

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to C.R.S. § 1-40-102(2) Appeal from the Ballot Title Board</p>	<p><u>DATE FILED</u> May 7, 2026 11:55 PM</p>
<p>In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #327</p> <p>CURTIS HUBBARD, Petitioner,</p> <p>v.</p> <p>KATHLEEN CHANDLER and RICK ENSTROM, Respondents,</p> <p>and</p> <p>COLORADO BALLOT TITLE SETTING BOARD: Michael Dohr, Theresa Conley, and Kurt Morrison Respondents.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Respondents:</i> 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</p>	<p>Case Number: 2026SA153</p>
<p>RESPONDENTS' OPENING BRIEF</p>	

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 2,334 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. INTRODUCTION

This initiative is substantively identical to proposed initiative 2005-2006 #240, for which the Title Board approved a title on March 18, 2026, and again approved a title following a motion for rehearing on March 25, 2026. That matter is currently on appeal in Case No. 26SA126. Initiative 240 would suspend the current independent Congressional Redistricting Commission, create new congressional maps for the 2028 and 2030 election cycles, and then allow the Redistricting Commission to again draw maps following the 2030 decennial census. Likewise, this initiative 327 would suspend the current independent Congressional Redistricting Commission, create new congressional maps for the 2028 and 2030 election cycles, and then allow the Redistricting Commission to again draw maps following the 2030 decennial census. In order to ensure that two different sets of proponents, filing two substantively-identical measures, receive fair and consistent treatment, the Proponents respectfully submit that this Court should consider this initiative and initiative 240 together as an identical pair.

II. ISSUES PRESENTED FOR REVIEW

A. In order to create and implement a new congressional map for the 2028-2030 election cycles, the initiative creates new lines for new districts. Are these new lines, created mid-decade, part of the measure's single subject?

B. The Colorado Constitution only allows the Commission to create one congressional map, immediately following the federal census. Is it necessary for the

initiative to change this prohibition, in order to overcome the prohibition on mid-decade redistricting and to implement a new map?

C. The language of the measure does not grant the General Assembly authority to redistrict, but the Petitioner claims that the effect of the initiative would nonetheless give the General Assembly redistricting authority. Does this Court consider the effects of the measure as part of its review of the Title Board's single subject determination?

III. NATURE OF THE CASE

This case is an appeal of the Title Board's recent decision to set a title and submission clause for Proposed Ballot Initiative 2025-2026 #327.

Proponents Chandler and Enstrom (the "Proponents") submitted Proposed Initiative #327 to the General Assembly's Legislative Council Staff and Office of Legislative Legal Services ("OLLS") General Assembly.

On April 3, 2026, the Proponents submitted the measure to the Title Board, and on April 15, 2026, the Title Board, found that the measure contained a single subject and proceeded to set a title and submission clause. It also found that the proposed initiative requires additional language to the Colorado Constitution: "The requirement for approval by fifty-five percent of the votes cast applies to this initiative." Petitioner Hubbard filed a *Motion for Rehearing*, challenging the Board's single subject determination, the Board's finding that the measure does not add to the Colorado Constitution, and the accuracy of the ballot title and submission clause.

Title Board reconsidered the measure on April 23, 2026. The Board denied the *Motion for Rehearing* by a 3-0 vote.

Petitioner Hubbard appealed on April 30, 2026.

IV. SUMMARY OF ARGUMENT

Proposed Initiative 2005-2006 #327 contains a single subject—creation of a new congressional map for the 2028 and 2030 election cycles. As part of this singular purpose, the initiative necessarily draws new lines, for new maps, in the middle of this decade. The Commission may only create one new congressional map, immediately following the decennial census. And because the Colorado constitution prohibits mid-decade redistricting, the measure necessarily amends the Colorado Constitution to allow the initiative’s new map to go into effect.

The Petitioner’s claim that the initiative vests the General Assembly with authority to redistrict is simply wrong. No provision of the initiative grants authority to the General Assembly, and by its terms the measure does not disturb the Commission’s power to create one new congressional map immediately following the decennial census. At most, the Petitioner claims that the effect of the initiative is to give the General Assembly authority, but this Court does not interpret or consider the purported effects of an initiative when reviewing the Title Board’s action.

