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| <p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> | <p style="text-align: right;">DATE FILED May 14, 2026 3:23 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> | |
| <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #327 (“Congressional Redistricting”)</p> <p>Petitioner: Curtis Hubbard,</p> <p>v.</p> <p>Respondents: John Brackney and Robyn Carnes,</p> <p>and</p> <p>Title Board: Michael Dohr, Theresa Conley, Kurt Morrison</p> | |
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| <p>PETITIONER’S ANSWER 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, the undersigned certifies that:

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

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It contains 2672 words.

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/s Mark G. Grueskin

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Constitutional Provisions

Colo. Const., art. III5

Colo. Const., art. V7

LEGAL ARGUMENT

I. Initiative #327 violates the Constitution’s single subject limitation.

A. One subject of #327 is the designation of reconfigured Congressional districts.

No party to this appeal disputes that one subject of this initiative is the setting of new Congressional districts. Respondents’ Opening Brief (“Resp. Op. Br.”) at 4 (“the measure creates a new Congressional redistricting map”); Title Board Opening Brief (“Bd. Op. Br.”) at 5 (“The single subject of #327 is the establishment of a new congressional district map for the 2028 and 2030 election cycles”).

Whether a subject is one that is notable enough that it will be the riveting factor for voters is often determined in light of the political visibility and volatility of that purpose of the initiative. For example, in *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, this Court examined an initiative that, according to the Board, dealt with regulation of alcohol. But its components were distinct purposes: (1) authorizing the sale of wine in grocery stores; and (2) liberalizing home delivery of alcohol by third-party delivery services. *Id.* at ¶ 20.

The issue of selling wine in grocery stores had been the subject of one failed initiative and unsuccessful legislation. *Id.* at ¶ 21. The fact that the question of wine at supermarkets was teed up in another initiative demonstrated that the public controversy over this issue “remains unsettled.” *Id.* The second topic about home delivery of alcohol “presents a similarly unsettled policy choice.” *Id.* As a result, voters could have competing and potentially inconsistent views on the two contentious topics, making the decision to vote “yes” or “no” on this initiative one in which one policy objective would be traded off against another. This Court’s conclusion was clear: “These are simply two different subjects,” notwithstanding the fact that the distinct subjects shared a common strand, alcohol regulation. *Id.* at ¶ 22.

When it comes to Congressional redistricting in the current political environment, there is no question that there is great public debate over whether states should redistrict outside of the traditional, once-a-decade timeframe in order to give a political party numerical advantage in Congress. Recent decisions by the U.S. Supreme Court and state courts, as well as radical, last-minute map-drawing by certain state legislatures, has made the issue of drawing new maps for the balance of this decade a tremendously controversial subject.

Thus, whether Colorado should participate in this political drama and draw new maps before the next national census is certainly an “unsettled” policy debate that will push voters to look at Initiative #327 either with disdain or approval. It is reasonable to think that, in light of Respondents’ and the Title Board’s admissions that the subject of this measure is a new map, votes will be cast either for or against the partisan impact of Initiative #327’s new district lines.

B. Another subject of #327 is the allocation to the General Assembly of the power to draw Congressional district lines.

Both Respondents and Title Board downplay the separate subject that this Court has identified in a previous single subject decision having to do with redistricting. In *In re Title, Ballot Title, & Submission Clause for 2015-2016 #132 and #133*, 2016 CO 55, the Court held that a redistricting initiative contained three subjects: (1) giving the power to set state legislative districts to a new commission, using new criteria; (2) undermining the non-political nature of the Supreme Court Nominating Commission by giving it a deciding role in who would sit on the combined redistricting commission; and (3) changing the power to set congressional district lines so that the newly established commission would draw districts rather than allowing the legislature to do so. *Id.* at ¶¶ 25, 29.

Respondents argue that the placement of districts in statute is not a reallocation of authority to the General Assembly because any district reconfiguring that it does is merely an “effect” of Initiative #327. Resp. Op. Br. at 11. The Title Board argues that any changes to district lines by the General Assembly after the 2026 election is merely speculation. Bd. Op. Br. at 8.

Both of these responses miss the key point: Initiative #327 puts district lines in statute. The General Assembly has inherent power to amend any statute, power that it possesses regardless of this initiative. “Absent constitutional concerns, the General Assembly may amend or repeal prior legislation as the result of the adoption of policies that differ from those previously embraced by that governmental institution.” *Colo. Water Conservation Board v. Upper Gunnison River Water Conservancy Dist.*, 109 P.3d 585, 591 (Colo. 2005) (citing *People v. Juvenile Court, City & Cnty. of Denver*, 893 P.2d 81, 89 (Colo. 1995)).

Neither the Board nor the Respondents cite any “constitutional concerns,” *see id.*, that could impede amendment of #327’s new statute that will establish district lines. In fact, the Board concedes that Initiative #327 requires only “that a statutory map shall be used for elections” between 2026 and the Redistricting Commission’s process after the 2030 census. Bd. Op. Br. at 6.

