

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 8, 2026 3:43 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 #328 (“Congressional Redistricting”)</p> <p>Petitioners: John Brackney and Robyn Carnes,</p> <p>v.</p> <p>Title Board: Theresa Conley, Michael Dohr, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No. 2026SA157</p>
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<p>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 2,207 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/ Nicholas Riley

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ISSUES ON REVIEW

I. Whether a proposed ballot measure is sufficiently definite to pass the single subject test when the measure relies on the passage of other provisions of law that have yet to be enacted.

II. Whether a proposed ballot measure includes multiple subjects if it becomes effective only upon the passage of another provision of law.

STATEMENT OF THE CASE

This case concerns whether tying the effectiveness of one ballot measure to the passage of another ballot measure violates the single subject requirement. The Title Board’s assessment of this question evolved over the course of the 2025–2026 cycle, and it is now presented in several measures pending before this Court, including proposed initiative 2025-2026 #241 (“#241”), 2026SA122, which proposes constitutional and statutory changes to Colorado’s independent redistricting commission; proposed initiative 2025-2026 #242 (“#242”), 2026SA123, which offers a new map for the state’s congressional districts; and proposed initiative 2025-2026 #328 (“#328”), which

provides an alternative congressional district map and is the measure at issue in this case.

Here, the Title Board found that #328 violates the single subject requirement because it is effective only if another measure is also adopted. Record at 5. However, the Board has previously held otherwise. *See* Record, *In re Title, Ballot Title, & Submission Clause for 2025-2026 #242*, No. 2026SA123 (Colo. 2026) at 14 (hereinafter “#242 Record”). The only material difference between the two measures is the congressional map proposed.

Number 241 proposes to relocate the authority for the independent congressional redistricting commission from the Colorado Constitution to a newly created statute. Under existing law, congressional redistricting in Colorado occurs every 10 years, after the federal census is conducted. *In re Colo. Indep. Congressional Redistricting Comm’n*, 2021 CO 73, ¶¶ 3–10. In 2018, Colorado voters enacted Amendment Y, codified as article V, sections 44–44.6 of the Colorado Constitution, which established an independent redistricting commission to draw maps following the census. *Id.* ¶ 3. Number 241

proposes to repeal Amendment Y and enact an identical statutory provision. Record, *In re Title, Ballot Title, & Submission Clause for 2025-2026 #241*, No. 2026SA122 (Colo. 2026) at 16–31 (hereinafter “#241 Record”). Number 241 does not alter the language of Amendment Y; it simply removes the language from the constitution and reenacts the same provision as a statute. The measure only takes effect “if, at the November 2026 statewide election, a ballot issue . . . to create temporary new congressional districts to be used in the 2028 and 2030 election cycles is approved by the people.” *Id.* at 31. At its March 18, 2026 meeting, the Title Board concluded that the measure contained a single subject and set a title. *Id.* at 15. The Title Board denied two motions for a rehearing on April 1, 2026. *Id.*

Number 242 puts forward a map of “new temporary congressional district[s],” as referenced in #241.¹ #242 Record at 14–48. Section 4 of the initiative states that the measure “takes effect only if, at the November 2026 statewide election, a ballot issue repealing sections 44,

¹ 2025-2026 #240, which is also before this Court, is a combination of #241 and #242. See Record, *In re Title, Ballot Title, and Submission Clause for 2025-2026 #240*, No. 2026SA126 (Colo. 2026) at 15.

44.1, 44.2, 44.3, 44.4, 44.5, and 44.6 of article V of the Colorado constitution is approved by the people[.]” *Id.* at 47. Thus, #242 becomes effective only if #241 is adopted. During the same March 18, 2026 meeting, the Title Board concluded that the measure contains a single subject and set a title. *Id.* at 14. The Title Board denied two motions for a rehearing on April 1, 2026. *Id.*

Number 328 proposes an alternative map of temporary congressional districts. Record at 6–39. It includes an identical effective provision to #242, indicating that #328 will take effect only if #241 is adopted. *Id.* at 39.

