SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 7, 2026 2:59 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 #326 ("Congressional Redistricting Using US Citizen Population") **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: 2026SA152
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).

Choose one:

X It contains 4,575 words.

☐ It does not exceed 30 pages.

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

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
Mark G. Grueskin
Attorney for Petitioner

TABLE OF CONTENTS

Issues Presented 1

Statement of the Case.....2

A. Statement of Facts.....2

B. Nature of the Case, Course of Proceedings, and Disposition Below. 2

Summary of Argument.....4

Legal Argument 5

I. Initiative #326 violates the Constitution's single subject limitation. 5

A. Standard of Review.....5

B. Preservation of Issue Below. 6

C. Initiative #326 violates the single subject requirement. 7

1. Initiative #326's first subject is its change of the constitutional criteria to be considered during the Congressional redistricting process provided in the Colorado Constitution......7

2. Initiative #326's second subject is its restriction on the fundamental right of initiative when as to Congressional redistricting. 9

3. Initiative #326's third subject is its restriction on the speech-and-debate rights of state legislators should they engage in Congressional redistricting. 13

4. Initiative #326's fourth subject is its restriction on First Amendment guarantees of free speech and association. 16

II. The title set for Initiative #326 is materially misleading to voters. 19

A. Standard of Review.....20

B. Preservation of Issue Below. 20

C. Initiative #326's title is misleading. 20
Conclusion 22

TABLE OF AUTHORITIES

Cases

Buckley v. Valejo, 424 U.S. 1 (1976) 16

Cole v. State, 673 P.2d 345 (Colo. 1983) 19

Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991) 14, 15

Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008) 19

Dallman v. Ritter, 225 P.3d 610 (Colo. 2010) 16

First Nat'l Bank v. Bellotti, 435 U.S. 765 (1978) 16

Hall v. Moreno, 2012 CO 14 ..... 17, 18

In re Booras, 2019 CO 16 18

In re Colo. Indep. Cong. Redistricting Comm'n, 2021 CO 73 7

In re Title, Ballot Title & Submission Clause for 2001-2002 #43 and #45, 46 P.3d 438 (Colo. 2002) 12

In re Title, Ballot Title & Submission Clause for 2003-2004 #32 and #33, 76 P.3d 460 (Colo. 2004) 11, 12

In re Title, Ballot Title & Submission Clause for 2009-2010 #91, 235 P.3d 1071 (Colo. 2010) 15

In re Title, Ballot Title & Submission Clause for 2013-2014 #90, 2014 CO 63 6

In re Title, Ballot Title & Submission Clause for 2015-2016 #156, 2016 CO 56 ... 10

In re Title, Ballot Title & Submission Clause for 2019-2020 #315, 2020 CO 61, ¶ 13, 500 P.3d 363 .....5, 6

In re Title, Ballot Title & Submission Clause for 2021-2022 #16, 2021 CO 55 5

In re Title, Ballot Title and Submission Clause for 2009-2010 # 91, 235 P.3d 1071 (Colo. 2010) 6

In re Title, Ballot Title and Submission Clause for 2015-2016 #73, 2016 CO 24 ..21

In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).....5

In re Title, Ballot Title, & Submission Clause for 2013-2014 #76, 2014 CO 52 6

In re Title, Ballot Title, and Submission Clause for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010) 6

In re Title, Ballot Title, and Submission Clause for 2011-2012 #45, 2012 CO 26 .20

In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #315, 2020 CO 61 6

Lakewood v. Colfax Unlimited Ass'n., 634 P.2d 52 (Colo. 1981).....18

Morrissey v. State, 951 P.2d 911 (Colo. 1998).....14

Romer v. Colo. Gen. Assembly, 810 P.2d 215 (Colo. 1991).....13

Urevich v. Woodard, 667 P.2d 760 (Colo. 1983) 10

Virginia Soc'y for Human Life v. Caldwell, 152 F.2d 268 (4th Cir. 1988).....21

Statutes

C.R.S. § 1-40-106.5(1)(e)(II).....5

Other Authorities

Leg. Council of the Colo. General Assembly, *2018 State Ballot Information Booklet*, Res. Pub. No. 702-2, Sept. 11, 2018.....8

Constitutional Provisions

Colo. Const., art. V, sec. 16 13
Colo. Const., art. V, sec. 44.3(2)(a) 7

ISSUES PRESENTED

Whether the Title Board lacked jurisdiction because the Proposed Initiative is comprised of the multiple subjects of:

(1) 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;

(2) 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;

(3) 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

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

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.

