

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: right;">DATE FILED May 7, 2026 3:10 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 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, the undersigned certifies that:

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

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It contains 3,717 words.

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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

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ISSUES PRESENTED

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

(1) Amending the Colorado Constitution to temporarily suspend the Independent Congressional Redistricting Commission’s exclusive authority over Congressional redistricting;

(2) Authorizing mid-decade redistricting and establishing criteria for such redistricting that differ from current constitutional standards;

(3) Establishing new Congressional district lines for the 2028 and 2030 elections that materially depart from existing district lines and doing so in Colorado statute; and

(4) Reallocating authority to the General Assembly for Congressional redistricting for the 2028 and 2030 elections by setting forth such districts in statute that can be legislatively amended prior to one or both such elections.

STATEMENT OF THE CASE

A. Statement of Facts.

John Brackney and Robyn Carnes (hereafter “Respondents”) proposed Initiative 2025-2026 #327 (the “Initiative” or “Initiative #327”). 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.

This initiative is multi-faceted. It authorizes mid-decade redistricting. It uses a limited set of criteria for such redistricting. It sets new districts for 2028 and 2030. Because the Independent Redistricting Commission is not involved in drawing district lines and the new districts are set in statute, Initiative #327 allows districts to be radically changed by the General Assembly as early as January, 2027.

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

A Title Board hearing was held on April 15, 2026, at which time titles were set for 2025-2026 #327. On April 22, 2026, Petitioner filed a Motion for Rehearing, alleging that Initiative #327 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 denied the Motion for Rehearing and set the following title:

Shall there be an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes concerning congressional redistricting and adopting a new short-term congressional map, and, in connection therewith, adopting a new short-term map, that is unique to this measure, to be used in 2028 and 2030 congressional elections that replaces the current congressional district map drawn by the independent congressional redistricting commission and restoring the commission's authority to draw congressional district maps in 2031 and every ten years thereafter?

SUMMARY OF ARGUMENT

Initiative #327 relates to redistricting, but it contains a little something for everyone. In so doing, it violates the single subject requirement of the Colorado Constitution, and the Title Board erred in setting titles for it.

Specifically, this measure authorizes mid-decade redistricting (a construct that is not permitted under any fashion by the voter-approved constitutional amendment creating the Independent Congressional Redistricting Commission), using a much less robust list of criteria than are present in the aforementioned constitutional amendment.

Then, for those who are looking to shift the partisan leanings of several of Colorado's Congressional districts, there's a new map that is provided by statute.

And for those who want to give state legislators back the power they lost when voters created the Redistricting Commission, the new districts can be changed because they are set forth in statute.

The problem with this array of redistricting concepts is that they are the very essence of significant subjects, hidden in the corners of this measure. And this amalgamation forces voters to trade off one policy priority against others. No matter how much more politically salable that makes this initiative, it violates the Constitution's single subject requirement and should be returned to its proponents to be reconfigured into two or more measures.

LEGAL ARGUMENT

I. Initiative #327 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-logrolling” 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. The initiative contains multiple subjects in violation of the Colorado Constitution.

1. *The Initiative’s first subject: depriving the Independent Congressional Redistricting Commission of sole authority to set Congressional district lines.*

This initiative sets new Congressional districts for the 2028 and 2030 election cycles. It does so by placing the district lines in Colorado statute. Of course, prior to the last redistricting, the Colorado General Assembly was charged with drawing district lines, pursuant to the U. S. Constitution. *See* U.S. Const., art. I, sec. 2. And when the political process did not produce Congressional districts that reflected the results of the most recent census, the job of drawing Congressional districts fell to the courts, beginning with *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982). If politicians deadlocked, the courts were left with “the

unwelcome obligation of performing (the redistricting function) in the legislature’s stead.” *Connor v. Finch*, 431 U.S. 407, 415 (1977).

