

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 7, 2026 12:59 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 #325</p> <p><b>Petitioner:</b> Curtis Hubbard</p> <p>v.</p> <p><b>Title Board:</b> Theresa Conley, Michael Dohr, and Kurt Morrison.</p> <p>and</p> <p><b>Initiative #325 Proponents:</b> Kathleen Chandler &amp; Rick Enstrom</p>	<p><b>▲ COURT USE ONLY ▲</b></p> <p>Case No. 2026SA151</p>
<p>PHILIP J. WEISER, Attorney General KOLYA D. GLICK,* 26PPA1371** Senior Assistant Attorney General JOSEPH G. MICHAELS,* #40403 Assistant Solicitor General 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6159, -6460 E-Mail: kolya.glick@coag.gov; joseph.michaels@coag.gov *Counsel of Record <i>Attorneys for the Title Board</i></p>	
<p><b>THE TITLE BOARD'S OPENING BRIEF</b></p>	

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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:

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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/ Kolya D. Glick*

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KOLYA D. GLICK,

Senior Assistant Attorney General

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## **ISSUES ON REVIEW**

- I. Whether the Title Board correctly determined that it had jurisdiction to set a title on Proposed Initiative 2025-2026 #325.
- II. Whether the Title Board set a clear title.

## **STATEMENT OF THE CASE**

There is an ongoing national conversation regarding the best way to conduct congressional redistricting. Against that backdrop, the Title Board was presented with multiple initiatives this term seeking to change the way Colorado draws its congressional maps. Proposed Initiative 2025-2026 #325 (“Initiative #325”) is one such initiative. The title in Initiative #325 is materially similar to Proposed Initiative 2025-2026 #324 (“Initiative #324”), and it may serve judicial economy for the two cases to be considered in tandem. Like Initiative #324, Initiative #325 seeks to change the criteria for congressional redistricting under the Colorado Constitution. In broad strokes, Initiative #325 proposes to restrict the use and influence of partisan voter registration data or partisan electoral performance when drawing congressional maps, to repeal the existing requirement that congressional maps preserve

politically competitive districts, and to create maps based on a list of delineated criteria that center on geography. Record, pp. 12-14. Unlike Initiative #324, however, Initiative #325 requires the use of U.S. citizen population data—instead of total population data—when drawing congressional maps. Record, pp. 12-13.

At its April 15, 2026 meeting, the Title Board concluded that the measure contained a single subject, made changes to the proposed title, and set a title. Record, p. 8. Petitioner Curtis Hubbard then filed a motion for rehearing, arguing that Initiative #325 contained multiple subjects and was misleading. Record, pp. 2-5. The Board addressed the motion for reconsideration at its April 23, 2026 meeting. Record, pp. 9-10. The Board granted the motion for rehearing to the extent it made minor changes to the text of the title, but it otherwise denied the motion.

In full, the title ultimately fixed by the Board after rehearing for Initiative #325 reads:

An amendment to the Colorado Constitution changing congressional redistricting criteria, and, in connection therewith, repealing the requirement that the congressional redistricting maps maximize the number of politically

competitive districts and preserve whole communities of interest; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance, and instead creating seven new geographic communities of interest, consisting of 50 of the 64 Colorado counties; and requiring any maps created by the congressional redistricting commission, the state legislature, or citizen initiative to use United States citizen population data, if available, and specified priorities to keep counties, cities, and geographic communities of interest together as much as possible.

Record, p. 9.

In full, the ballot title and submission clause as designated and fixed by the Board after rehearing reads:

Shall there be an amendment to the Colorado Constitution changing congressional redistricting criteria, and, in connection therewith, repealing the requirement that the congressional redistricting maps maximize the number of politically competitive districts and preserve whole communities of interest; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance, and instead creating seven new geographic communities of interest, consisting of 50 of the 64 Colorado counties; and requiring any maps created by the congressional redistricting commission, the state legislature, or citizen initiative to use United States citizen population data, if available, and specified priorities to keep counties, cities, and geographic communities of interest together as much as possible?

*Id.*

The text of the Initiative proposes changes to Sections 44 and 44.3 of Article V of the Colorado Constitution. Record, pp. 12-13. Specifically, it proposes changing congressional redistricting criteria by: repealing the requirement of maximizing politically competitive districts; adding a provision prohibiting the use of partisan voter data or partisan electoral performance in drawing maps; amending the weight placed on preserving “traditional communities of interest”; creating a set of “geographic communities of interest” defined to include 50 of the 64 counties in the state; *requiring the use of U.S. citizen population data from the U.S. Census (if available) to calculate population (as distinguished from Initiative #324’s total population)*; and setting forth priority ordering in which aspects of the geographic communities of interest criteria apply. Record, pp. 11-14.