STATEMENT OF THE CASE

A. Statement of Facts.

Kathleen Chandler and Rick Enstrom (hereafter "Respondents") proposed Initiative 2025-2026 #326 (the "Initiative" or "Initiative #326"). 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.

Petitioners filed Initiative #326 to revise redistricting for members of the U.S. House of Representatives. In so doing, they did not just change the existing system through the Independent Congressional Redistricting Commission, adopted by voters in 2018 as Amendment Y. Instead, they changed the Commission process and also restricting redistricting by the General Assembly and by the voters through initiative. The specific change they applied to the Commission, the legislature, and the electorate was to prohibit the creation of any redistricting map with partisan voter registration data or partisan election performance data. Moreover, Initiative #326

also prohibits giving effect to any map that is "influenced by" such factual partisan information.

A Title Board hearing was held on April 15, 2026, at which time titles were set for Initiative #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, unfair, and inaccurate 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 insofar as the Board changed the title based on concerns raised in Petitioner's Motion for Rehearing.

The Board set the following ballot title for Initiative #326:

> *Shall there be an amendment to the Colorado Constitution changing congressional redistricting criteria, and, in connection therewith, repealing the requirement that the congressional redistricting maps maximize the number of politically competitive districts and preserve whole communities of interest; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance, and instead creating seven new geographic communities of interest, consisting of 50 of the 64 Colorado counties, and requiring any maps created by the congressional redistricting commission, the state legislature, or citizen initiative to use specified priorities to keep counties, cities, and geographic communities of interest together as much as possible?*

SUMMARY OF ARGUMENT

Besides changing redistricting criteria, this measure is a substantive and unprecedented restriction on political debate. Initiative #326 does not just relate to the setting of Congressional districts by the Independent Congressional Redistricting Commission. It prohibits any use of partisan voter registration data or partisan electoral performance information to "create" or "influence" the adoption of a new district map. This severe limitation on multiple fundamental rights – of voters, of legislators, and of Redistricting Commissioners – is a line of surreptitious subjects that violates the single subject requirement. As such, the Title Board erred and should have withheld titles given this failure to comply with the single subject mandate of the Colorado Constitution.

The Title Board's title set for this measure is materially incomplete, as it failed to inform voters that no map could be "influenced by" any partisan information. Voters should at least know that they and any other person interested in advocating for or against a proposed map will be constitutionally silenced in discussing this issue of paramount importance in any redistricting discussion. Thus, even if this issue constitutes a single subject, it cannot be presented to voters with the title the Board set.

Petitioner raises the same arguments here as in his briefs that are being filed simultaneously on Initiatives #324 and #325.

LEGAL ARGUMENT

I. Initiative #326 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 proponents' 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 the Matter of the 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 2-4.

C. Initiative #326 violates the single subject requirement.

1. Initiative #326's first subject is its change of the constitutional criteria to be considered during the Congressional redistricting process provided in the Colorado Constitution.

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 creating a set of "geographic communities of interest" that apply to 50 of 64 counties in the state. Proposed Art. V, sec. 44(b.5). It also sets an ordering for various geographical criteria to apply, including the new geographic communities of interest. *Id*., sec. 44.3(2). It then makes the requirement for applying traditional communities of interest optional. *Compare* Colo. Const., art. V, sec. 44.3(2)(a) *with* Proposed sec. 44.3(2)(h). And finally, it repeals the requirement to maximize the number of competitive districts drawn.