V. STANDARD OF REVIEW AND PRESERVATION OF ISSUES

In reviewing Title Board action, this Court “draw[s]” all legitimate presumptions in favor of the propriety of the Title Board’s decision and will only

overturn the Board’s decision in a clear case.¹ At the same time, this Court’s “deference . . . is not absolute; [it has] an obligation to examine the initiative’s wording to determine whether it comports with the constitutional requirements.”² “In conducting this limited inquiry, [this Court] employ[s] the general rules of statutory construction and give words and phrases their plain and ordinary meaning.”³

The issues in this appeal were set forth and preserved in Petitioner Hubbard’s *Motion for Rehearing*.

VI. ARGUMENT

A. The measure’s single subject is creation of a new Congressional district map for the 2028 and 2030 election cycles.

The single subject of #327 is congressional redistricting. Under current law, congressional maps are drawn once by the Colorado Independent Redistricting Commission every ten years, immediately following the decennial census.⁴ In

¹ *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 2017 CO 57, 20.

² *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, ¶ 9 (internal quotations and citations omitted).

³ *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 11.

⁴ See Colo. Const. art. V, §§ 44-44.6.

order to accomplish congressional districting for the 2028 and 2030 election cycles, the measure creates a new Congressional redistricting map.

The measure fits within Colorado’s existing legal framework by making two associated adjustments. First, Initiative #327 amends constitutional provisions to state that a statutory map shall be used for any elections that occur between the date of the measure’s adoption and the date the Commission completes its work following the 2030 census.⁵ Second, the measure expressly reaffirms that the Commission “shall continue to engage in congressional redistricting” following the 2030 census “and every 10 years thereafter.”⁶

Different components within a measure form a single subject if they are “necessarily and properly connected rather than disconnected or incongruous.”⁷ The single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage,” and to “prevent surprise and fraud from being practiced upon the voters.”⁸ Neither concern is present here. Number 327 establishes new maps for two election cycles (and any intervening special

⁵ Proposed Colo. Const. art. V, § 44(1.5).

⁶ *Id.*

⁷ *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 15.

⁸ *In re Title, Ballot Title & Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶¶ 13, 14 (quotations and citations omitted).

elections), while maintaining the existing process for redistricting. The proposal is clear, succinct, and harmonious.

Combined, the initiative forms a single subject. The initiative has one subject—the creation of a new congressional map for the 2028 and 2030 election cycles—and all provisions are properly connected to that subject.

Notwithstanding the inherent connection between the initiative’s sections, the Petitioner nonetheless argues that the measure has four separate subjects: (1) temporarily suspending 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.⁹ Petitioner’s suggestion that these are separate subjects is unavailing.

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

To begin, Petitioner’s second and third arguments—that the initiative authorizes mid-decade redistricting and that it establishes new district lines for the

⁹ *Pet. for Review* at 3.

2028 and 2030 election cycle—are merely restatements of the initiative’s single purpose. In order to create a new congressional district map for 2028 and 2030, the initiative must by necessity create the map “mid-decade.” And a new district map must, by definition, establish new district lines, for the new congressional districts.

What the Petitioner characterizes as new redistricting criteria are in fact merely restatements of existing criteria. The initiative requires contiguity, compliance with the Voting Rights Act of 1965, and compliance with the federal one-person, one vote requirement.¹⁰ Those exact three criteria simply repeat three criteria that already exist in the Colorado Constitution.¹¹ And two of the criteria merely repeat federal mandates, because states must comply with the Voting Rights Act¹² and the federal one-person, one-vote principle requirement.¹³

C. The initiative must amend the Colorado Constitution, so that the initiative’s new map may replace the Commission’s map.

The Petitioner’s first argument is that the initiative’s temporary suspension of the Independent Redistricting Commission forms a second subject. This

¹⁰ Proposed C.R.S. § 2-1-101.7.

¹¹ Colo. Const. art. V, §§ 44.3(1)(a) and (1)(b).

¹² 52 U.S.C. § 10301.

