

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 7, 2026 8:43 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) Appeal from the Ballot Title Board</p> <hr/> <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>Title Board: Theresa Conley, Michael Dohr, and Kurt Morrison.</p> <p>And</p> <p>Initiative #326 Proponents: Kathleen Chandler and Rick Enstrom</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2026SA152</p>
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<p style="text-align: center;">THE TITLE BOARD’S OPENING BRIEF</p>	

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, I certify that:

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

It contains 2,183 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).

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/ Peter G. Baumann

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ISSUES ON REVIEW

I. Whether #326's prohibition on redistricting plans being "created with, or influenced by," partisanship data creates additional subjects apart from adjustments to redistricting criteria by interfering with the fundamental rights of initiative proponents, voters, or legislators.

II. Whether the Title Board abused its discretion by not including the prohibition on maps "influenced by" partisan data in the ballot title.

STATEMENT OF THE CASE

Proposed Initiative 2025-2026 #326 ("#326") makes changes to Colorado's existing congressional redistricting framework. It amends section 44.3 of article V of the Colorado Constitution to establish a hierarchy of criteria that the Independent Redistricting Commission must consider when drawing congressional maps. Record at 10. At the top of that hierarchy, #326 would require that "to the extent possible," the commission must achieve "precise mathematical equality between districts," "based on citizen population." *Id.* If citizen population is not

made available by the U.S. Census Bureau, then the measure would allow the commission to achieve equality between districts “based on overall population.” *Id.*

At the bottom of that hierarchy, #326 would add to the existing redistricting criteria a requirement that no plan adopted by the commission or any other entity can “be created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind.” *Id.* Finally, #326 would repeal the existing requirement that congressional districts be drawn to “maximize the number of politically competitive districts.” *Id.* at 11.

At its April 15, 2026, meeting, the Title Board concluded that the measure contained a single subject, that it required the addition of language to the Colorado Constitution, and set a title. Record at 8. Petitioner Curtis Hubbard filed a motion for rehearing. Record at 2-6. First, Petitioner argued that #326 has five separate subjects: (1) changing redistricting criteria, (2) restricting the “fundamental right to of initiative,” (3) restricting “the fundamental constitutional rights of speech and association, (4) limiting state legislators’ speech and debate

rights, and (5) changing the population basis for drawing districts from total population to U.S. citizen population. *Id.* at 2-5. Hubbard also argued that the Board’s title was “misleading, unfair, and inaccurate,” because it failed to say that it applied “to maps adopted by initiative or by the General Assembly,” and because it did not reference the prohibition on maps being “influenced by” partisan data. *Id.* at 5.

The Board considered the motion at its April 23, 2026, meeting, and granted the motion only to the extent that it added a reference in the title to maps developed by the state legislature and by citizen initiative. *Id.* at 8.

In full, the title fixed by the Board for #326 reads:

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.

Id.

Before this Court, Petitioner renews both his single subject and clear title challenges. Pet. for Review at 3-4 (Apr. 30, 2026). As to the former, Petitioner has abandoned the argument that requiring maps to be drawn using U.S. citizen population, if available, is a separate subject, but otherwise advances the same single subject arguments on appeal as he did on rehearing. *Compare* Pet. for Review at 3-4 (claiming #326 has four subjects) *with* Record at 2-5 (claiming #326 has five subjects). As to the title, Petitioner alleges that the title is insufficient because it does not tell voters that maps cannot be “influenced by” partisanship or performance data. Pet. for Review at 4.

SUMMARY OF ARGUMENT

If adopted, #326 would adjust the criteria used to draw congressional district maps. One of the ways in which it would do so is to prohibit the adoption of maps that are “created with, or influenced by,” partisan data. Although this provision may limit voters, initiative proponents, and legislators in certain ways, those limitations are all fairly encompassed within #326’s single subject. And the dramatic

effects that Petitioner relies on to create its additional subjects would require an unlikely and expansive interpretation of this provision.

Moreover, the Board’s decision not to include in the title an ancillary limitation on the use of partisan information to “influence” maps was within the bounds of its considerable discretion.

ARGUMENT

I. The Title Board had jurisdiction to set a title.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8.

In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, ¶ 8.

The Title Board agrees that Petitioner preserved his single-subject objection in his motions for rehearing.

B. The measure has a single subject.

The single subject of #326 is a change to the criteria for drawing congressional district maps. It does so by establishing that drawing districts of equal population using U.S. citizen population, if available, is the dominant criteria, by removing the criteria related to maximizing competitive districts, and by prohibiting the use of partisan registration

or performance data as criteria for drafting or considering maps. Each of these provisions is necessarily and properly connected to #326's single subject.

Broadly speaking, Petitioner challenges the Board's single subject determination in two ways. Both relate to the provision prohibiting maps from being "created with, or influenced by," partisan registration or electoral performance data. Record at 10.

