SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to C.R.S. § 1-40-102(2) Appeal from the Ballot Title Board	~~DATE FILED~~ May 14, 2026 12:32 PM
In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #326 **CURTIS HUBBARD,** Petitioner, v. **KATHLEEN CHANDLER** and **RICK ENSTROM,** Respondents, and **COLORADO BALLOT TITLE SETTING BOARD**: Michael Dohr, Theresa Conley, and Kurt Morrison **Respondents**.	▲ COURT USE ONLY ▲
Attorneys for Respondents: Scott E. Gessler (28944) Geoffrey N. Blue (32684) Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050	Case Number: 2026SA152

RESPONDENTS' ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

X It contains 3,105 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

X **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/Scott E. Gessler
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I. SUMMARY OF ARGUMENT

This measure is a straightforward anti-gerrymandering protection, designed to stop partisan gerrymandering for Colorado's Congressional districts. Although the measure contains multiple criteria for developing congressional districting plan, the Petitioner focuses his objections on one criterion; the prohibition on the use of partisan voting data and partisan performance.

Throughout his *Opening Brief*, the Petitioner argues that the measure will result in multiple subjects. In doing so, he projects that the measure's passage will produce certain legal effects—that it will stifle initiative rights, undermine legislative prerogatives, and trammel First Amendment protections. This Court does not consider these purported effects, and as a practical matter, the Petitioner wildly misconstrues what the initiative does and does not do. The measure regulates the act of developing a congressional districting plan. Specifically, the measure sets forth a number of redistricting criteria, including a prohibition on using, or being influenced by, partisan voter registration data or partisan performance.

Outside of this narrow regulation mapmaking, the measure does not regulate political activity. First, the measure does not limit public debate or advocacy to support or oppose a particular map put before the electorate for approval, and indeed voters as a logical matter cannot "create" or "influence" a fully-formed map presented for their approval.

Second, the measure does not affect the Speech and Debate Clause. That clause shields legislators from liability for their acts as legislators, and this measure would not in any way disturb those immunities. And as a practical matter, the measure cannot affect legislative prerogatives, because the General Assembly plays no role in developing congressional districting plans. That limit on the General Assembly's powers will not change if the measure passes.

Finally, the measure does not limit First Amendment rights, for the same reason it does not limit the right to initiative. Any person can urge the Commission to adopt or publicly advocate for a particular congressional districting plan (or method to develop a plan) for any reason; the measure regulates the act of developing a congressional districting plan, not the public debate surrounding any potential plan.

The Petitioner also challenges the title and submission clause, arguing that the title should include the phrase "or influenced by." His argument, however, relies on the same misconceptions discussed above. According to Petitioner, inclusion of three words will alert voters that the measure imposes a virtual gag order on public debate and citizen initiative rights. This is wrong, and even if it were remotely true, the title need not describe the measure's legal effects.

II. ARGUMENT

A. Preservation of issues.

The Respondents agree that the Petitioner preserved his arguments at the Title Board below.

B. Single subject claims are really objections to false characterizations about the measure's effects.

This proposed initiative combats partisan gerrymandering in Colorado. For decades, Americans across the political spectrum have decried efforts by state legislatures (and occasionally redistricting commissions) to engage in partisan gerrymandering. In 2019, the U.S. Supreme Court ruled that partisan gerrymandering claims are not justiciable under the U.S. Constitution,[1] firmly placing the issue in state hands. In 2018, Colorado passed a constitutional amendment placing responsibility for Congressional redistricting in an Independent Redistricting Commission. But in today's politically charged environment, many states have seen renewed efforts to engage in partisan gerrymandering, either through the legislative process or by ballot initiative. Colorado is not immune, and indeed this Court has before it several challenges to ballot initiatives that establish new Congressional maps. Many consider those initiatives to be blatant partisan gerrymanders. This measure would stop all partisan gerrymanders in Colorado by establishing neutral, non-partisan criteria for future Congressional redistricting.

The measure halts partisan gerrymandering by establishing Congressional redistricting criteria, through a combination of requirements and prohibitions. These include traditional redistricting criteria and prioritization of different criteria. The Petitioner, however, focuses on one criterion: a prohibition on the use of partisan

[1] *Rucho v. Common Cause*, 588 U.S. 684 (U.S. 2019).

voter registration data or partisan performance to create or influence a Congressional map. Specifically, the measure states:

> 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.

