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| SUPREME COURT OF COLORADO<br>2 East 14th Ave.<br>Denver, CO 80203 | DATE FILED<br>May 15, 2026 8:21 AM |
| Original Proceeding<br>Pursuant to Colo. Rev. Stat. § 1-40-107(2)<br>Appeal from the Ballot Title Board | |
| In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #326 ("Congressional Redistricting Criteria")<br><br>**Petitioner:** Curtis Hubbard,<br><br>**v.**<br><br>**Respondents:** Kathleen Chandler and Rick Enstrom,<br><br>**and**<br><br>**Title Board:** Michael Dohr, Theresa Conley, Kurt Morrison. | **▲COURT USE ONLY▲** |
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| **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:

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

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X It contains 3380 words.

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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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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**



**Constitutional Provisions**

## LEGAL ARGUMENT

### I. Initiative #326 violates the Constitution's single subject limitation.

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

In response to the contention that Initiative #326 restricts the rights of initiative, the right to speech and debate for legislators, and the rights of free speech and association, the Respondents assert that #326 is just silent on the issue. This contention is undermined by Respondents' initiative text and the titles set by the Board.

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). To emphasize this point, Respondents state, "instead of focusing on any particular clause within the initiative that addresses one of those topics, the Petitioner claims that the ***effect*** of the initiative will be to restrict these three rights." *Id*. (emphasis in original).

The question for the Court is, does Initiative #326 "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 Respondents cannot credibly portray that this right is not even "addressed" by #326 when the measure identifies the fundamental right of initiative by name. Nor can they suggest that Petitioner's argument about substantive restrictions on fundamental rights is merely a potential effect of Initiative #326 when it is expressly incorporated into their measure.

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 states, rather than on what its proponents say it says (or doesn't say).

During its title setting process, even the Title Board agreed that the measure reaches these fundamental rights. After the Motion for Rehearing was heard, the title was revised to state that this initiative deals with "criteria for congressional redistricting maps created by the congressional redistricting commission, ***the state legislature, or citizen initiative***." R. at 8 (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 Respondents to say this issue is not addressed when the titles they are defending before this Court say otherwise.

In addition to the expressly stated application of #326 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 substantive 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 (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 "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 virtually indistinguishable from Initiative #326. This initiative, too, forecloses the opportunity for political participation based only on an asserted nexus to a revised 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 #326, it applies to broader groups of legislators and voters, and it impedes more than just the 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 #326 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 #326 "does not prohibit anyone from participating in the initiative process. Rather, consistent with its single

subject, it adjusts the criteria that may be used for congressional redistricting, including for maps drawn by initiative." Title Board Opening Brief ("Bd. Op. Br.") at 8. 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. 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*.

The Board's attempt to distinguish *In re 2003-2004 #32 and #33* fails to support a single subject finding here. The Board insists that the linchpin of that decision was that it dealt, not with initiative rights, but with an impingement on the

right of "attorneys' fundamental right to participate in the political process." Bd. Op. Br. at 8. As noted above, though, the Court's holding actually keyed off of whether restricting ***substantive*** political rights, under the rubric of changed ***procedures***, was really all one subject. The Court held these were different subjects that could not be combined in one proposal.

Subsequent decisions by this Court support Petitioner's position. "We have rejected, because they contained multiple subjects, initiatives that proposed procedural changes to the initiative and referenda process, while also proposing substantive changes to constitutional provisions." *In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010). The question is not whether there is a tangential label that can be applied to the two changes. The question is, does an initiative pair with a mere procedural change "a significant invasion of [a] fundamental constitutional right"? *In re #43, supra*, 46 P.3d at 448. If so, the measure is two subjects to be presented to voters separately.

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 #326, 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 #326 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 title does ***not*** state that legislative and initiated maps cannot be "created with, or influenced by" partisan information. Thus, the title effectively misleads 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.

### D. The Board is incorrect that the restriction of fundamental rights cannot be a subject because the courts may narrowly construe Initiative #326.

The Board contends that the limitations placed on the General Assembly and on voters "rest on the assumption that this provision will be interpreted so broadly as to limit what legislators or members of the public can even say about proposed maps." Bd. Op. Br. at 9. The Board also speculates that "it is at least as likely that the phrase 'influenced by' will be interpreted more narrowly to encompass only direct efforts to draw or modify maps, and leave un-regulated expressive activity about those maps." *Id*. at 9-10. It is noteworthy that the Board provides no legal basis or precedent for this construction of "influenced by."