Rather than continuing to trust the self-interest of politicians or rely on a reluctant judiciary, Colorado voters adopted Amendment Y at the 2018 general election. See *In re Colo. Indep. Cong. Redistricting Comm’n*, 2021 CO 73, ¶¶ 41-43. This constitutional amendment represented a significant change to the overtly political 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. Gen. Assembly, *2018 State Ballot Information Booklet*, Res. Pub. No. 702-2, Sept. 11, 2018, at 8.¹

The Blue Book’s very first argument in favor of Amendment Y addressed the elimination of map-drawing by politicians serving their political party’s interests:

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(https://content.leg.colorado.gov/sites/default/files/images/2018_english_bluebook_for_the_internet.pdf) (last viewed May 3, 2026)

Amendment Y limits the role of partisan politics in the congressional redistricting process by transferring the legislature's role to an independent commission. The measure creates a system of checks and balances to ensure that no one political party controls the commission... These provisions encourage political compromise by keeping political parties and politicians with a vested interest in the outcome from controlling the redistricting process.

Id. at 10.

However, Initiative #327 returns redistricting to the political process. Here, a ballot measure drawn by partisan interests can be sold to voters to serve partisan preferences. And it is simply unrealistic to suggest that voter approval of a redistricting map is an apolitical exercise. “Redistricting is an incredibly complex and difficult process that is fraught with political ramifications and high emotions,” and so it is no surprise that Congressional redistricting represents “an inherently political undertaking.” *Hall v. Moreno*, 2012 CO 14, ¶¶ 1, 5.

When other initiative proponents sought to revise the redistricting process and, as part of that measure, put a deliberately neutral body (there, the Supreme Court Nominating Commission) in charge of making appointments to the new redistricting commission, this Court sat up and took note of that change. That measure assigned to the Nominating Commission a “new and inherently political task,” even though it was an entity “that currently has no role whatsoever in the

legislative process of redistricting.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #132 and #133*, 2016 CO 55, ¶¶ 25, 26. In a measure that performed a major overhaul of redistricting responsibilities, this assignment that transitioned a non-political commission into a political one was an aspect that was “coiled up in the folds of a complex measure.” *Id.*

Thus, the transfer of redistricting from a nonpartisan board to all registered voters who decide this issue while navigating the partisan winds of a general election is a subject unto itself.

2. *The Initiative’s second subject: reallocating legal authority for setting congressional districts from the independent, nonpartisan Commission to the indisputably partisan General Assembly.*

As addressed above, districts are now set by the Independent Congressional Redistricting Commission pursuant to its constitutional authority to act for this sole purpose. *See* Colo. Const., art. V, sec. 44. The General Assembly does not have any legal capacity to dictate redistricting standards, much less draw a new district map. “[I]n light of the commissions’ independent constitutional authority and purposefully independent design, coupled with the limited role carved out for the legislature, the General Assembly does not have the authority to compel the commissions or their nonpartisan staff to take any action beyond what

Amendments Y and Z already require.” *In re Interrogs. on Senate Bill 21-247 Submitted by the Colo. Gen. Assembly*, 2021 CO 37, ¶ 34.

Yet, for a critical juncture in time (the 2028 and 2030 election cycles), Initiative #327 restores the districting function to the legislature because it places the new districts in Colorado statute. If #327 is adopted at the 2026 election with new district lines specified in statute, the General Assembly is fully able to amend that statute at its sole discretion. *See Colo. Const.*, art. V, sec. 1(1) (“The legislative power of the state shall be vested in the general assembly, consisting of a senate and house of representatives....”)

The legislature could act as soon as the 2027 legislative session to redraw those lines. It could do so under any justification that it chose, including for strictly partisan purposes. *See Louisiana v. Callais*, 558 U.S. ____ (“in considering the constitutionality of a districting scheme, courts must treat partisan advantage like any other race-neutral aim: a constitutionally permissible criterion that States may rely on as desired”). As such, the legislature could redraw district lines to make them very different than the districts that are part of this initiative, given that the statute specifying district lines would be subject to the ordinary amendment process. In contrast, other voter-approved redistricting measures have shut the

General Assembly out of any future role. *Compare In re Interrogs. Propounded by Senate Concerning House Bill 1078*, 536 P.2d 308, 319 (Colo. 1975) (“Amendment No. 9 (that was adopted by voters) sets forth clearly the will of the people that there be no reapportionment between the lives of commissions created after each federal census”). The legislature will have full power to reset district lines if redistricting is moved back to statute by Initiative #327.