From this one criterion, the Petitioner discerns four separate subjects.

Upon examination, the Petitioner's claims about separate subjects are really claims about the measure's purported effects. Nowhere does the proposed measure discuss petition or initiative rights—but the Petitioner argues that the measure will stifle the right to initiative. Nowhere does the measure address the Speech and Debate Clause, or even mention legislative immunity—but the Petitioner argues that the measure conflicts with, and effectively amends, the Speech and Debate Clause. And nowhere does the measure discuss political speech or association—yet the Petitioner claims that the measure infringes upon guarantees of free speech and association. At their core, these arguments assert that the measure, if passed, will produce a host of negative consequences;

But an initiative does not "violate the single subject requirement because it may have different effects on other provisions of Colorado law . . . Such effects are not relevant to whether the proposed initiative contains a single subject."[2] The Petitioner

[2] *Matter of Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 15; *see also Matter of Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 18.

nonetheless asks this Court to interpret how the proposed measure will impact a variety of rights under the federal and Colorado Constitutions. But this Court has firmly rejected this approach. It refuses to "interpret or construe the future legal effects of a proposed initiative."[3] And even if an initiative may inevitably have different effects on different laws, this Court properly recognizes that it has "never held that just because a proposal may have different effects ... it necessarily violates the single-subject requirement."[4] Thus the Court will not inquire into the proponents' motivation or "construe the legal effect of the initiative as if it were law; neither is within the scope of our single-subject review."[5]

Finally, as discussed in detail below, the litany of negative consequences alleged by the Petitioner simply do not exist. The initiative does not infringe on the right to initiative, the Speech and Debate Dlause, or the First Amendment. Rather, the Petitioner misconstrues the operation of the initiative and the very nature of the purported infringements.

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[3] *In re Title, Ballot Title & Submission Clause For Proposed Initiatives 2001-2002 No. 21 & No. 22 ("English Language Education")*, 44 P.3d 213, 215–16 (Colo. 2002).

[4] *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17.

[5] *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 No. 200A*, 992 P.2d 27, 31 (Colo. 2000).

C. The measure does not affect or limit initiative rights.

First among the Petitioner's parade of horribles is the claim that if adopted, this measure will restrict the exercise of ballot initiative rights.

As an initial matter, the Petitioner tacitly agrees that the purported infringement is properly connected to the measure's redistricting criteria. But rather than argue the lack of a necessary or proper connection, he claims that the "sheer scope" of the restriction qualifies as a second subject.[6] But "sheer scope" of the effects of an initiative do not transform those effects into a separate subject.

But even if one wishes to consider effects, the Petitioner misconstrues what the measure actually does. According to him, the measure "preclud[es] the proponents of an initiative from considering partisan implications of a Congressional redistricting map or campaigning with any reference to such considerations[, which] is a limitation on permitted political expression that is separate and apart from the change to redistricting criteria generally." But the initiative does not preclude proponents from considering partisan criteria or preclude campaigns that refer to partisan considerations. Rather, the measure prohibits a *mapmaker* from *using* partisan data or performance in constructing a map. The proposed measure constrains the development of a "congressional districting plan." This is different than the public debate surrounding the approval or rejection of an initiative. Accordingly, the measure

[6] *Petition* at 10.

does not limit or affect the arguments or reasons used by the electorate to adopt a completed congressional districting plan. Rather, the measure only limits the manner in which the mapmaker develops a congressional districting plan. Whoever draws the map may not use partisan registration data or partisan electoral performance, nor may the mapmaker be influenced by such partisan information.

This clause does not—and as a matter of logic cannot—affect initiative rights. Anyone may "consider" partisan implications when deciding whether to support a congressional districting plan that comes before the voters. To be sure, the initiative restricts how a mapmaker builds the congressional redistricting plan. But a proponent is free to advance a completed districting plan, for any reason. Likewise, voters may approve or support a map placed before them in an initiative, for any reasons. For example, a supporter of an initiative can argue that the map creates an admirable partisan balance, due to its use of nonpartisan criteria, and therefore voters should support it. Or a supporter can campaign against a map, arguing that the partisan result does not accurately reflect Colorado's electoral performance.