The legal reality that the map is in statute and thus subject to the legislature's power to amend is not an effect of #327. Neither is it speculation that statutes, including the one to be adopted as part of Initiative #327, are inherently susceptible to the exercise of legislative power by a sitting General Assembly. It is a function of the legislature's constitutional authority and the separation of governmental powers that is built into the Colorado Constitution. "Of our three branches of government, only the General Assembly has the power to make law." *Amica Life Ins. Co. v. Wertz*, 2020 CO 29, ¶ 17 (citing Colo. Const., art. III).

Further, the Board and the Respondents misread this Court's decision in *In re #132 and #133, supra*. As the Court held in that case, "a reallocation of constitutional power is a separate and discrete objective." 2016 CO 55, ¶ 29. By placing the new districts in statute, Initiative #327 necessarily allocates power to reset district lines to the General Assembly. If Respondents sought to deprive the General Assembly of this power, they could have placed the districts in the Constitution. *See In re Interrog. on House Joint Resolution 20-1006*, 2020 CO 23, ¶¶ 84-85 ("The legislature lacks authority to amend a constitutional provision.... The power to amend the state constitution rests solely with the people of Colorado through the initiative and referendum process.").

Respondents contend that “Proposed Colo. Const. § (sic) art. V, § 44(1.5) explicitly requires use of the maps contained in the initiative, thus depriving the General Assembly of authority to create a new map.” Resp. Op. Br. at 11. But that is not what their initiative’s language says. Initiative #327’s pertinent provision only specifies the districts to be used for the rest of the decade with a statutory reference: “[T]he single-member districts for Congress set forth in Section 2-1-101.7, Colorado revised Statutes, shall temporarily be used for every Colorado congressional election for a term of office commencing on or after the date this measure is adopted by the voters of Colorado.” Proposed art. V, sec. 44(1.5)(b). There is no limiting language after the statutory cite in this provision, such as “as such districts were approved by voters at the 2026 general election.” And the language at the end of that sentence only specifies which future elections are affected (i.e., those that follow the election at which this amendment could be adopted), not which district lines must be used.

In addition, the Respondents gave the Supreme Court unlimited authority to “review the single-member districts for Congress set forth in section 2-1-101.7, Colorado Revised Statutes, and determine whether the districts substantially comply with the criteria set forth in subsection 1.5(a) of this section.” Proposed

art. V, sec. 44(1.5)(b). Thus, any redistricting accomplished by legislative amendment in 2027 through 2030 would have to be reviewed by this Court.

Had Respondents sought to freeze the statutory districts into place, they could have done so by replicating the existing judicial review scheme for redistricting that is now in the Constitution. “By **November 1 of the redistricting year**, the supreme court shall approve the plan submitted or return the plan to the commission.” Colo. Const., art. V, sec. 44.5(4)(a) (emphasis added). If the plan needs to be changed, “The supreme court shall approve a plan for the redrawing of congressional districts no later than December 15 of the redistricting year.” *Id.*, sec. 44.5(5).

Respondents included no such cut-off dates in specific years for finalizing a Congressional redistricting map. They did nothing to restrict the allowable timing of legislative redistricting or judicial approval of maps. Thus, the transfer of power to the General Assembly to draw whatever district lines it chooses to draw is a second subject of this measure.

C. An additional subject of #327 is authorizing mid-decade redistricting.

Respondents and the Board insist that the new map and allowing mid-decade redistricting are related. But mid-decade redistricting isn’t simply about new

district lines. It is also about forsaking consistency in representation, and that goes to the very essence of fair redistricting. “The frequency of redistricting affects the stability of Colorado’s congressional districts, and hence, the effectiveness of our state’s representation in the United States Congress.” *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1228 (Colo. 2003).

Authorizing mid-decade redistricting is thus a dramatic reversal from the permitted reformatting of districts to date. It is also a significant departure from the recognized policy priority of preserving the effectiveness of federal representation in the U.S. House of Representatives. Voters who are looking to “shake up” Congress would support mid-decade redistricting, but they might oppose the partisan tilt that the new maps represent. *See* Petitioner’s Opening Brief at 13-14. In a similar context, the single subject requirement was violated where an initiative “unconstitutionally combines [] two subjects in an attempt to attract voters who might oppose one of these two subjects if it were standing alone.” *In re Titles, Ballot Titles, & Submission Clause for Proposed Initiative 2013-2014 #76*, 2014 CO 37, ¶ 35. Thus, allowing a mid-decade redistricting is its own subject, however it is achieved.

D. A final subject of #327 is limiting the impact of the Independent Congressional Redistricting Commission by allowing for interim re-mapping of districts.