On April 15, 2026, the Title Board held a hearing to set a title for #328. *Hearing Before Title Board on Proposed Initiative 2025-2026 #328* (Apr. 15, 2026), at 7:44:10–7:59:30, <https://tinyurl.com/se5fu7yx> (“Hearing”). The Board considered whether #328 violates the single subject rule. *Id.* In particular, the Board raised the issue that #328 seeks to amend a nonexistent statute. *Id.* at 7:47:24–7:49:02. The Board explained that it had faced a similar issue when it declined to set a title for proposed initiative 2023-2024 #88. *Id.* In that matter, title setting

was denied on the basis that, “because proposed initiative 2023-2024 #88 amends statute that does not currently exist and may not exist in the future, the Board cannot understand the initiative well enough to state the single subject of the measure in the title.” *Hearing Before Title Board on Proposed Initiative 2023-2024 #88* (Oct. 18, 2023), at 4:39:57–4:40:37, <https://tinyurl.com/4x3rfehv>. The Title Board’s decision for 2023-2024 #88 was never appealed.

Board members expressed concern that #328 is indefinite in scope in the same manner as 2023-2024 #88 because the measure seeks to amend statutory provisions that will not exist unless #241 is adopted. Hearing at 7:47:24–7:49:02. Board members further acknowledged that it had not considered the issue as it related to #242. *Id.* at 7:49:17–7:53:07. The issue proved dispositive, and the Board determined it lacked jurisdiction to set title by a vote of two-to-one. Record at 4. It stated that “the Board lacks jurisdiction to set title on the grounds that [the] measure does not constitute a single subject.” *Id.*

Petitioners John Brackney and Robyn Carnes, through counsel, filed a motion for rehearing. Record at 2–3. They argued that (1) #328

contains a single subject limited to a new redistricting map, (2) the provisions relating to the enactment of #241 “are necessarily and properly connected to that central subject,” and (3) it would be inequitable to find that #328 contains multiple subjects when the Title Board previously found #242 contains a single subject. *Id.*

The Board considered the motion for rehearing at its April 23, 2026 meeting. *Rehearing Before Title Board on Proposed Initiative 2025-2026 #328* (Apr. 23, 2026), at 6:46:45–7:01:09, <https://tinyurl.com/ypsep2fj> (“Rehearing”). Board members indicated that #328 raises two issues: (1) whether a measure can be considered to contain a single subject when it necessarily relies on the passage of a separate ballot measure, and (2) whether the Board has jurisdiction to set a title over a ballot measure that seeks to amend a statute that does not exist at the time the ballot measure is up for adoption. *Id.* at 6:49:03–6:50:05.

The Board also considered whether #328 differs meaningfully from 2023-2024 #88. For 2023-2024 #88, the Board was concerned that the proposition relied on the passage of certain bills then pending in the

legislature, whereas #328 depends upon the adoption of a simultaneously proposed ballot measure. *Id.* at 6:51:13–6:54:35.

The Board denied the motion for rehearing by a different two-to-one vote. Record at 5. Board member Michael Dohr held that connecting the passage of #328 to the passage of another measure constituted a measure with multiple subjects. Rehearing at 6:59:33–6:59:38. Board members Theresa Conley and Kurt Morrison reached opposite conclusions to their previous votes. Ms. Conley held that the Board cannot set title for a measure that is indefinite when the measure proposes to amend a law that does not exist. *Id.* at 6:59:17–6:59:30. Mr. Morrison held that #328 includes a single subject, despite being contingent on the passage of a separate measure, and that unlike 2023-2024 #88, the interdependent nature of #328 and #241 did not make #328 so incomprehensible that a title could not be set. *Id.* at 6:58:20–6:58:56.