Initially, Petitioner argues that this requirement violates the fundamental rights of petition proponents by "restricting" their fundamental right of initiative. Pet. for Review at 3. But such a limitation is not a second subject. Section 1 of article V of the Colorado Constitution, which "reserve[s]" to the people "the power to propose laws and amendments to the constitution" does not establish an unqualified right to initiative unfettered by reasonable regulations. Restrictions on how that power may be exercised have been the subject of both legislative enactments (e.g., § 1-40-106.5, C.R.S.) and initiatives. The State's most notorious initiative, TABOR, includes myriad

restrictions on how the right to initiative may be exercised. *See, e.g.*, Colo. Const. art. X, § 20(3).

Before the Title Board, Petitioner cited *In re Title, Ballot Title and Submission Clause for 2003-2004 Nos. 32 & 33*, 76 P.3d 460, 462 (Colo. 2003), for the proposition that a measure that restricts fundamental rights, paired with procedural changes to a constitutional structure, “is a multi-subject initiative.” Record at 3. But that case involved not only changes to the initiative process, but a complete prohibition on attorneys serving on the title board. *In re 2003-2004 ##32 & 33*, 76 P.3d at 462. This Court described that provision not as an infringement on the fundamental right to initiative, but on those attorneys’ fundamental right to participate in the political process. *Id.*

Number 326 is different. It 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. That adjustment is not a second subject.

Second, Petitioner alleges that the prohibition on maps being “influenced by” partisan data or performance creates two additional subjects by (1) “restricting state legislators’ fundamental constitutional rights under the Speech or Debate Clause . . . by preventing Congressional redistricting by the General Assembly if that redistricting plan has been created by or even influenced by any partisan information;” and (2) “restricting Coloradans’ fundamental constitutional rights of free speech and association by preventing any influence on Congressional redistricting through any reference to partisan considerations.” Pet. for Review at 3-4.

Both scenarios fail for the same reason articulated above: even broadly construed, the effects of this provision are consistent with #326’s single subject. Moreover, in both cases Petitioner’s single subject concerns 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. But 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. Especially because Petitioner’s interpretation would “restrict[] . . . fundamental constitutional rights,” Pet. for Review at 3-4, and “whenever possible,” Colorado courts will construe laws “in such a way as to avoid calling their constitutional validity into question.” *People v. Lee*, 2020 CO 81, ¶ 11.

Although “some limited legal analysis of the initiative’s text may be necessary” in ruling on a single subject challenge, *In re Title, Ballot Title & Submission Clause for 2009-2010 #24*, 218 P.3d 350, 355 (Colo. 2009), the Court’s “inquiry at this juncture avoids interpretation beyond that necessary to determine whether there is a single subject,” *In re Title, Ballot Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶ 14. Here, it is sufficient for the Court to conclude that Petitioner’s alleged second subjects would require an unreasonably broad interpretation of this provision. The Title Board correctly concluded that this phrase is unlikely to be interpreted so broadly, and that it fit within #326’s single subject.

II. The title set by the Board satisfies the clear title standard.

A. Standard of review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *Id.* ¶ 8.

The Board agrees that Petitioner preserved his challenge to the clear title set by the Board.

B. The decision to omit reference to the prohibition on using partisan data to “influence” maps falls well within the Title Board’s considerable discretion.

Petitioner argues that #326’s title is insufficient because it fails “to inform voters that the prohibition on partisan performance and data

extends beyond Congressional redistrict maps ‘created with’ such information and includes any redistricting map that was even ‘influenced by’ such information.” Pet. for Review at 4.

First, Petitioner’s motion for rehearing before the Board clarifies that his objection to the Board’s decision to omit “influenced by” from #326’s title is contingent on a broad interpretation of that phrase that “restricts the ability of any person to advocate for or against a map because it will have a projected partisan effect.” Record at 5. As discussed above, that interpretation is unlikely. And unlike when assessing single subject, where some limited legal analysis may be necessary, “[i]n performing its title-setting function, the Board may not speculate on how a potential amendment would be interpreted.” *In re 2009-2010 #24*, 218 P.3d at 356.

In the relevant section, #326 prohibits any congressional redistricting plan from being “created with, or influenced by, the use of partisan voter registration data or partisan electoral performance.” Record at 10. The “central feature[]” of this provision is a prohibition on using partisanship to draw congressional maps. *See In re 2019-2020 #3*,

2019 CO 107, ¶ 16. The Board’s title, which informs voters that the measure would prohibit “the use of partisan voter registration data or partisan electoral performance in creating maps,” Record at 8, fairly captures this feature.

CONCLUSION

For these reasons, this Court should affirm the title set by the Title Board on 2025-2026 #326.

Respectfully submitted on this 7th day of May, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record electronically via CCEF, at Denver, Colorado, this 7th day of May.

/s/ Carmen Van Pelt

Carmen Van Pelt