Issue 1 in the Petition: Petitioner now challenges whether the Board had jurisdiction to set a title for Initiative #325. Petitioner offers four subparts to Issue 1—which are identical to those asserted in his challenge to Initiative #324—asserting that the initiative consists of the following four subjects:

(a) changing the criteria for Congressional redistricting maps adopted by the existing Independent Congressional Redistricting Commission, an entity which is embedded in the Colorado Constitution to control all aspects of such redistricting;

(b) restricting voters' access to the fundamental constitutional right of initiative by preventing Congressional redistricting through an initiative if that redistricting plan has been created with or even influenced by any partisan information;

(c) restricting state legislators' fundamental constitutional rights under the Speech or Debate Clause of the Colorado Constitution by preventing Congressional redistricting by the General Assembly if that redistricting plan has been created with or even influenced by any partisan information; and

(d) restricting Coloradans' fundamental constitutional rights of free speech and association by preventing any influence on Congressional redistricting through any reference to partisan considerations.

Pet. at 3-4. The Petition does not assert that Initiative #325's proposed requirement to use U.S. citizenship data from the U.S. Census is a separate subject, although Petitioner made that argument in his motion for rehearing before the Board. *See Record*, pp. 4-5.

Issue 2 in the Petition. Petitioner also asserts that the "titles violate the clear title requirement by failing to inform voters that the

prohibition on partisan performance and data extends beyond Congressional redistricting maps ‘created with’ such information and includes any redistricting map that was even ‘influenced by’ such information.” Pet. at 4.

### **SUMMARY OF ARGUMENT**

The Title Board set an appropriate title for Initiative #325. The title contains a single subject: the criteria for drawing congressional maps. That subject is stated clearly and is not misleading. This Court should deny the petition and affirm the Title Board.

### **ARGUMENT**

#### **I. The Title Board had jurisdiction to set a title.**

##### **A. 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*, 489 P.3d 1217, 1220 (Colo. 2021) (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*, 333 P.3d 76, 79 (Colo. 2014).

In doing so, the Court does "not address the merits of the proposed initiative" or "suggest how it might be applied if enacted." *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 442 P.3d 867, 869 (Colo. 2019). Nor can the Court "determine the initiative's efficacy, construction, or future application." *In re 2013-2014 #76*, 333 P.3d at 79. Instead, the Court "must examine the initiative's wording to determine whether it comports with the constitutional single-subject requirement." *In re 2019-2020 #3*, 442 P.3d 867, 869 (Colo. 2019). To satisfy the single-subject requirement, the "subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous." *In re 2013-2014 #76*, 333 P.3d at 79.

The "Board's actions are presumptively valid[,] and this presumption precludes [this Court] from second-guessing every decision the Board makes in setting titles." *In re Title, Ballot Title & Submission*

*Clause & Summary for 1999-2000 #245(b), 245(c), 245(d) & 245(e), 1 P.3d 720, 723 (Colo. 2000).*

The Title Board agrees that Petitioner preserved their single-subject objections in their motions for rehearing.

**B. The subject of the measure is clearly stated.**

For the same reasons and same authorities that the Title Board properly set title for Initiative #324, in that it had a single subject and clear title, Initiative #325 also has proper title.

The single subject of Initiative #325 is the criteria for drawing congressional redistricting maps. To create those criteria, the measure adds new prohibitions on partisan gerrymandering, amends existing requirements related to preserving communities of interest and competitive districts, and sets forth criteria focused on geography for use in determining congressional districts. Record, pp. 13-14. Those criteria are cohesive and relate to the single narrow issue of congressional redistricting. Petitioner's attempts to subdivide the issue and create new issues within Initiative #325 are unavailing.

The single-subject rule serves to prevent both the joinder of multiple subjects to secure the support of various factions, and voter fraud and surprise. *In re Title, Ballot Title & Submission Clause for 2001-2002 #43*, 46 P.3d 438, 442 (Colo. 2002). The single-subject requirement prevents “attracting support from various factions which may have different or even conflicting interests.” *In re Proposed Initiative “Pub. Rts. in Waters II,”* 898 P.2d 1076, 1079 (Colo. 1995).