¹³ See *Karcher v. Daggett*, 462 U.S. 725 (1983).

characterization is not correct, because the initiative does not “suspend” the Commission. Rather, the initiative adds constitutional language stating that the that the new map replaces the Congressional map drawn by the Commission immediately following the decennial 2020 census.¹⁴

This new constitutional language is necessary because the Commission may only redistrict one each decade. The Colorado Constitution states that “[w]hen a new apportionment is made by congress, the commission shall divide the state into congressional districts accordingly.”¹⁵ This Court has at length examined the phrase “when a new apportionment is made by congress” and determined that the language prohibits mid-decade redistricting.¹⁶ Specifically, because a “new apportionment” is “synonymous with a federal census, redistricting must take place after and only after a census.”¹⁷

For all practical purposes, the Commission is not currently functioning, so there is nothing to suspend. Following final review by this Court, the Commission was required by statute file its new Congressional map with the Colorado

¹⁴ Proposed Colo. Const. art. V, §44(1.5)(a).

¹⁵ Colo. Const. art. V, § 44(2).

¹⁶ *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1237-1243 (Colo. 2003).

¹⁷ *Id.* at 1238.

Secretary of State.¹⁸ Once it completed that task, it had no further duties; Colorado law expressly prohibited it from creating a new, mid-decade map. And because no authority exists to create a new map this decade, the initiative necessarily amends the Colorado Constitution to enable the new map to go into effect. Absent this modification to allow a new map, current constitutional language would prohibit drawing a new, mid-decade congressional redistricting map.

D. The Court does not review the claim that the effect of the initiative would be to allocate redistricting authority to the General Assembly.

Finally, the Petitioner argues that the measure contains a separate subject because the initiative “reallocate[es] authority to the General Assembly for Congressional redistricting for the 2028 and 2030 elections.” This argument is fatally flawed in two respects.

First, the initiative does not reallocate authority to the General Assembly for redistricting. Nothing in the plain language of the initiative gives the General Assembly authority to redistrict. Indeed, the words “General Assembly” appear nowhere in the new constitutional or statutory language. At most the initiative *removes* the words “General Assembly” from the declaration in C.R.S. § 2-1-100.5 and instead substitutes the source of the declaration as “the People of the State of Colorado.” The

¹⁸ C.R.S. § 2-1-105(2).

initiative's silence about General Assembly's powers, coupled with the removal of any remnant of the General Assembly's involvement in Congressional redistricting, conclusively shows that the measure itself does not grant any redistricting authority to the General Assembly.

Consistent with the absence any grant of authority to the General Assembly, the initiative does not disturb the Colorado Constitution's grant of authority to the Independent Congressional Redistricting Commission. Indeed, proposed Colo. Const. art. V, § 44(1.5)(c) explicitly states that the "Independent Congressional Redistricting Commission established pursuant to subsection 2 of this section shall *continue* to engage in congressional redistricting" according to existing constitutional requirements.¹⁹ And like the identical Proposed Initiative #240, the measure temporarily substitutes a new congressional map for the Congressional map created by the Commission following the 2020 decennial census. But initiative does not change the Commission's authority. The Commission will retain its constitutional grant of authority to create new maps after the 2030 census. And because the Commission has no authority to create a mid-decade map, the initiative does not remove any authority from the Commission. Redistricting authority remains within the purview and control of the Independent Redistricting Commission.

¹⁹ Proposed Colo. Const. art. V. § 44(1.5)(c) (emphasis supplied).

Second, the Petitioner’s claim that the initiative reallocates authority to the General Assembly is at most a claim about the *effect* of the initiative. In other words, the Petitioner seemingly claims that as a result of the initiative, the General Assembly will somehow be newly invested with authority to redistrict. But when reviewing the Title Board’s actions, this Court “does not address the merits of the proposed initiatives.”²⁰ And on the merits, Petitioner’s argument is suspect, because Proposed Colo. Const. § 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.

But even assuming, solely for the sake of argument, that Petitioner is correct, the contention does not result in a separate subject. This Court has “never held that just because a proposal may have different effects it necessarily violates the single-subject requirement. Indeed, the effects this measure could have on Colorado law if adopted by voters are irrelevant to [the Court’s] review of whether the proposed initiative and its Titles contain a single subject.”²¹ Even if the Petitioner were correct (which he is not) that the new initiative would somehow allow the General Assembly to redistrict, that potential effect does not create a separate subject.

²⁰ *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 9.

²¹ *Id.*, at ¶ 17 (internal citations omitted).

VII. CONCLUSION

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

Respectfully submitted this 7th day of May 2026,

GESSLER BLUE LLC

 s/ Scott E. Gessler
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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 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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