening Brief ("Resp. Op. Br.") at 5 (emphasis added). According to the Title Board, "none of those rights are even ***addressed*** in the text of Initiative #325, much less burdened." Title Board Opening Brief ("Bd. Op. Br.") at 11 (emphasis in original).

The question for the Court is, does Initiative #325 "address" these rights? To answer the question, the Court need not go any further than the text of the measure, which plainly circumscribes these rights. The initiative amends Article V, sec. 44.3 as follows:

> Any congressional districting plan adopted by a commission, by the general assembly, or by initiative must not be created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind.

R. at 13.

Using the right of initiative as an initial example, the above language by its terms limits how a redistricting map drawn "***by initiative*** must not be created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind." (Emphasis added.) The Board and the Respondents cannot credibly portray that this right is not even "addressed" by #325 when the measure identifies the fundamental right of initiative by name.

One of the goals of the single subject requirement is "to prevent surprise and fraud from being practiced upon voters." C.R.S. § 1-40-106.5(1)(e)(II). Respondents say at this early stage that their measure is silent on the aforementioned fundamental rights, but the text of their measure belies that representation. This contradiction is startling. But it highlights that the Court must base its single subject decision on what the initiative says rather than what its proponents say it says (or doesn't say).

In fact, the Title Board agreed during the hearing that the measure reaches these fundamental rights. Upon consideration of the Motion for Rehearing, the Board changed the titles so they address the new geographic communities of interest

and citizenship restriction in "any maps created by the congressional redistricting commission, ***the state legislature, or citizen initiative***." R. at 9 (emphasis added). Where the Board gains insight into a measure at a rehearing, that insight is properly considered by this Court in its review of the Board's decision on single subject. *See In re Title, Ballot Title & Submission Clause, and Summary for 2001-2002 #43 and #45*, 46 P.3d 436, 455 (Colo. 2002) (Court "do[es] not overstep our bounds" in taking note of on-the-record comments at a rehearing proceeding to find a measure includes a second subject). It is just factually wrong for the Board and Respondents to say this issue is not addressed when the revised titles they are defending before this Court say otherwise.

In addition to the expressly stated application of #325 to the right of initiative, it is no stretch of the imagination or the initiative's text to see that state legislators' rights and constituents' and voters' rights are directly affected by the prohibition on redistricting maps that are "created with, or influenced by" partisan data. How can the Speech or Debate Clause rights of legislators *not* be affected by this prohibition on creating or being influenced by partisan data? How can voters' rights of speech and association not be affected by a constitutional mandate that prohibits "[a]ny congressional districting plan adopted" if it is "influenced by" the specified partisan information? These restrictions logically and necessarily flow from this measure.

One must deny reality to say these three rights are not "addressed" by this unprecedented initiative.

Although the limitation on fundamental rights is unprecedented, the single subject violation here is not. As discussed in Petitioner's Opening Brief, this Court has struck down a limitation on political participation of lawyers in the title setting process as a second subject. *In re Title, Ballot Title & Submission Clause for 2003-2004 #32 and #33*, 76 P.3d 460, 462 (Colo. 2004). And to be clear, as the Court observed, there are only three members of the Title Board who were affected by this provision. *Id*. at 462. Not a dozen Redistricting Commissioners. Colo. Const., art. V, sec. 44.1(2). Or one hundred legislators. *Id*., sec. 45. Or tens of thousands of voters and even greater numbers of constituents.

This Court extended its analysis, pointing to the potential that this limitation could apply to any attorney. "By foreclosing any possibility that an attorney could serve on the title board, these initiatives restrict the political rights of all attorneys." *In re #32 and #33, supra,* 76 P.3d at 462. Thus, it was the mere "possibility" of "this exclusion from the political process," which constituted "a substantive matter, not a procedural change," and thus triggered the second subject in a measure that dealt with the initiative process. *Id*.

The impermissible structure in *In re #32 and #33* is indistinguishable from Initiative #325. This initiative, too, forecloses the opportunity for political participation based only on an asserted nexus to the process used in redistricting. In *In re #32 and #33, supra*, the restriction applied to members of one profession, only three of whom could participate at any one time as members of the Title Board. As to Initiative #325, it applies to broader groups of legislators and voters, and it impedes more than their right to serve on the Title Board. It limits how they can exercise those key political rights that are core prerogatives of the democratic process. Because the Title Board misunderstood the meaning and effect of this Court's precedent, its single subject decision on #325 should be reversed.