Amendment Y was adopted to minimize partisan control of redistricting. That included the setting of maps that would apply for the entire decade. Eliminating that ongoing constraint on mapping as part of a measure that sets new maps is a bit like eliminating the single subject requirement as part of a measure that adjusted petition procedures. In both cases, “voters may inadvertently nullify their only protection” against misuse of the device they approved to protect themselves from abuse in that process. *In re Titles, Ballot Titles, & Submission Clause for Proposed Initiative 2001-2001 #43*, 46 P.3d 438, 446 (Colo. 2002). That reversion to prior law serves a “discrete purpose” and violates the single subject requirement. *Id.*

The Board, in its Answer Brief, argues that the question of whether mid-decade redistricting is accomplished with significantly different criteria, was not an issue that was preserved at the rehearing. “Because Petitioner did not present that argument to the Board, Petitioner has not preserved it for this Court’s review.” Bd. Answer Brief at 1. In fact, the issue of the new criteria to be applied was raised specifically by the Board Chair and addressed at length by Petitioner’s counsel.

Counsel: You have several questions then that have all been put together. Do you want to allow mid-decade redistricting? Do you want to adopt this specific plan? Do you want to allow the General Assembly now to have the ability to change this until authority is basically shifted back to the commission after the next census? Because by being in statute it triggers the general assembly's plenary constitutional legislative authority. There's nothing that restricts them.

Board Chair: **But then it has, this does have in the, it has the criteria, I'm looking at section 2 of the measure...**

Counsel: Yes

Board Chair: ...and I guess 3, or section 2(1.5)(a) and (b) where the Supreme Court, the Colorado Supreme Court would need to authorize any changes. For some reason, I'm just getting this right together, and maybe this is the case law, where the legislature does not have the authority to change the map without the congressional permission. But I realize that, yeah, I'm, okay...

Counsel: Counsel: I do not believe this measure does that.

Board Chair: No, I don't think so either, I think there's...

Counsel: **And you are right to point out that it also, too, then has a different set of substantive criteria that are now going to apply, so instead of the hierarchy that exists right now in the Constitution, working through one person/one vote, VRA, communities of interest, contig... I'm never going to say that right... contiguous geographic areas and then political competitiveness, this has substituted an entirely different set of criteria under which this map is going to be written.**

(Emphasis added.)¹ The Board is, in other words, arguing preservation of an issue that it raised with respect to Petitioner’s motion for rehearing and which Petitioner argued during the rehearing. Moreover, the Board did not object to this issue’s preservation in its Opening Brief. *See* Bd. Op. Br. at 5 (“The Title Board agrees Petitioner preserved his single-subject objection in his motion for rehearing.”) Thus, to the extent the issue is not encompassed by Petitioner’s motion for rehearing, it was argued during the hearing at the Board’s request and without objection, and raised in Petitioner’s Petition for Review and his Opening Brief. Therefore, the compounding aspect of altered criteria to be used to craft any mid-decade redistricting is properly presented for judicial review here.

E. The Board is incorrect that this matter is bound by the Court’s review of challenges to Initiative #240.

According to the Title Board, “if the Court concludes that this scenario (giving mapping authority to the legislature) constitutes a second subject, such a holding applies equally to (Initiative) #240, which is also on review before this Court.” Bd. Op. Br. at 7.

¹ April 23, 2026 Rehearing before Title Setting Board (https://csos.granicus.com/player/clip/570?view_id=1&meta_id=24383&redirect=true) at 6:39:45-6:41:31.

The single subject challenges to Initiative #240 were based on grounds unrelated to this appeal. There, Petitioner Wayne Williams (“Williams”) complained that changing the boundary lines for districts and changing the judicial review process for districts were separate subjects. Williams’ Opening Brief at 5 (Case No. 26SA126).² Williams also argued that a temporary map and a reauthorization of the Independent Congressional Redistricting Commission were separate subjects. *Id.* Third, Williams argues that #240 would disenfranchise voters who are represented, due to Congressional district designations, by elected officials on the State Board of Education and the University of Colorado Board of Regents. *Id.* at 6-8. Finally, Williams makes a number of clear title claims. *Id.* at 10-13.

Petitioner here makes none of those arguments. The arguments made in this appeal are more pointed and based on relevant case law such as this Court’s single subject rulings on redistricting and other election related initiatives.

Regardless, the Court can only resolve the dispute before it based on the legal rationale preserved below and advanced on appeal. *Cf. Briargate at Seventeenth Ave. Owners Ass’n v. Nelson*, 2021 COA 78M, ¶ 66 (objections to

² See https://www.coloradojudicial.gov/sites/default/files/2026-04/26SA126%20Petitioner%27s%20Opening%20Brief_2.pdf (last viewed May 13, 2026).

ruling at trial must be preserved if they are to receive appellate review). It may not amalgamate arguments that were not made to the Title Board or appealed to the Court by Williams.

Thus, the Court's decisions on competing redistricting initiatives must be based solely on the grounds of appeal advanced in each case, not some other argument(s) that Williams could have made but failed to make below and here.

CONCLUSION

The Board's title setting should be set aside because Initiative #327 violates the single subject requirement in the Colorado Constitution.

Respectfully submitted this 14th day of May, 2026.

s/ Mark G. Grueskin

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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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