

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED April 30, 2026 1:23 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 #326 (“Congressional Redistricting Using US Citizen Population”)</p> <p>Petitioner: Curtis Hubbard,</p> <p>v.</p> <p>Respondents: Kathleen Chandler and Rick Enstrom,</p> <p>and</p> <p>Title Board: Michael Dohr, Theresa Conley, Kurt Morrison</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>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</p>	<p>Case Number:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2025-2026</p>	

**#326 (“CONGRESSIONAL REDISTRICTING USING US CITIZEN
POPULATION”)**

Curtis Hubbard, registered elector of Boulder County and the State of Colorado (“Petitioner”), through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board (“Title Board” or “Board”) with respect to the title, ballot title, and submission clause set for Initiative 2025-2026 #326 (“Congressional Redistricting Using US Citizen Population”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2025-2026 #326.

Kathleen Chandler and Rick Enstrom (“Proponents”) proposed Initiative 2025-2026 #326 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 15, 2026, at which time titles were set for 2025-2026 #326. On April 22, 2026, Petitioner filed a Motion for Rehearing, alleging that Initiative #326 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 and incomplete as they do not fairly communicate the true intent and meaning of the measure and will mislead voters. The rehearing was held on April 23, 2026, at which time the Title Board granted the Motion for Rehearing only to the extent the Board made changes to the title.

B. Jurisdiction

Petitioner is entitled to review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. *See* C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying the Motion for Rehearing. The matter is properly before this Court.

GROUNDS FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because it lacked jurisdiction to set titles for the Initiative and the titles set by the Board violate the “clear ballot title” requirement by omitting critical elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioners’ Opening Brief:

1. Whether the Title Board lacked jurisdiction because the Proposed Initiative is comprised of the multiple subjects of:
 - (a) changing the criteria for Congressional redistricting maps adopted by the existing Independent Congressional Redistricting Commission, an entity which is embedded in the Colorado Constitution to control all aspects of such redistricting;
 - (b) restricting voters’ access to the fundamental constitutional right of initiative by preventing Congressional redistricting through an initiative if that redistricting plan has been created with or even influenced by any partisan information;
 - (c) restricting state legislators’ fundamental constitutional rights under the Speech or Debate Clause of the Colorado Constitution by preventing Congressional redistricting by the General Assembly if that redistricting

plan has been created with or even influenced by any partisan information; and

(d) restricting Coloradans’ fundamental constitutional rights of free speech and association by preventing any influence on Congressional redistricting through any reference to partisan considerations.

2. Whether the titles violate the clear title requirement by failing to inform voters that the prohibition on partisan performance and data extends beyond Congressional redistricting maps “created with” such information and includes any redistricting map that was even “influenced by” such information.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the titles are legally flawed and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner’s briefs.

Respectfully submitted this 30th day of April, 2026.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621

Nathan Bruggeman, #39621

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2025-2026 #326 (“CONGRESSIONAL REDISTRICTING USING US CITIZEN POPULATION”)** was sent electronically via Colorado Courts E-Filing this day, April 30, 2026, to the following:

Counsel for the Title Board:

Kyle Holter
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for Proponents:

Scott Gessler
Gessler Blue LLC
7350 E. Progress Pl., Suite 100
Greenwood Village, Colorado 80111

/s Erin Mohr _____



DATE FILED
April 30, 2026 1:23 PM

STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2025-2026 #326 ‘Congressional Redistricting Using US Citizen Population’”

.....

IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 24th day of April, 2026.

Jena Griswold

SECRETARY OF STATE



**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025 -2026 #326
("CONGRESSIONAL REDISTRICTING USING US CITIZEN POPULATION")**

Initiative Proponents: Kathleen Chandler and Rick Enstrom

&

Objector: Curtis Hubbard

MOTION FOR REHEARING

By undersigned counsel, Curtis Hubbard, a registered voter of the County of Boulder, objects to the titles set for Initiative #326, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 15, 2026, the Title Board set the following ballot title and submission clause for Initiative #326:

Shall there be an amendment to the Colorado Constitution changing criteria for congressional redistricting maps, and, in connection therewith, repealing the requirement that the independent congressional redistricting commission maximize the number of politically competitive districts; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance; and requiring congressional redistricting maps be based upon United States citizen population data, if available?

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #326 because it comprises multiple subjects.