Before this Court, petitioners renew their challenge that #328 contains a single subject. Pet. for Review at 3 (Apr. 30, 2026).

SUMMARY OF ARGUMENT

The Title Board agrees that the petition raises unsettled and recurring questions of law regarding interrelated ballot measures and that review should be granted.

ARGUMENT

I. 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. To satisfy the single subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *Id.*

The Title Board agrees that petitioners preserved their single subject objection in their motion for rehearing. Record at 2–3.

II. The Court should grant the petition for review and provide guidance on the unanswered questions presented by this appeal.

The Colorado Constitution states that no measure “shall be proposed by petition containing more than one subject[.]” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 10 (quoting Colo. Const. art. V, § 1(5.5)). This restriction is known as the single subject requirement. *Id.* ¶ 11. In recognition of this charge, the General Assembly has found that “every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly [must] be limited to a single subject.” § 1-40-106.5(1)(a), C.R.S. The single subject requirement serves two functions: (1) “it ensures that each proposal depends upon its own merits for passage” and (2) it “prevents surprise and fraud from being practiced upon voters” by stopping the “inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In*

re Title, Ballot Title, & Submission Clause for 2025-2026 #158, 2026 CO 13, ¶¶ 16–17 (citations, quotations, and alterations omitted).

What constitutes a single subject for the purposes of these constitutional and statutory provisions has been extensively litigated. To undersigned counsel’s knowledge, however, this Court has not addressed whether single subject concerns apply not only within a single measure but also across multiple measures. Moreover, this Court does not appear to have had occasion to address whether interdependent ballot measures are, or can be, indefinite in scope such that the Title Board lacks jurisdiction to set title for the measures. The Title Board’s consideration of these issues evolved over the course of the 2025–2026 cycle. The Board agrees, however, that any single subject determination made as to these issues should apply consistently to all measures containing similar provisions. Accordingly, the Board welcomes this Court’s review and guidance.

In this action, with regards to #328, the Board determined that the measure did not include a single subject for two independent reasons. First, one member of the Board found that, by making the

enactment of #328 dependent on the enactment of #241, the measure is effectively log-rolling across two ballot measures. This holding is supported indirectly by the Court’s decision in *In re Title, Ballot Title and Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶¶ 34–35.

That case concerned a pair of ballot measures that proposed to reallocate redistricting authority for state and federal elections among various commissions and the legislature. *Id.* ¶¶ 2–6. The Court explained that one of the measures, which relocated state and federal redistricting authority to a Reapportionment Commission, “creates a danger of log rolling” because the ballot measure might attract a “yes” vote from voters who wanted to change the process for state legislative redistricting, but who might otherwise “oppose removing the power to draw congressional districts from the General Assembly, or vice versa.” *Id.* ¶ 34. So too here. By making #241 and #328 interdependent, a voter may vote for #241 to remove the constitutional authority of the independent redistricting committee only because they want the congressional maps proposed by #328. That voters may pick between the congressional maps in #328 and #242 makes no difference. A voter

who prefers the congressional map proposed in #328 must approve all provisions of #241, whether those provisions are necessary to redraw Colorado's districts or not.

The alternative basis for the Title Board's holding is the concern that ballot measures which seek to amend nonexistent law are inherently vague. This Court has repeatedly emphasized the Title Board's role in crafting accurate titles for ballot measures to ensure voters have fair notice of the matters on which they are voting. *In re 2013-2014 #90*, ¶ 25, ("the title must fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board"); *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008) ("the Title Board's chosen language must not mislead voters"). When a ballot measure seeks to amend a law whose provisions do not yet exist, the Title Board—and voters—may lack sufficient clarity about the consequence of the measure.

Regardless, the Title Board agrees with petitioners that these issues merit consideration and further review.

CONCLUSION

For these reasons, the Court should grant the petition for review.

Respectfully submitted on this 8th 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 this 8th day of May.

/s/ Carmen Van Pelt

Carmen Van Pelt