B. The Board and Respondents incorrectly state that the restriction on multiple substantive constitutional rights is acceptable because it is done in the redistricting context.

The Board seems to take the position that any incursion on these rights is tolerable, given the measure's primary focus. "Initiative #325 does not expressly create or alter any rights outside the narrow context of congressional redistricting." Bd. Op. Br. at 16. In the same way, Respondents err as they insist that these changes are "necessarily and properly connected" because they relate to redistricting. Resp. Op. Br. at 8.

Both parties are wrong for the same reason. Their defense was effectively rejected by the Court's decision in *In re 2003-2004 #32 and #33, supra.* That change was done in the narrow context of petition procedures, but the single subject problem arose because any restriction on political rights isn't about ***procedure***. It is, and was in that case, a ***substantive*** limitation of a fundamental constitutional right. *Id*. at 462. There, the Court didn't have to decide if this was a constitutional violation as to the lawyers who serve as ballot title setters, *id*. at 463, and it need not (and should not) do so here either.[1] Changing an array of permitted redistricting criteria is a procedural question, but the limitation on fundamental rights, found in the text of this measure, is "a substantive change in the law that should be separately addressed by the voters." *Id*.

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[1] The Title Board asserts that the First Amendment to the U.S. Constitution will prevent certain aspects of this "created with, or influenced by" construct from being given full effect. Bd. Op. Br. at 11. In other words, the Board seems to ask the Court to overlook the measure's single subject violation because it is, at least in part, unconstitutional and unenforceable. That is not a defense to a single subject violation, however, as the Court will not adjudicate the merits and applicability of this measure at this preliminary stage. "We have consistently held that it is not the purview of this court to determine the efficacy, construction, or future application of an initiative in the process of reviewing the action of the Title Board in setting titles for a proposed initiative." *In re Title, Ballot Title, & Submission Clause, and Summary for Initiative 1999-2000 #235(A)*, 3 P.3d 1219, 1225 (Colo. 2000).

Thus, it is no defense that there are substantive constitutional limitations tacked onto the procedural changes and that this combination is acceptable because both subjects share the heading of "redistricting criteria." An initiative that uses a "general theme" as its single subject hasn't met the test required by the Constitution. *In re Title, Ballot Title and Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 16. Therefore, the Board erred in finding this measure to have met the Constitution's single subject requirement.

C. Respondents incorrectly state that the second subject of rights restriction is acceptable, given the prospect of future initiatives that can change the law.

Respondents also contend that, even if these fundamental rights are restricted by #325, a future initiative that is a statutory amendment can comply with them or, if drafted as a constitutional amendment, it can change them. Resp. Op. Br. at 6. In other words, Respondents ask the Court to evaluate Initiative #326 without relying on the words it uses.

It should go without saying that the single subject analysis doesn't include an inquiry about whether there is a work-around that voters can use in the future to evade the problematic terms of an initiative. The single subject inquiry asks, "What subject or subjects are included in this measure, and are there topics within the

initiative that would work a fraud on voters because they didn't see these concealed topics coming?" The fact that both the Board and the Respondents argue that these issues are not even "addressed" by #325 answers the question of just how well hidden these aspects could be from the voting public.

In the redistricting context, concerns about surreptitious legal changes are particularly acute. For example, in *In re Title, Ballot Title, & Submission Clause for 2015-2016 #132 and #133,* 2016 CO 55, the Court addressed whether a role for the Supreme Court Nominating Commission as the appointing authority for bipartisan redistricting commissioners was its own subject. *Id.* at ¶ 26. There were no fundamental rights at issue. It was just that this change to an existing provision of the Constitution was "coiled up in the folds of a complex measure." *Id.* In other words, it was virtually invisible to voters, and the single subject's goal of preventing voter surprise was thus at issue.

The titles here do not alleviate this voter surprise. Although there is mention in the titles set of maps drawn by the legislature or by initiative, as discussed above, that reference is limited to the requirement that such maps reflect geographic communities of interest and U.S. citizenship data if it has been collected. The titles do ***not*** state that legislative and initiated maps cannot be "created with" or "influenced by" partisan information. Thus, the titles effectively mislead voters by

telling them only half of the story. As such, voters will be lulled into voting based on a major change to fundamental rights about which they will be unaware.

II. The titles are misleading because they do not state the prohibition on "influenc[ing]" the adoption of redistricting maps with the use of partisan data.