A. The first subject: reconfiguration of criteria for setting congressional districts.

As the single subject statement in the title that this Board set states, one subject of this measure is “changing congressional redistricting criteria.” The measure does this by repealing the requirement to maximize the number of competitive districts drawn.

B. The second subject: limiting the fundamental constitutional right of initiative.

Section 2 of Initiative #326 provides that any congressional redistricting plan “adopted... by initiative must not be created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind.” Proposed Section 44.3(1)(d).

In other words, two designated representatives cannot “create[]” their measure by using voter registration or electoral performance information. The use of “must” in this subsection makes this a mandatory restriction on any submitted proposed initiative.

The Supreme Court has decided this issue. A substantive restriction on a fundamental constitutional right that is paired with procedural changes to the same constitutional structure is a multi-subject initiative. In *In re Title, Ballot, and Submission Clause for 2003-2004 # 32 & # 33*, 76 P.3d 460, 462 (Colo. 2003), the Court found that an initiative that changed certain petition procedures around the initiative and referendum process but also prohibited all attorneys from being involved in the title setting process comprised two subjects. “By foreclosing any possibility that an attorney could serve on the title board, these initiatives restrict the political rights of all attorneys.... [T]his exclusion from the political process is a substantive matter, not a procedural change to the petitions process.” *Id.* at 462, citing *Evans v. Romer*, 854 P.2d 1270 (Colo. 1993), cert. denied, 510 U.S. 959 (1993) (invalidating a substantive restriction imposed by initiative on a fundamental constitutional right).

Clearly, if restricting the manner in which petition matters can be authorized to proceed to the ballot (through limiting the composition of the Title Board) is a second subject, restricting the manner in which initiated congressional redistricting proposals can be formulated so as to be on the ballot is a second subject of this measure. A substantive limitation such as this one cannot be paired with a procedural change, redefining and reordering redistricting criteria, and survive a single subject analysis. Thus, no title for it should have been set by the Board.

C. *The third subject: limiting the fundamental constitutional rights of speech and association.*

This initiative also restricts what can be said in an initiative campaign to convince voters to adopt a congressional redistricting plan. As noted, a new map “must not be... influenced by” the use of voter registration or electoral performance data “of any kind.” Proposed Section 44.3(1)(d).

As a result, no advocate of the map can advance it to influence the election based on a position, opinion, or belief that the map favors or disfavors any political party or political candidate. This prior restraint of speech in the political context is a substantive restriction on what voters can say, hear, and consider when voting on a redistricting initiative. “Restrictions on speech based on its content are ‘presumptively invalid’ and subject to strict scrutiny.” *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 358 (2009), citing *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 188 (2007).

As was true above, this substantive restriction is not part of a single subject with purely procedural changes to the redistricting process. Therefore, no title can be set on #326.

D. The fourth subject: limiting the constitutional rights of state legislators under the Colorado Constitution’s speech and debate clause.

As noted above, the initiative restricts “[a]ny congressional redistricting plan adopted... by the general assembly... [from being] created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind.” Proposed Section 44.3(1)(d). In short, this means that legislators can neither consider nor advocate for a map based on its factual electoral backdrop in terms of voter registration or performance.

The speech or debate clause in the Colorado Constitution is located in article V, § 16. That clause “plainly protects legislators from inquiry into legislative acts or their motives for performing them.” *Romer v. Colo. General Assembly*, 810 P.2d 215, 222 (Colo. 1991), citing *United States v. Brewster*, 408 U.S. 501, 509 (1972). After all, the purpose of the speech or debate clause is to “protect the integrity of the legislative process by insuring the independence of individual legislators.” *Anderson v. Senthilnathan*, 2023 COA 88, ¶ 61 (citations omitted).

Initiative #326 is a substantive restriction on the protected rights and prerogatives of legislators under Colorado’s speech or debate clause. If they adopt a congressional redistricting plan, their legislative act and even their motives in adopting said plan are open to challenge. If #326’s proponents are to open this substantive can of worms, they must do so via a separate initiative. Under *In re Title for 2003-2004 # 32 & # 33*, *supra*, they cannot both change the procedural guidelines for redistricting and restrict the materials that legislators consider or use in advancing a redistricting plan.

Thus, this measure as currently constructed cannot be titled, and it should be returned to Proponents to be separated into at least two single-subject initiatives.

