SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED May 14, 2026 7:43 PM
Original Proceeding Pursuant to C.R.S. § 1-40-102(2) Appeal from the Ballot Title Board	
In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #327 **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: 2026SA153

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 2,618 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

The exercise of the power of initiative cannot be a separate subject from the content of the initiative itself. The right to initiative is broad and self-executing, and an initiative to create a new congressional map cannot be viewed as "returning" or "transferring" redistricting authority back to the people of the State of Colorado. The people of the State of Colorado have–and have always had—the power to redistrict through initiative. Under precedent stretching back 90 years, Coloradans have the right to redistrict through initiative. Furthermore, the exercise of the initiative right cannot be viewed separately from its subject matter. The means of enacting statutory and constitutional change (in this case a popular initiative), cannot be separated from the subject of that initiative (in this case, a new congressional districting plan.).

By its plain language, the measure does not allow the legislature to engage in redistricting after adoption of this measure. The provision that amends the Colorado Constitution specifically refers to the map in "this measure," which is "adopted" by the people of the State of Colorado. And under this Court's precedent, the language triggers the implementation of this map immediately following adoption of the initiative, and therefore that language precludes any subsequent redistricting attempts for the 2028 and 2030 election cycles.

Finally, the effective date for implementation of the map does not constitute a separate subject from the map itself. By law, every initiative has a specific date by when it goes into effect, and this measure is no different. Indeed, without an effective

date, the map cannot go into effect. Accordingly, the effective date of implementation is necessarily and properly connected to the actual redistricting plan itself.

II. PRESERVATION OF ISSUES

The Petitioner raises four single subject claims, arguing that the proposed initiative presents four separate subjects: (1) the measure deprives the Commission of sole authority to set districts; (2) the measure reallocates authority to the General Assembly; (3) the measure sets new districts; and (4) the measure allows mid-decade redistricting. The Petitioner raised the last three subjects in his *Motion for Rehearing* on April 22, 2026. But he failed to raise or preserve the first argument, that the measure deprives the Commission of sole authority to set districts.

III. ARGUMENT

A. The power to initiate and enact legislation and constitutional amendments is never a separate subject.

The Petitioner argues that by creating a new Congressional districting plan, the initiative "returns redistricting to the political process,"[1] and that the "transfer of redistricting from a nonpartisan board to all registered voters"[2] constitutes a separate subject from the initiative's implementation of a new congressional districting plan.

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[1] *Petition* at 8.

[2] *Petition* at 10.

The short response is that the exercise of the right to initiative is always necessarily and properly connected to the subject matter of the initiative itself. Voters cannot enact laws or constitutional amendments without exercising their initiative rights. In other words, the end goal of policy changes can only be achieved through the means of an initiative. The ends and means are inextricably and necessarily connected.

With respect to the Petitioner's specific argument, there is no "return" or "transfer" of authority to the People's ability to exercise their authority through the power of initiative. "The people are sovereign" and their power of initiative applies to redistricting.[3] Under Colo. Const. art. V, § 1(2), the people of the State of Colorado may, at any time, propose and enact "state legislation and amendments to the constitution." Under the constitution, "[t]he initiative power is self-executing, and the power of initiative is to be liberally construed to allow the greatest possible exercise of this valuable right."[4] Over 90 years ago, this Court expressly declared that the people of the state had the authority to adopt a reapportionment and redistricting plan by initiative.[5] Petitioner's argument that the exercise of the power of initiative transfers

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[3] *Armstrong v. Mitten*, 95 Colo. 425, 430, 37 P.2d 757, 759 (1934).

[4] *Colorado Community Health Network v. Colorado Gen. Assembly*, 166 P.3d 280, 284 (Colo. App. 2007); *see also In re Interrogatories Propounded by Senate Concerning House Bill 1078*, 536 P.2d 308, 314 (Colo. 1975) (The right to initiative is "expressly declared to be self-executing"); Colo. Const. art. V, § 1(10).

[5] *Armstrong*, 95 Colo. at 430, 37 P.2d at 759 (1934).

authority to the people of the State of Colorado directly contradicts controlling case law and precedent.