Importantly, these changes apply to redistricting under the current constitutional rubric. *See* R. at 12-14 (proposing amendments to Article V, sections 44 and 44.3 relating to redistricting by the Independent Congressional Redistricting Commission). This is the construct that voters know and understand, as it was used during the 2021 redistricting process after voters adopted Amendment Y at the 2018 general election. *See In re Colo. Indep. Cong. Redistricting Comm'n*, 2021 CO 73, ¶¶ 41-43.

The adoption of Amendment Y represented a significant change to the process of redistricting in Colorado.

> Amendment Y establishes a new process for congressional redistricting…. Under the state constitution (as of 2018), the state legislature is responsible for dividing the state into these congressional districts…. Amendment Y transfers the authority to draw congressional district maps from the state legislature to a newly created Independent Congressional Redistricting Commission.

Leg. Council of the Colo. General Assembly, *2018 State Ballot Information Booklet*, Res. Pub. No. 702-2, Sept. 11, 2018, at 8.[1]

But as Respondents represented to the Title Board in their motion for rehearing, "the proposed initiative is not limited to a commission, but rather the criteria apply to maps drawn by a commission, the legislature, and by initiative." R. at 7. In this regard, Respondents were pointing to their amendment of Article V, sec. 44.3, to which was added the following language in the new subsection (1)(c): "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.

---

1 (https://content.leg.colorado.gov/sites/default/files/images/2018_english_bluebook_for_the_internet.pdf (last viewed May 4, 2026).)

Because of the language this key provision uses ("must not be created with, or influenced by") and the scope of whom it applies to ("a commission, by the general assembly, or by initiative"), no one who draws a Congressional redistricting map – a Redistricting Commissioner, a legislator who sponsors a bill that sets a map, or initiative proponents whose measure advances a new map – can use partisan information in establishing district boundaries ("must not be created with"), consider any partisan data or performance ("or influenced by"), or convince decision makers – other Commissioners, other legislators, or voters – to approve such map ("must not be… influenced by").

The breadth on what can be researched, thought about, or discussed in the redistricting process, coupled with Respondents' express textual language and admission that their measure applies not only to commission maps but also to legislative and voter-approved maps, triggers the multiple subject concerns that the Title Board overlooked.

2. Initiative #326's second subject is its restriction on the fundamental right of initiative when as to Congressional redistricting.

The fact that Initiative #326 prevents initiative proponents (unlike the Redistricting Commission, a public body that conducts its meetings pursuant to a clear constitutional process) from using or even considering partisan voter

registration or electoral performance data is an extraordinary, unprecedented incursion on the initiative process. Given the sheer scope of how much this would restrict initiative proponents, it is a second subject.

The right of initiative is a fundamental constitutional right. An overly broad restriction, such as limiting any "inducement" to become involved in an initiative effort, "unnecessarily trammels the fundamental right of initiative." *Urevich v. Woodard*, 667 P.2d 760, 763 (Colo. 1983). This Court's single subject assessment does not contemplate determining whether a measure would ultimately be determined to be constitutional. *See In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8 ("Our role is not to consider the merits, efficacy, construction, or future application of a proposed initiative"). Nevertheless, the Court does evaluate whether an initiative, attempting to qualify for a ballot title under a too-broad general theme, impedes the exercise of fundamental rights as part of a single subject analysis.

For instance, four companion initiatives sought to revise procedures around the initiative and referendum process. Among other things, these measures created petition rights "in all districts," capped the maximum number of required signatures at 5% of all district votes cast for secretary of state, precluded the setting of ballot measure summaries or fiscal notes at the time ballot titles were set, revised the

process for deciding whether an initial ballot contained multiple subjects, restricted appeals of ballot title decisions, prohibited any requirement of training for petition circulators, allowed any adult in Colorado to circulate any petition, changed petition filing deadlines and presumptions about the signatures gathered, and limited election official review and potential protests of petition sufficiency. *In re Title, Ballot Title & Submission Clause for 2003-2004 #32 and #33,* 76 P.3d 460, 463-71 (Colo. 2004).

What concerned this Court about these measures was not the array of affected procedures but these proposals' substantive restriction to prevent any attorney from acting as part of a ballot title setting entity. Two measures, Initiatives #21 and #22, applied to all attorneys. Two others, Initiatives #32 and #33, would have allowed the Attorney General to serve personally on the Title Board but would have prevented any other attorney from acting in this capacity. *Id*. at 461.