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. As to "influence," the dictionary definition is clear. "Influence" means "to affect or change how someone or something develops, behaves, or thinks."[1] In a context akin to Initiative #326, "'influencing' means ***encouraging a*** vote for or against a

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

candidate or a ***vote 'yes' or 'no' on a public question***." *State v. Green Mt. Future*, 2013 VT 87, ¶ 53 (emphasis added).

The Board's after-the-fact suggestion that this initiative is a single subject based on rules of construction is misplaced. "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). In any event, the Board cites no case law support for its position that the single subject compliance of an initiative is based on a construction of language that this Court has not interpreted. The more appropriate understanding of #326 relies only on the plain meaning of "influence," and that meaning supports Petitioner's position below and before this Court.

Therefore, this measure constitutes multiple subjects in violation of the Constitution.

## II. The titles are misleading because they does 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 #326 "prohibit[s] a redistricting map that is created with partisan voter registration data or partisan electoral performance." R. at 8. 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 title's failure to state maps cannot be "influenced by" partisan data because the title does 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 the that redistricting maps can be configured. And their measure would be applied in this manner. "We must favor a construction of a constitutional amendment that will render every word operative, rather than one that may make some words meaningless or nugatory." *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210, 1215 (Colo. App. 2009).

And they are simply wrong about what the words mean, as "create" and "influence" are not synonymous. First of all, the plain meanings of the two terms are

not the same. Further, their dictionary definitions are distinct from one another. 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))).

As noted above, "influence" means to change a person's opinion or way of thinking. As to policy choices, it's a matter of convincing someone to support or oppose a given proposal. "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" rests on an interpretation that the Board cannot entertain.

According to the Board, the Petitioner's concern about "influenced by" rests on an interpretation that "is unlikely" to be given to that phrase. Bd. Op. Br. at 12.

Further, the Board suggests that it can engage in no interpretation of any term in an initiative in its title setting role (unlike in its single subject determination role). *Id.*

The Board seeks to complicate the inquiry beyond the legal standards that actually apply. Both this Court and the Board assess an initiative in title setting, "[g]iving effect to the plain language of [the measure], as we must in ascertaining its intent and meaning for the purpose of reviewing" the title. *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 75*, 138 P.3d 267, 271 (Colo. 2006) (holding that the plain meaning of the initiative text required the conclusion that it was prospective in effect).

The point is, the Board did not have to read anything into "influenced by." It is the language of the initiative and has a plain meaning, as addressed above. *See Green Mt. Future, supra*, at ¶ 53 (it "means encouraging… a vote 'yes' or 'no' on a public question"). Voters, having just been through an election with advertisements, campaign brochures, and weeks of politicking, would know what it means to be "influenced by" political information. The Board's argument strains credulity to think voters would be confused by such a reference that would inform them of a key aspect of this measure.

In the same vein, the Board's position that the "central feature" of #326 is prohibiting partisan data if used "to draw congressional maps," Bd. Op. Br. at 12,

ignores the fact that the measure does not say that. It extends to ***influence*** in the ***adoption*** of maps.

A title is deficient if it omits "key aspects" of a measure. *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶¶ 26-27. The omission of new procedures that lead to recall of an elected official was enough to invalidate a ballot title, changing the recall process. A title that omits such information "does not provide sufficient information to allow voters to determine intelligently whether to support or oppose the proposal." *Id*., ¶ 32. If the number of signatures needed to kick off a recall and the process for petition review are "central features" of such an initiative, *id*., ¶¶ 29-31, the fact that redistricting maps cannot even be "influenced by" partisan data is just such a feature and key to voter understanding of what this measure seeks to accomplish.

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 a change in redistricting criteria, that deserves notice in the titles.

Thus, the Board erred, and the title set is misleading by omission.

## CONCLUSION

Initiative #326 should be returned to Respondents for its violation of the single subject requirement or returned to the Title Board for the appropriate revision of these titles.

Respectfully submitted this 14th day of May, 2026.

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## CERTIFICATE OF SERVICE

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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