Second, by arguing that the exercise of the right to initiative constitutes a separate subject, the Petitioner asserts that the exercise of the power of initiative is separate and apart from the subject matter of an initiative itself. In Petitioner's reading, every time an initiative amends the powers of an agency identified in the constitution (such as the redistricting commission), the very existence of that initiative results in two separate subjects – the first subject is the content of the initiative, and the second subject is the people's use of the initiative. This would unduly restrict the right to initiative. The people of the State of Colorado already have authority to exercise the right of initiative on any topic they see fit. It would be nonsensical to interpret the broad reservation of the right to initiative under Colo. Const. art. V, § 1(2) to apply to some subjects, but not others. This Court should not engage in an exercise where it determines which subject areas require an initiative to specifically authorize the right to initiative. Such an approach would unduly restrict the right to initiative, by limiting that right in certain, undefined subject areas.

And Petitioner's approach produces absurd results. As a practical matter, the Petitioner demands that proponents first enact an initiative giving the people of the State of Colorado the right to exercise redistricting authority through use of the initiative. Only then can proponents advance an initiative containing a new redistricting map.

Under the heading "The Initiative's third subject: setting new districts for 2028 and 2030,"[6] the Petitioner argues that implementing a specific congressional districting map is a separate subject from implementing a new map through the initiative process. In other words, voters may like a new map, but they may separately object to the process of adopting a map by initiative.[7] This is merely a variant of Petitioner's above argument, that the exercise of the initiative power is a separate subject from the initiative's very subject matter – the implementation of a new congressional map.

Here, Petitioner's point is broader. He argues that the exercise of the initiative power constitutes a separate subject from the content of the initiative. In his view, some voters may support a congressional map, but they may be opposed to enacting that map through the initiative process. But this approach would apply to *every* initiative—a voter may support the goal of the initiative but oppose achieving that goal through the initiative process. This expands the single subject-analysis to the point where it negates the very initiative process itself. Every substantive policy change would first require an initiative to authorize an initiative on that subject matter. Only after the first initiative could a proponent seek to make a substantive policy change.

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[6] *Petition* at 13.

[7] *Petition* at 13-14.

Again, the people's ability to enact a statutory or constitutional change is necessarily connected to their ability to enact that policy change through the initiative process.

B. The measure does not "re-allocate" redistricting authority to the General Assembly.

The Petitioner argues that the measure contains a separate subject because it "reallocate[es] authority to the General Assembly for Congressional redistricting for the 2028 and 2030 elections." He reasons that "[i]f #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."[8]

The Petitioner incorrectly argues that the legislature could change the Congressional map. In addition to the arguments contained in the *Respondents' Opening Brief*, Petitioner's argument fails because the measure amends the Colorado Constitution to allow a temporary redistricting plan only through adoption of this measure. Specifically, Proposed Initiative #327 adds the new section Colo. Const. art. V, § 44(1.5)(a), which states in relevant part:

> Notwithstanding any other provision of existing law, the 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*, and before the certification of new congressional boundary

[8] *Petition* at 10.

> lines drawn by the congressional redistricting commission after the 2030 decennial census pursuant to subsection (1.5)(c) of this section.[9]

The phrase "this measure" refers to Proposed Initiative #327, which contains a specific congressional districting plan. The phrase does not refer to any other law or statutory language. Furthermore, the new constitutional language refers to the map "adopted by the voters of Colorado." Thus, the map is limited to the initiative map, a map that is adopted by voters. It does not refer in any way to the General Assembly, nor does it authorize to a temporary map adopted by the General Assembly.

Lastly, the phrase "commencing on or after the date" operates to prohibit subsequent redistricting. By specifically stating that the map in question "commences" upon the measure's adoption, the constitutional language "places a temporal restriction on redistricting."[10] In *People ex rel. Salazar v. Davidson* this Court held that because congressional reapportionment triggered redistricting in Colorado, the legislature could establish new districts only once following that triggering event. In that case, the word "when" (as used in "when a new apportionment shall be made"):

> indicate[d] the relationship of redistricting and apportionment—redistricting "shall" take place "when" apportionment occurs. "When," in this context, mean[t] "just after the moment that," "at any and every time that," or "on condition that."[11]

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[9] Proposed Colo. Const. art. V, § 44(1.5)(a) (emphasis supplied).

[10] *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1238 (Colo. 2003).