In any event, it is logically impossible for any person debating or voting on a ballot initiative to "create" or "influence" a map. Voters and commentators have no ability to develop, alter, or even "influence" a congressional districting plan that has been presented to them by initiative. In the initiative context, proponents present to voters a fully-formed congressional districting plan, and voters may adopt or reject the districting plan, for any reason or combination of reasons. Thus, the Petitioner is

simply wrong when he argues that the measure "precludes" a proponent from "considering partisan implications" or prohibits "campaigning with any reference to such considerations." The measure only restricts that actual act of developing a congressional districting plan. Nothing more.

Finally, the Petitioner's citations are unavailing. Unlike a proposed initiative that explicitly prohibited attorneys from participating in governmental process,[7] or an initiative that expressly excluded certain zoning matters from the right to referendum,[8] this measure does not discriminate against any group, nor does it limit in any way the exercise of a right. Rather, it constrains those who would gerrymander Colorado's congressional districts for partisan advantage.

D. The measure has no effect on legislative protections under the Speech and Debate Clause.

Next, the Petitioner argues that the measure "restrict[s] a key legislative prerogative in addition to restructuring an agency charged with an important mission,"[9] thus creating two subjects. Under the Petitioner's legal analysis, "[t]he *effect*

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[7] *In re Title, Ballot Title & Submission Clause for 2003-2004 #32 and #33*, 76 P.3d 460, 463-71 (Colo. 2004).

[8] *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 448 (Colo. 2002), *disapproved of by Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57.

[9] *Petition* at 15.

is to allow inquiry into legislators' reasoning, motivations behind, and peer lobbying for a redistricting map.[10] This argument suffers multiple flaws.

First, the Petitioner advances the quintessential argument that the measure will have certain effects on other constitutional provisions. This Court does not and should not analyze the potential effects of the proposed measure. Rather, the single subject analysis is confined to the plain language of the initiative, not speculation about its potential interaction with other laws.

Second, the measure cannot in any way affect legislative prerogatives under the Speech and Debate Clause, because legislators do not, and will not, have any authority to create or influence a congressional map. The General Assembly cannot, under Colorado law, develop a congressional districting plan. To be sure, the measure hypothetically applies if the General Assembly had authority to develop a congressional districting plan. But the Colorado Constitution does not allow the General Assembly to develop Congressional districting plans, instead placing that authority with the Independent Congressional Redistricting Commission.[11] If voters approve the measure, it will not change this constitutional authority.

Third, even if the General Assembly had authority to develop a congressional map, as a legal matter the Petitioner is simply wrong about the measure's effect on the

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[10] *Petition* at 14 (emphasis supplied).

[11] Colo. Const. art. V, §§ 44 to 44.6.

Speech and Debate Clause. That clause is not a talisman that shields legislators from criticism, or that prohibits one from examining legislative motivations. Rather, the clause ensures that legislators can "conduct the business of lawmaking without undue hindrance or fear caused by threatened or pending lawsuits related to their legislative duties."[12] Thus, the clause protects legislators from criminal prosecution or civil liability while fulfilling legislative duties.

The Petitioner reads the Speech and Debate Clause far too broadly, arguing that the clause prohibits inquiry "into legislators' reasoning, motivations behind, and peer lobbying for a redistricting map"[13] But the prohibition on "inquiry" is limited to judicial inquiry into personal liability for legislative acts. Indeed, the U.S. Supreme Court has used the phrase to mean "intensive judicial inquiry, made in the course of a prosecution by the Executive Branch under a general conspiracy statute,"[14] or more directly "criminal inquiry."[15]

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[12] *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 208 (Colo. 1991); *see also Romer v. Colorado Gen. Assembly*, 810 P.2d 215, 222-223 (Colo. 1991).

[13] *Petition* at 14.

[14] *U.S. v. Johnson*, 383 U.S. 169, 177 (1966).

[15] *United States v. Brewster*, 408 U.S. 501, 525 (1972).