To set a proper title, the “Board need not consider and resolve potential or theoretical disputes or determine the meaning or application of the” measure. *In re Title, Ballot Title & Submission Clause & Summary for a Pet. on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994). The need for future judicial interpretation of a measure therefore does not render the Board unable to set a title. *See id.* For instance, this Court has held that, to the extent an initiative’s use of the term “nonexempt well” was unclear, the Board could still set a title even though the term’s “definition must await future legislative and judicial construction and interpretation.” *In re 1997-1998 #75*, 960 P.2d 672, 673 (Colo. 1998).

Ultimately, there are three core methods of violating the single-subject requirement: (1) if the text relates to more than one subject; (2) if the Initiative has two or more distinct and separate purposes that are not dependent on or corrected to each other; or (3) if the Initiative is an impermissible umbrella topic. See *In re 2021-2022 #16*, 489 P.3d at 1222; *In re Title, Ballot Title & Submission Clause & Summary Regarding (Petitions)*, 907 P.2d 586, 590 (Colo. 1995). The single-subject requirement thus seeks “[t]o prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II), C.R.S. It exists to avoid “log rolling,” where a measure would attempt to gain support from various factions by combining unrelated subjects into a single initiative for consideration—particularly where the initiative could attract a “yes” vote from voters who might otherwise vote “no” on one of the multiple subjects if presented individually. *In re 2013-2014 #76*, 333 P.3d at 85.

Initiative #325 does not violate any of these principles.

First and foremost, the fact that further legislative and judicial construction may be necessary to determine how the Initiative will interact with other constitutional rights—such as the right to initiative or the right to free speech—does not render the meaning of the initiative unknowable to voters. *See In re Title, Ballot Title & Submission Clause for 1997-1998 #75*, 960 P.2d at 673. Indeed, to the extent Initiative #325 were to conflict with fundamental First Amendment rights under the U.S. Constitution (it does not), those First Amendment rights would necessarily supersede the Initiative. Petitioner’s contrary arguments below failed to address that supremacy entirely. Record, pp. 3-4.

Similarly, the Initiative’s prohibition on partisan gerrymandering (or what it means for partisan voter data to “influence” congressional maps) may be subject to future judicial and legislative dispute. But the possibility that the Initiative #325’s terms *might* require further interpretation does not mean they *necessarily* contain a second subject; rather, that possibility suggests its *single* subject could be disputed and interpreted in the future. *See In re Pet. on Sch. Fin.*, 875 P.2d at 210

(Board’s duty is to summarize central features of initiated measure, not to “consider and resolve potential or theoretical disputes”); *see also In re Proposed Initiative 1996-6 (Public Rights in Waters III)*, 917 P.2d 1277, 1281 (Colo. 1996) (court “cannot speculate as to the effect th[e] Initiative may have on other constitutional provisions or statutes”).

Second, Petitioner’s arguments simply misread how Initiative #325 will apply. Petitioner suggests the Initiative will infringe the right of initiative, the right to free speech and association, and legislators’ free speech and debate rights. Record, pp. 1-3. Petitioner is wrong on the merits of what the Initiative actually does: none of those rights are even *addressed* in the text of Initiative #325, much less burdened.

But more to the point, even if future factual circumstances might create a tension between Initiative #325 and other constitutional rights, that dispute would be resolved through ordinary judicial and legislative channels. This Court need not (and should not) “consider and resolve potential or theoretical disputes” about how the Initiative could apply to a set of facts that has not yet occurred. *See In re Pet. on Sch. Fin.*, 875 P.2d at 210.

Third, Initiative #325 does not contain multiple subjects merely because its criteria applies to maps created by congressional redistricting commission, the state legislature, *or* citizen initiative. *Contra* Record, p. 3. The subject of the Initiative is the criteria for drawing congressional maps in Colorado; it does not change the procedure for drawing those maps or dictate the body that draws the maps. Put simply, there is nothing different or conflicting about the interests Initiative #325 would attract. *See In re Proposed Initiative “Pub. Rts. in Waters II,”* 898 P.2d at 1079. In any event, as this Court has held, just because an initiative “encompasses *related* matters[,] it does not violate the single subject requirement.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #89*, 328 P.3d 172, 177-78 (Colo. 2014) (quotation marks omitted) (emphasis in original); *see also In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159-60 (Colo. 2014) (where initiative tends to “carry out one general objective” or central purpose, “provisions necessary to effectuate [that] purpose . . . are properly included within its text”) (quotation omitted).