The Board's titles state that Initiative #325 "prohibit[s] a redistricting map that is created with partisan voter registration data or partisan electoral performance." R. at 9. They do not say, as the initiative text does, that a map is also prohibited if it is "influenced by" the use of partisan data.

A. Respondents incorrectly justify the titles' failure to state maps cannot be "influenced by" partisan data because the titles do state maps cannot be "created with" partisan data.

According to Respondents, "the phrases 'created with' and 'influenced by' substantially overlap…. Thus, adding the phrase 'influenced by' to the title adds unnecessary detail, length, and complexity. The phrase 'created with' is sufficient." Resp. Op. Br. at 10.

As an initial matter, Respondents obviously believe the words have different meanings because they included both of them as limitations on redistricting maps. And their measure would be implemented accordingly. In any constitutional analysis, this Court will "apply the constitutional provision according to its clear

terms. We must ***give effect***, if possible, ***to every word***." *City of Aurora v. Acosta*, 892 P.2d 264, 267 (Colo. 1995) (emphasis added).

And they are simply wrong about what the words mean, as "create" and "influence" are not synonymous. First of all, terms in an initiative must be given their "plain meaning." "In construing the text of a proposed initiative, we employ general rules of statutory construction and accord the language of the proposed initiative and its titles its plain meaning." *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 31.

Second, these particular terms have distinctly different definitions. For instance, "'to create' means to 'cause to exist; bring into being.'" *State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ*., 2017 WI 70, ¶ 25 (interpreting what it means to "create" a governmental body) (citing Am. Heritage Dictionary 438 (3d ed. 1992) ("Create"))); *see Breighner v. Mich. High Sch. Ath. Ass'n*, 662 N.W.2d 413, 418 (Mich. App. 2003) (in evaluating issue of creation of government agencies, "'Create' means 'to cause to come into being, as something unique'"), citing Random House Webster's College Dictionary (1997).

In a context akin to Initiative #325, "'influencing' means encouraging a vote for or against a candidate or a vote 'yes' or 'no' on a public question." *State v. Green*

Mt. Future, 2013 VT 87, ¶ 53. "Influence" does not mean, as "create" does, to bring something into existence.

Thus, Respondent's argument that these terms are the same or subsumed within one another fails.

B. The Title Board erroneously argues that the term "influenced by" may be a matter of dispute which can be resolved at a later time.

According to the Board, "To the extent Petitioner focuses on ambiguity in what it means for a map to be 'influenced by' partisan data, his argument simply highlights a term that may be disputed in the future." Bd. Op. Br. at 19.

Unfortunately, the Board has misconstrued Petitioner's concern altogether. The issue is that the titles do not inform voters of the "influence by" prohibition at all, not that the phrase can't be understood. And the phrase, "influenced by," is hardly confusing. In conjunction with its use pertaining to any map that is "adopted," the meaning is clear. As noted above, in a context when a map needs approval of a Commission, the General Assembly, or voters, it "means encouraging… a vote 'yes' or 'no' on a public question." *Green Mt. Future, supra,* at ¶ 53; *see* Cambridge

Dictionary ("influence," used as a verb, means "to affect or change how someone or something develops, behaves, or thinks").[2]

Thus, the Board's argument for not informing voters that #325 seeks to prohibit discussion that would encourage support or opposition to a map based on its partisan leanings is mislaid. The voters can clearly understand the breadth of what this means and that it means something other than "to create."

Unfortunately, the Title Board's decision to omit this material reference from the titles means that voters will not know how much this measure seeks to control – and limit – public debate. That is a major feature of the measure, not directly or logically connected to redistricting, that deserves notice in the titles.

"Although the titles need not state every detail of an initiative or restate the obvious, they must not mislead the voters or promote voter confusion." *In re Title, Ballot Title & Submission Clause, and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1099 (Colo. 2000) (Title Board's omission of restriction on mandated school program was reversible error). Voters will certainly be confused by what this

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[2] *See* https://dictionary.cambridge.org/us/dictionary/english/influence) (last viewed May 10, 2026).

initiative will accomplish if they think there are no limits relating to how they can "influence" a mapping election when, in fact, there clearly are.

Thus, the Board erred.

CONCLUSION

The Board failed in its duty to reject this multi-subject initiative, and its decisions below should be reversed.

Respectfully submitted this 14th day of May, 2026.

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I, Leni Charles, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 14, 2026, to the following:

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