The Court struck down these initiatives as violative of the single subject requirement, explaining:

> [T]he provision also limits the substantive rights of all attorneys. By foreclosing any possibility that an attorney could serve on the title board, these initiatives restrict the political rights of all attorneys. Under our prior decisions, **this exclusion from the political process is a substantive matter, not a procedural change** to the petitions process.

Id. at 462 (emphasis added). This new restriction relating to political rights was a second subject. "We make no prediction as to whether excluding lawyers from the

title board is constitutional, but at the very least, this exclusion is a substantive change in the law that should be separately addressed by the voters." *Id*. at 463.

Similarly, precluding the proponents of an initiative from considering partisan implications of a Congressional redistricting map or campaigning with any reference to such considerations is a limitation on permitted political expression that is separate and apart from the change to redistricting criteria generally. It is a substantive restriction on a fundamental constitutional right, and that material change in constitutional rights must be presented to voters in its own measure.

This conclusion is consistent with other precedent. "Prohibiting municipal legislation from being referred to that city's registered electors when the success of such referendum would 'reduce private property rights,' represents **a significant invasion of this fundamental constitutional right.**" *In re Title, Ballot Title & Submission Clause for 2001-2002 #43 and #45,* 46 P.3d 438, 448 (Colo. 2002) (emphasis added). That curtailment was a distinct subject from an initiative that also sought to modify the process by which initiative and referendum petitions were placed on the ballot.

Because limiting how initiative proponents can create their maps and influence voters about their proposal is a "significant invasion" of their fundamental right of initiative, and because it is not necessarily connected to changing criteria

used by the Redistricting Commission for redistricting maps, it is a second subject that must be presented to voters on its own so they may evaluate the merits of restricting their fundamental right of initiative about redistricting independently.

3. Initiative #326's third subject is its restriction on the speech-and-debate rights of state legislators should they engage in Congressional redistricting.

As noted earlier, Amendment Y diverted the role of redistricting away from state legislators and gave the job, instead, to the Redistricting Commission.

Despite that re-allocation of authority, Initiative #326 provides that any map adopted by the General Assembly is subject to the same constraints as a map adopted by initiative. In other words, no map can be created with or influenced by partisan data.

The Colorado Constitution provides, as to members of the General Assembly, "for any speech or debate in either house, or any committees thereof, they shall not be questioned in any other place." Colo. Const., art. V, sec. 16. This provision "plainly protects legislators from inquiry into legislative acts or their motives for performing them." *Romer v. Colo. Gen. Assembly*, 810 P.2d 215, 222 (Colo. 1991) (citation omitted). "The heart of the Clause is speech or debate in either House. Properly enacted legislation is equally protected." *Id.* (citation and internal quotation marks omitted).

Yet, Initiative #326 allows for such inquiry because the question is whether an adopted map was "created with" or "influenced by" partisan voter or election history information. The effect is to allow inquiry into legislators' reasoning, motivations behind, and peer lobbying for a redistricting map.

As a result, Initiative #326 creates an unprecedented exception to the speech-and-debate clause and allows anyone challenging the map to discover what legislators did and said that led to passage of their map. And that development will eviscerate the clause, which "serves as a means of practical security for preserving the independence and integrity of the legislature." *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 207 (Colo. 1991) (citations and internal quotation marks omitted). After all, the goal of the clause "was to ensure that legislators could conduct the business of lawmaking without undue hindrance or fear caused by threatened or pending lawsuits related to their legislative duties." *Id*. at 208. And this Court has been consistent in assuring this protection, holding "unwaveringly… that courts may not interfere with legitimate legislative activities." *Id.*

As a general matter, this use of the right of initiative to create gaps in the speech-and-debate clause is inconsistent with voters' authority. "The people through initiative cannot affect the deliberative process" of the state legislature. *Morrissey v. State*, 951 P.2d 911, 915 (Colo. 1998) (citation omitted).