Alternatively, whether it redraws the district map for 2028 or fails to do so, the legislature could also amend the statute in 2029 in advance of the 2030 election. It could make close districts in 2028 landslide districts in 2030. Or it could shift the advantage from one party to the other – in a single district or throughout the state. Either way, legislators, as political insiders, could respond to the extreme political desires of political parties rather than constituent needs. *See Callais, supra*, at *43 (“as far as federal law is concerned, a state legislature may use partisan advantage as a factor in redistricting”).

As this Court has expressly held, transferring the authority to draw congressional district lines from one entity to another is its own subject. In *In re Title for 2015-2016 #132 and #133, supra*, a proposed initiative sought to combine all legislative and Congressional redistricting in one commission. An essential

element of that measure was the transfer of Congressional districting from the legislature to an independent commission. “[T]he objective of this aspect of the proposed Initiative is to reallocate constitutional authority and control over congressional redistricting. **Such a reallocation of constitutional power is a separate and discrete objective, and its inclusion in Initiative #132 therefore violates the single subject requirement.**” 2016 CO 55, ¶ 29 (emphasis added).

Initiative #327 achieves the same objective. It simply does it in reverse by giving the legislature back an interim power that had been delegated in its totality to the Independent Congressional Redistricting Commission. And #327 does so in tandem with the other subjects addressed herein.

Even a temporary reallocation of this constitutional power for two Congressional elections is a distinct matter that is inconsistent with the single subject requirement. In the near term, Initiative #327 displaces the bipartisan Redistricting Commission to hand control for 2028 and 2030 to whatever political party controls the General Assembly. The Court may take judicial notice of the fact that redistricting has become the ultimate exercise in political gamesmanship, and as such, much is riding on the partisan balance of the U.S. House of Representatives for the next four years. Therefore, given the Supreme Court’s

binding precedent on this point in *In re Title for 2015-2016 #132 and #133, supra*, no title can be set for this measure because voters will be unaware that in “setting” district lines by adopting Initiative #327, they have handed control over redistricting for the next two election cycles to politicians in the state legislature.

3. *The Initiative’s third subject: setting new districts for 2028 and 2030.*

Initiative #327 resets the Congressional district lines for the rest of the decade. *See* Proposed Section 2-1-101.7.

The topic of changes in district lines and Congressional representation will be a great motivator for voters, depending on whether they are seeking the partisan advantage (or hoping to avoid the partisan disadvantage) resulting from their new districts. Thus, this subject will be a major motivating factor for voters in deciding whether to support or oppose Initiative #327. It is certain to be the consideration that pushes voters to a “yes” or “no” vote.

The question of whether to adopt the new districts that are proposed by Initiative #327 is entirely different. This measure’s realignment of districts is intended to, and will, have a definite partisan tilt.

The GOP-backed map would increase the party’s advantage in the 3rd, 5th and 8th Districts, all currently held by Republicans, according to a Newsline analysis. The boundaries of the solidly Democratic 7th

District would be drastically redrawn to extend across Denver's south suburbs to include the conservative Elbert County, making the seat roughly a toss-up, and giving the GOP a chance to win a 5-3 split of Colorado congressional seats.²

There are certain to be voters who agree with that result. And undoubtedly, there will be voters who oppose it. But what new district lines are drawn and how they may change the composition of Colorado's Congressional delegation is distinct from whether the Redistricting Commission should be in charge of setting districts for the decade (subject #1, above) or whether the General Assembly should have even temporary decision-making power over district lines (subject #2, above). Those two subjects address structure and roles of redistricting decision makers, not the immediate political consequences of this proposed map.

Voters should not be forced to choose to accept a political consequence they favor in return for a decision-making structure they oppose. Similarly, they should not have to accept a partisan outcome they disfavor in return for a decision-making format they prefer. This is precisely the type of policy trade-off that the single

² *Colorado Republicans advance measures to block Democrats' 2028 redistricting plan*, Colorado Newsline (Apr. 16, 2026) (<https://coloradonewsline.com/2026/04/16/colorado-republicans-advance-measures-redistricting/>) (last viewed May 3, 2026).

subject requirement was intended to avoid, and the Title Board should have refused to set a title for #327 as a result.