E. The fifth subject: changing the basis for drawing Congressional districts from using total population and using, instead, only citizens as documented by the U.S. Census.

In the current era, the issue of targeting non-citizens is a particularly politically loaded topic. This is true in light of federal immigration enforcement and recent Colorado ballot measures.¹ Using a second subject to attract voters to a hot button issue, when they “might vote ‘no’ on one or more of the subjects if they were proposed separately,” was one of the evils to be avoided in enacting the single subject requirement. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8.

Notably, this initiative does not condition the use of only U.S. citizens in redistricting if that should become a federal requirement. It merely states that Colorado will use the number of citizens for districting only “[i]f the U.S. Census Bureau produces citizen population for the state

¹ Just the potential of non-citizen involvement in the electoral process has driven up large vote totals in the past. For instance, Amendment 76 changed Colorado’s constitution in 2020 from providing that “[e]very citizen” could vote to stating that “only” citizens could vote; it passed, 63% to 37%. <https://www.coloradosos.gov/pubs/elections/Results/Abstract/2020/general/amendProp.html>.

of Colorado.” Proposed Section 44.3(1)(a)(I). Thus, it is an incidental aspect (and superfluous subject) of a measure that deals with an unrelated refashioning of redistricting criteria.²

II. The ballot title is misleading, unfair, and inaccurate.

- A. The title fails to refer to the fact that the initiative binds redistricting by the legislature and by the voters through initiative.

Given the multiple references to the expanse of this measure, the title should state that it applies to maps adopted by initiative or by the General Assembly.

- B. The title fails to state that no plan can be “influenced by” partisan voter registration or electoral performance data of any kind.

Voters should understand that they are adopting a ballot measure that restricts the ability of any person to advocate for or against a map because it will have a projected partisan effect. If voters are going to curtail the type of information that can be relayed during a campaign of incredible importance to each of them, they should know that they are limiting their own speech and the speech of all other political voices if they adopt this measure.

Likewise, they should know that their elected legislators cannot speak of the potential change in representation if legislators are authorized to adopt a congressional redistricting map. But there is no such statement about or allusion to this fact in the Board-adopted title.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #326 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

² Similarly, the vote to adopt Amendment 76 was a superficial but politically motivating add-on to then-existing law. As the Blue Book pointed out, the initiative did not address any current non-citizen voting. It simply prevented the state from changing its laws, assuming it might choose to do so at some undefined point in the future. Legislative Council of the Colorado General Assembly, *2020 State Ballot Information Booklet*, Res. Pub. No. 748-1 at 18 (https://content.leg.colorado.gov/sites/default/files/blue_book_english_for_web_2020_1.pdf).

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

RECHT KORNFELD, P.C.

s/ Mark Grueskin

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025 -2026 #326** was sent this day, April 22, 2026, via email to:

Scott Gessler
Counsel for proponents

Emily Burke Buckley
Senior Assistant Attorney General

s/ Erin Mohr

Ballot Title Setting Board

Proposed Initiative 2025-2026 #326¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Constitution changing criteria for congressional redistricting maps, and, in connection therewith, repealing the requirement that the independent congressional redistricting commission maximize the number of politically competitive districts; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance; and requiring congressional redistricting maps be based upon United States citizen population data, if available.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Constitution changing criteria for congressional redistricting maps, and, in connection therewith, repealing the requirement that the independent congressional redistricting commission maximize the number of politically competitive districts; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance; and requiring congressional redistricting maps be based upon United States citizen population data, if available?

Hearing April 15, 2026:

Single subject approved; draft title changed; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Board members: Michael Dohr, Theresa Conley, Kurt Morrison

Hearing adjourned 6:17 P.M.

¹ Unofficially captioned “**Congressional Redistricting Using US Citizen Population**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2025-2026 #326¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Constitution changing criteria for congressional redistricting maps created by the congressional redistricting commission, the state legislature, and citizen initiative, and, in connection therewith, repealing the requirement that the maps maximize the number of politically competitive districts; prohibiting the use of partisan voter registration data or partisan electoral performance in creating maps; and requiring the maps be based upon United States citizen population data, if available.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Constitution changing criteria for congressional redistricting maps created by the congressional redistricting commission, the state legislature, and citizen initiative, and, in connection therewith, repealing the requirement that the maps maximize the number of politically competitive districts; prohibiting the use of partisan voter registration data or partisan electoral performance in creating maps; and requiring the maps be based upon United States citizen population data, if available?