As to the single subject inquiry, restricting a key legislative prerogative in addition to restructuring an agency charged with an important mission, presents two subjects. "[W]hen provisions seeking to accomplish one purpose are coupled with provisions proposing a change in governmental powers that bear no necessary or proper connection to the central purpose of the initiative, the initiative violates the single-subject rule." *In re Title, Ballot Title & Submission Clause for 2009-2010 #91,* 235 P.3d 1071, 1077 (Colo. 2010).

Such a change to the powers of the General Assembly is "coiled in the folds of this initiative." *Id.* Voters would not appreciate that they are depriving their own legislators of pivotal protections that stem back to the English Bill of Rights of 1689 as well as to the first state constitutions drafted in the United States. *See Bledsoe, supra*, 810 P.2d at 207. Moreover, this prerogative has been uniformly honored by the Colorado courts, assuring that legislators could perform their law-making duties without subjecting legislation to collateral, non-substantive attacks.

Therefore, the Board erred in finding this measure is a single subject.

4. Initiative #326's fourth subject is its restriction on First Amendment guarantees of free speech and association.

As addressed previously, this measure constrains how a redistricting map can be "created" and, critically, how its adoption can be "influenced." No reference to partisan voter or election information is permitted by Initiative #326.

It is unquestioned that "fundamental First Amendment interests" include "the freedoms of political expression and political association." *Dallman v. Ritter*, 225 P.3d 610, 622 (Colo. 2010) (citing *Buckley v. Valejo*, 424 U.S. 1, 23 (1976)). The state of the law has long been that restrictions on persons seeking to influence the outcome of a vote on a ballot issue violate the First Amendment. "To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But **the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution protects expression which is eloquent no less than that which is unconvincing**." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 790 (1978) (emphasis added) (citation and internal quotation marks omitted).

Yet, under Initiative #326, no person can cite the political impact of a map in attempting to convince Commission members, legislators, or voters to support or oppose a particular map. Respondents seek to limit, or at least skew, political debate by denying decision makers the information that may well be most pertinent to them.

After all, "[r]edistricting is an incredibly complex and difficult process that is fraught with political ramifications" and represents "an inherently political undertaking." *Hall v. Moreno*, 2012 CO 14, ¶¶ 1, 5.

In the current climate, in particular, it is unimaginable that redistricting maps would be the subject of one – or more – Commission concepts, ballot initiatives, or legislative proposals without any reference at all to their political impacts. Yet, if Initiative #326 is presented to them, voters will not be told it contains an absolute ban on any attempt to "influence" the outcome of the mapping process through the use of factually accurate, statistical evidence of voter registration in proposed districts or political leanings based on past election results in proposed districts. Not only is this subject coiled in the folds of #326, the titles set by the Board are silent on the "influenced by" aspect of this initiative.

This subject is critical to voters, as an evaluation of districts' partisan make-up is one way to assure that the map will serve the real goal of redistricting: fair and effective representation of constituents.

> [T]he trial court considered competitiveness as an important factor in providing for the election of accountable and responsive representatives. The trial court reasoned that **in a competitive district, it is more difficult for a representative to ignore the needs and preferences of an entire voter bloc**. We agree with the trial court that '[a] competitive district requires candidates running for [and serving in] office to work very hard, listen to all views, and to reach out

> and engage as many people as possible.' Thus, we hold that **consideration of competitiveness is consistent with the ultimate goal of maximizing fair and effective representation**.

Id. at ¶ 52 (emphasis added).[2]

Restricting the substance of political debate is entirely unrelated to modifying the involved redistricting criteria, a procedural alteration of the current structure. The reason this element of #326 is at odds with the balance of this measure is clear. "[T]he 'core value' of the Free Speech Clause of the First Amendment is the public's interest in having 'free and unhindered debate on matters of public importance.'" *In re Booras*, 2019 CO 16, ¶ 26 (citation omitted). This hidden restriction in Initiative #326 provides for no such exchange on a matter (political competitiveness) that this Court, in its redistricting case law, has recognized is of paramount importance to voters. *See Moreno, supra*, 2012 CO 14 at ¶ 52; *see also Lakewood v. Colfax Unlimited Ass'n*, 634 P.2d 52, 67 (Colo. 1981) (citations omitted) ("Freedom of ideological expression is not only inextricably entwined with our most deeply held individual values, it is the cornerstone of a constitutional democracy").