4. *The Initiative's fourth subject: amending the Constitution to allow for mid-decade redistricting, based on a narrowed set of redistricting criteria.*

The question of whether voters want district lines changed after the constitutionally authorized redistricting process has fully run its course is a separate subject in this initiative. Mid-decade redistricting is not a prerogative that has been recognized in Colorado as an accepted practice; in fact, it has expressly been rejected under the terms of the Colorado Constitution. *See People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1238-39 (Colo. 2003). And even though there is a full-scale redistricting war that has been launched in other parts of the country,³ the desire on the part of Colorado voters to redraw districts now and join in this controversy may well be mixed.

Some voters may prize consistency in representation over the possibility of their national political party obtaining an advantage in the U.S. House of

³ *National redistricting war reignites with Supreme Court's Voting Rights Act ruling*, The Hill (Apr. 29, 2026) (<https://thehill.com/homenews/campaign/5856022-redistricting-supreme-court-voting-rights-act/>) (last viewed May 3, 2026).

Representatives. This Court has certainly acknowledged continuity as a key factor in fair and effective representation.

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. **When the boundaries of a district are stable, the district's representative or any hopeful contenders can build relationships with the constituents in that district. Furthermore, the constituents within a district can form communities of interest with one another, and these groups can lobby the representative regarding their interests.** These relationships improve representation and ultimately, the effectiveness of the district's voice in Congress.

Id. at 1228 (emphasis added).

Other voters may prefer inserting Colorado into the political battle of which even a single mid-decade redistricting could be part. There can be no question that the public debate over recent redistricting in other parts of the country have elevated partisan advantage in the national conversation. That fundamental debate is distinct from the questions raised above concerning the shift back to legislative decision-making as opposed to reliance on the independent redistricting commission.

Moreover, whether there should be mid-cycle redistricting at all is distinct from the question of whether the specifics of districts in a new map should be approved. A voter could certainly support mid-cycle redistricting but object

fundamentally to one or more districts in the map being proposed. Alternatively, a voter could approve of the map being proposed but object strenuously to resetting the map mid-decade and, in so doing, forfeit the Commission's exclusive jurisdiction over redistricting. These types of differences are even more fundamental than, for example, the questions of whether to allow alcohol delivery and wine in grocery stores that the Supreme Court held to be separate subjects in 2022. *See In re Titles, Ballot Titles, and Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, and #128*, 2022 CO 37. That voters can have such fundamental differences over the distinct elements of #327 demonstrates its multi-subject nature.

Of course, this conundrum is only exacerbated by the fact that the proposed mid-decade redistricting is subject to a new, drastically limited set of criteria. Unlike the rubric under which redistricting was conducted by the Commission in 2021, *see* Colo. Const., art. V, sec. 44.3, Initiative #327 limits the tests for a sufficient map to three factors: (1) districts must be contiguous; (2) the Federal Voting Rights Act must be complied with; and (3) districts must satisfy the federal

one-person/one-vote requirement. *See* Proposed art. V. sec. 44(1.5)(a).⁴ Further, this Court’s review of a map is based on whether “the districts substantially comply” with these three tests. Thus, the temporary districts need not reflect communities of interest, keep political subdivisions whole, or protect against the abridgement of voting rights by racial or language minorities’ electoral influence as is required by the existing constitutional provisions. *See* Colo. Const., art. V, sec. 44.3. It is certainly conceivable that some voters would find the using narrowed in criteria to be a motivating factor in deciding how to vote on #327.

Thus, because this measure creates a voter decision on the novel issue of mid-decade redistricting as well as the other issues addressed in this brief, it violates the single subject requirement.

CONCLUSION

Because the Title Board overlooked this Court’s precedent about redistricting and failed to consider the separate elements that are only barely

⁴ Given the U.S. Supreme Court’s recent decision in *Callais, supra*, Initiative #327 could be said to really only impose a two-part test for redistricting compliance. As Justice Kagan noted in her dissent, “Today’s decision renders Section 2 (of the Voting Rights Act) all but a dead letter.” 2026 U.S. LEXIS 1950, *120.

covered under the too-general theme of “redistricting,” it erred in finding that Initiative #327 comprises a single subject. This Court should reverse that decision, returning the measure to its proponents for resubmission as two single-subject initiatives.

Respectfully submitted this 7th day of May, 2026.

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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:

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