Hearing April 15, 2026:

Single subject approved; draft title changed; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Board members: Michael Dohr, Theresa Conley, Kurt Morrison

Hearing adjourned 6:17 P.M.

Rehearing April 23, 2026:

Motion for rehearing (Hubbard) granted only to the extent the Board made changes to the title (3-0).

Board members: Michael Dohr, Theresa Conley, Kurt Morrison

Hearing adjourned 4:38P.M.

¹ Unofficially captioned “**Congressional Redistricting Using US Citizen Population**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

2025-2026 #326 FINAL

Be it enacted by the people of the State of Colorado,

SECTION 1. In the constitution of the State of Colorado, section 44 of Article V, **add** 3(a) as follows:

§ 44. Representatives in congress--congressional districts--commission created

(3)(a) CITIZEN POPULATION MEANS THE NUMBER OF PERSONS WHO ARE U.S. CITIZENS.

SECTION 2. In the constitution of the State of Colorado, section of Article V, **amend** (1); and **repeal** (3) as follows:

§ 44.3. Criteria for determinations of congressional districts—definition

(1) ~~In adopting a congressional redistricting plan, the commission shall,~~ ANY CONGRESSIONAL DISTRICTING PLAN ADOPTED BY A COMMISSION, BY THE GENERAL ASSEMBLY, OR BY INITIATIVE MUST IMPLEMENT THE FOLLOWING CRITERIA, IN THE FOLLOWING ORDER.

(a) ~~Make a good faith effort to~~ ONE PERSON, ONE VOTE. TO THE EXTENT POSSIBLE, EACH CONGRESSIONAL DISTRICT MUST achieve precise mathematical ~~population~~ equality between districts, ~~justifying each variance, no matter how small,~~ as required by the constitution of the United States.

(I) IF THE U.S. CENSUS BUREAU PRODUCES CITIZEN POPULATION FOR THE STATE OF COLORADO, THEN EACH DISTRICT MUST ACHIEVE, TO THE EXTENT POSSIBLE, PRECISE MATHEMATICAL EQUALITY BETWEEN DISTRICTS BASED ON CITIZEN POPULATION AS DETERMINED BY THE U.S. CENSUS BUREAU.

(II) IF THE U.S. CENSUS BUREAU DOES NOT PRODUCE CITIZEN POPULATION FOR THE STATE OF COLORADO, THEN EACH DISTRICT MUST ACHIEVE, TO THE EXTENT POSSIBLE, PRECISE MATHEMATICAL EQUALITY BETWEEN DISTRICTS BASED ON OVERALL POPULATION AS DETERMINED BY THE U.S. CENSUS BUREAU.

(b) Districts must be composed of contiguous geographic areas;

~~(b)~~ (c) DISTRICTS MUST ~~comply~~ with the federal “Voting Rights Act of 1965”, 52 U.S.C. sec. 50301, as amended.

(d) 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.

~~(3)(a) Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.~~

~~(b) In its hearings in various locations in the state, the commission shall solicit evidence relevant to competitiveness of elections in Colorado and shall assess such evidence in evaluating proposed maps.~~

~~(c) When the commission approves a plan, or when nonpartisan staff submits a plan in the absence of the commission's approval of a plan as provided in section 44.4 of this article V, the nonpartisan staff shall, within seventy-two hours of such action, make publicly available, and include in the commission's record, a report to demonstrate how the plan reflects the evidence presented to, and the findings concerning, the extent to which competitiveness in district elections is fostered consistent with the other criteria set forth in this section.~~

~~(d) For purposes of this subsection (3), "competitive" means having a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses. Competitiveness may be measured by factors such as a proposed district's past election results, a proposed district's political party registration data, and evidence-based analyses of proposed districts.~~

SECTION 3. Effective Date. This measure takes effect on the date of the official declaration of the vote and proclamation of the governor.



Fiscal Summary

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Measure: Initiative 326 – CONGRESSIONAL REDISTRICTING USING US CITIZEN POPULATION

Analyst: Hamza Syed, hamza.syed@coleg.gov, 303-866-4976

Date: April 13, 2026

Fiscal Summary of Initiative 326

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State Expenditures

The measure increases the workload of the Congressional Redistricting Commission when adopting maps. Costs may also increase to address legal challenges.

Economic Impact

The measure has no impact on the state's economy.