As a practical matter, courts regularly look at legislative motivations when determining whether a legislature has engaged in racial gerrymandering,[16] and the tools by which litigants and courts determine gerrymandering have never run afoul of a federal or state speech and debate clauses. Courts and litigants have for decades analyzed legislative intent, underlying data, and reasoning in developing legislative and congressional maps. This measure does not alter those well-established tools to uncover prohibited partisan gerrymandering.

E. The measure does not infringe upon First Amendment rights to free speech and association.

This final single-subject argument is nearly identical to the Petitioner's argument that the measure restricts the voter's ability to advance initiatives that establish a Congressional districting plan. Here, the Petitioner argues that if the initiative were to pass, it would inhibit the public's ability to present argument to the Independent Redistricting Commission, or to engage in political debate. Specifically, the Petitioner claims that if the measure is adopted, "no reference to partisan voter or

[16] *See, e.g., Bush v. Vera*, 517 U.S. 952, 969 (1996) ("Here, the District Court had ample bases on which to conclude both that racially motivated gerrymandering had a qualitatively greater influence on the drawing of district lines than politically motivated gerrymandering"); *see also Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 266–67, (2015) ("the plaintiff's burden in a racial gerrymandering case is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district").

election information is permitted" and "no person can cite the political impact of a map in attempting to convince commission members."[17]

As with Petitioner's earlier arguments, this claim focuses on the measure's alleged effects. Specifically, the Petitioner argues that if adopted, the effect of the measure would impact First Amendment rights. This Court's single subject analysis should not consider the purported impact on speech and assembly rights.

Second, the Petitioner is simply wrong. As noted above, the measure regulates a mapmaker's actions when developing a redistricting plan. Thus, it regulates the act of developing a congressional districting plan. It does not, on its face or in effect, "restrict the substance of political debate."[18]

The measure prohibits the Commission from using any partisan voter registration data or partisan performance, or from being influenced by that information when drawing a map. This is much different than purportedly prohibiting public debate about a map or public comment to commissioners. Under the First Amendment, any person may refer to the political impact of a congressional map or advocate for or against a map, based on its partisan effects. The measure does not affect that behavior. If the Commission in fact considers partisan information and therefore that information in fact influences the actual map, then the map will run

[17] *Petition* at 16.

[18] *Id.* at 18.

afoul of the measure's anti-gerrymandering provisions. But at all times, any person can urge the Commissioners to adopt a map for any reason, even if that reason runs afoul of state or federal law. In short, the measure regulates the act of developing a congressional districting plan—not political debate about a map. It does not regulate testimony or argument before the Commission, and it does not regulate arguments employed by advocates or opponents of any proposed districting plan.

F. Petitioner's complaint about the title's accuracy stems from a misunderstanding of what the initiative does.

The Petitioner argues that the ballot title and submission clause is misleading, reasoning that the measure "impedes the free flow of information" or prohibits "any reference to the political effects of a map."[19] As discussed above, these statements are wildly inaccurate, and even if they were plausible the "the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme."[20]

Finally, the Petitioner's proposed change to the title and submission clause does not in any meaningful way address his multiple objections. The Petitioner seemingly demands that the measure include the phrase "or influenced by." Under his

[19] *Petition* at 21.

[20] *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #85*, 2014 CO 62, ¶ 19.

reasoning, these three words will "tell the other half of the story"[21] by indicating to voters that the measure results in "the imposition of a virtual gag order on redistricting commissioners, voters, and legislators."[22] It is difficult to understand how inclusion of the phrase "or influenced by" will convey to voters the Petitioner's sweeping objections that the initiative trammels the right to initiative, the right of free speech, and legislative immunities under the Speech and Debate Clause. Bluntly put, those three words will not convey the Petitioner's arguments, in part because those three words do not support any of the Petitioner's single-subject objections.

III. CONCLUSION

This Court should affirm Title Board's determination that it has jurisdiction to set a ballot title and submission clause, and it should affirm the clause set by the Title Board.

Respectfully submitted this 14h day of May 2026,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

[21] *Petition* at 21.

[22] *Id.* at 22.

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2026, I electronically filed the foregoing with the Clerk of the Court using the CCES system, which notified all parties and their counsel of record.

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