[11] *Id.*

Under this same reasoning, the word "commencing," as used in "commencing on or after the date this measure is adopted," serves the same function. The word "commencing" indicates the relationship between a new district map and the adoption of Proposed Initiative #327, and it means "just after the moment that." Thus, the phrase limits the adoption of a new, temporary congressional map subsequent to the map established with the passage of the measure.

And, as *People ex rel. Salazar* recognized (and reaffirmed), "custom, history, and policy" all support this conclusion.[12] Indeed, as early as 1934, this Court rejected the General Assembly's attempt to override, through legislative act, a reapportionment plan adopted by initiative.[13] The Petitioner's argument that the General Assembly could exercise power to create a subsequent map marks a sweeping departure from nearly a century of past practice, and from *Salazar's* more recent limitations on multiple redistricting efforts.

To be sure, the Petitioner disagrees with this reasoning, arguing that even though the measure does not explicitly allow the General Assembly to redistrict, the measure nonetheless places the new map in statute, and therefore under Colo. Const. art. V, § 1(1)[14] the measure effectively allows the General Assembly to establish new

[12] *Id.*

[13] *Armstrong*, 95 Colo. at 430, 37 P.2d at 759 (1934).

[14] *Petition* at 10.

maps. But even assuming for the sake of argument that the Petitioner's legal analysis this is correct, his claimed separate subject relies on reasoning about the effect of the initiative.

But these purported effects are not a subject for this Court's review. When reviewing the Title Board's actions, this Court "does not address the merits of the proposed initiatives."[15] 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."[16] The Petitioner nonetheless asks this Court to interpret how the proposed measure interacts with general legislative powers under Colo Const. art. V, § 1(1). But this Court has firmly rejected this approach. It refuses to "interpret or construe the future legal effects of a proposed initiative."[17] And even if an initiative may inevitably have different effects on different constitutional provisions, this Court properly recognizes that it has "never held that just because a proposal may have different effects ... it

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[15] *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 9.

[16] *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.

[17] *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).

necessarily violates the single-subject requirement."[18] Thus the Court will not "construe the legal effect of the initiative as if it were law" because it does not fall "within the scope of our single-subject review."[19]

C. A new congressional map necessarily creates new lines in the middle of this decade.

Here, the Petitioner argues that the implementation of a new map is a separate subject from implementing a new map *now*—what he characterizes as "mid-decade." In his view, the timing of when the initiative goes into effect is separate from the substance of the initiative. As a practical matter, he argues that when proponents identify a new map, they cannot at the same time state when that map will go into effect.

The date of implementation is necessarily and properly connected to the subject matter of the initiative – in this case, the new congressional map. Indeed, in order to create a new congressional district map for 2028 and 2030, the initiative must by necessity create the map "mid-decade." Otherwise, it cannot create a map at all. Indeed, the existence of a map that cannot go into effect means there is no map, at all.

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

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

Further, his argument would effectively render the "effective date" clause of the initiative an entirely separate subject, in direct contravention of Colorado statute governing initiatives. Under Colorado law, *every* initiative has an effective date upon which it goes into effect. Specifically, every measure "takes effect from and after the date of the official declaration of the vote by proclamation of the governor, but not later than thirty days after the votes have been canvassed."[20] This statutory mandate recognizes that an implementation date is necessary for every initiative. An effective date cannot form a separate subject.

Finally, the provision that authorizes a temporary map to go into effect in 2028[21] is necessarily and properly connected to the map itself. Because the redistricting commission's authority to develop a new Congressional map contains language[22] similar to that interpreted by this Court in *Ex rel. Salazar*, the Proposed Colo. Const. art. V, § 44(1.5)(a) is necessary to avoid a potential conflict with limitations on mapmaking by the Commission. Thus, the language is necessary to allow the map to go into effect, according to its "effective date." Accordingly, having

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[20] C.R.S. § 1-40-123(1).

[21] Proposed Colo. Const. art. V, § 44(1.5)(a).

[22] Colo. Const. art. V, § 44(2) ("When a new apportionment is made by congress, the commission shall divide the state into congressional districts accordingly").

a valid effective date–whether one characterizes it as mid-decade, or early-decade, or late-decade—is necessarily and properly connected to the enactment of the map itself.

IV. CONCLUSION

The Court should affirm the Title Board's finding that Proposed Initiative #327 contains a single subject.

Respectfully submitted this 14th day of May 2026,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

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.

By: *s/ Joanna Bila*
Joanna Bila, Paralegal