---

[2] At the time this case was decided, competitiveness was not even a constitutionally mandated consideration in redistricting. It was only a statutorily specified aspect of this process.

This prohibition on referring to any factually accurate and relevant partisan information when creating or influencing redistricting maps also impedes the protected right of association in public policy matters such as this one. "The constitutional right of association is linked with the right of free speech and originates from the Supreme Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.'" *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 76 (Colo. 2008) (citations omitted). After all, "the First Amendment's guarantee to freedom of speech necessarily protects the right to receive ideas and information." *Cole v. State*, 673 P.2d 345, 350 (Colo. 1983) (citations omitted). Yet, groups of interested persons will be unable to advance, with one another or with the public at large, their view about the partisan effects of a map, lest they "influence" the final decision reached on it. Thus, the restrictive nature of this measure on group debate and advocacy is yet another "coiled in the folds" aspect of Initiative #326.

Thus, this initiative contains multiple subjects, and the Board should have refused to set titles for this measure.

II. The title set for Initiative #326 is materially misleading to voters.

A. Standard of Review.

The Supreme Court must "consider whether the titles, summary, and submission clause reflect the intent of the amendment" and reverse the Title Board if the titles set "contain a material and significant omission, misstatement, or misrepresentation." *In re Title, Ballot Title, and Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶ 29 (citations omitted). Titles are legally flawed if they "create confusion and are misleading because they do not sufficiently inform the voters" of important elements of the initiative. *Id*. (citations omitted).

In this regard, the Board's obligation is to set titles that set the stage for "informed voter choice" and "convey to voters the initiative's likely impact," whether such voters are "familiar or unfamiliar" with the measure's subject matter. *Id*. at ¶ 30 (citations omitted).

B. Preservation of Issue Below.

This issue was preserved in Petitioner's Motion for Rehearing before the Title Board. R. at 5.

C. Initiative #326's title is misleading.

The Title Board set a title that states that this measure "prohibit[s] a redistricting map that is created with partisan voter registration data or partisan electoral performance." R. at 8. The measure actually prohibits any redistricting plan

from being adopted if it was "created with, or influenced by" such partisan data. In other words, the Board's title tells voters half of this story.

As addressed above, this measure impedes the free flow of information about an issue that impacts voters' representation in Congress, the advancement of policy issues they care most about, and the competitiveness (and thus responsiveness) of their elected House members. Influence means "to affect, modify or act upon by physical, mental or moral power, especially in some gentle, subtle, and gradual way" or "to affect or alter the conduct, thought, or character of by indirect or intangible means." *Virginia Soc'y for Human Life v. Caldwell*, 152 F.2d 268, 270 (4th Cir. 1988) (addressing state statute regulating communications to "influence" the outcome of elections) (citations omitted).

Voters should know that ***any*** reference to the political effects of a map, based on voter registration or electoral performance, will be prohibited under this initiative. The failure to address such a key issue is a material omission that invalidates this title. Where there is a significant change in the law that is not related to voters, the Board errs. "So general a title does not allow a voter to understand the effect of a 'yes/for' or 'no/against' vote and thus does not satisfy the clear title requirement." *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 32 (failure to specify new election procedures invalidated ballot title set by Board).

This precept certainly applies to the imposition of a virtual gag order on redistricting commissioners, voters, and legislators. Therefore, the titles set are invalid.

CONCLUSION

This multi-subject initiative should not have been titled by the Board, and it should now be returned to its proponents. Alternatively, the title should be returned to the Board to be corrected so voters know that, regardless of the identity of the decision maker(s), redistricting maps cannot be "influenced by" partisan information.

Respectfully submitted this 7th day of May, 2026.

s/ Mark G. Grueskin
Mark G. Grueskin, #14621
Nathan Bruggeman, #39621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
mark@rklawpc.com
nate@rklawpc.com
ATTORNEYS FOR PETITIONER

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 7, 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