Fourth, Petitioner cannot create a second issue by pointing to different aspects of the criteria for the simple reason that an initiative is not restricted to containing only a single *provision*, only a single subject. This Court has thus held consistently that voter initiatives can impact multiple aspects of a central purpose without violating the single subject requirement. For instance, this Court concluded that the provisions of a voter initiative that sought to establish parental rights concerning children in four distinct areas—upbringing, education, values, and discipline—were sufficiently connected to satisfy the single subject requirement. *In re Proposed Ballot Initiative on Parental Rts.*, 913 P.2d 1127, 1131 (Colo. 1996).

Similarly, an initiative establishing a tax credit that applied to multiple taxes satisfied the single subject requirement because “[a]ll six taxes [we]re connected to the same tax credit and [we]re bound by the same limitations.” *In re Title, Ballot Title & Submission Clause & Summary Regarding Amend Tabor #32*, 908 P.2d 125, 129 (Colo. 1995) (upholding single subject for TABOR amendment that addressed tax credit across multiple tax concerns). And in a measure addressed to

giving building and development control to voters instead of local government officials, this Court found no single-subject violation because, while the initiative was broad, its provisions were related to the purpose and management of the purpose of the initiative. *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #256*, 12 P.3d 246, 254 (Colo. 2000); *accord In re 2013-2014 #89*, 328 P.3d at 177 (affirming single-subject title for proposed initiative involving the over-arching purpose of creating public right to Colorado's environment along with mechanisms to carry out that purpose).

Likewise, in *In re Proposed Initiative on Petitions*, 907 P.2d at 590-91, this Court approved the Title Board's action in setting title, finding that the title had a single subject that simply included various procedural formalities associated with the exercise of the right to petition. *Accord In re Proposed Initiative for 1999-2000 #255*, 4 P.3d 485 (Colo. 2000) (upholding single subject title where initiative would impose background checks at gun shows and included multiple procedures for accomplishing that initiative).

Here, Initiative #325 does not expressly create or alter *any* rights outside the narrow context of congressional redistricting. Nor does it address any broader procedural restrictions on the right to initiative or the speech and debate rights of citizens or legislators. Rather, the Initiative merely sets the criteria for redistricting, modifying and amending the existing criteria along the way. Its provisions do not impermissibly contain hidden aspects “coiled up in the folds.” *See In re 2013-2014 #76*, 333 P.3d at 85. Rather, the scope of the proposed criteria is narrow and falls well within the Initiative’s single subject.

Moreover, although the Initiative changes the status quo as to existing redistricting criteria, “[t]he mere fact that a proposed [initiative] may affect the powers exercised by government under preexisting [law] does not by itself demonstrate that the proposal embraces more than one subject.” *In re Title, Ballot Title & Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1077 (Colo. 2010). Indeed, “[a]ll proposed . . . laws would have the effect of changing the status quo in some respect if adopted by the voters.” *In re Title, Ballot Title &*

*Submission Clause & Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000).

Finally, Petitioner has forfeited any challenge to the requirement of drawing redistricting maps based on U.S. citizenship data from the U.S. census (if available), by failing to raise that issue at all in his Petition. *See generally* Pet. at 3-4; *see also* *Moody v. People*, 159 P.3d 611, 614 (Colo. 2007) (noting the “basic principle of appellate jurisprudence that arguments not advanced on appeal are generally deemed waived”); *cf. People v. Rodriguez*, 914 P.2d 230, 254 (Colo. 1996) (in postconviction context, “conscious relinquishment of those claims not reasserted” on appeal results in abandonment of those claims). But to the extent Petitioner’s challenge was not forfeited, the use of U.S. citizen population data is fairly and properly encompassed within Initiative #325’s single issue of amending Colorado’s redistricting criteria.

## **II. The title set by the Board satisfies the clear title standard.**

### **A. Standard of review and preservation.**

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 454 P.3d 1056, 1060 (Colo. 2019). “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re 2013-2014 #90*, 328 P.3d at 162. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *Id.* at 159.

The Board agrees that Petitioners preserved their challenge to the clear title set by the Board.

### **B. The title is not misleading.**

Petitioner’s argument that the title and submission clause are misleading focuses on Initiative #325’s prohibition on partisan gerrymandering. Petitioner asserts that the title violates “the clear title

requirement by failing to inform voters that the prohibition on partisan performance and data extends beyond Congressional redistricting maps ‘created with’ such information and includes any redistricting map that was even ‘influenced by’ such information.” Pet. at 4. That argument provides no basis to grant the petition.

Under this Court’s precedent, “[a]n appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title.” *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988); *accord In re 1999-2000 #256*, 12 P.3d at 254 (initiative does not violate single-subject requirement simply because it covers a broad subject). And “[t]here is no requirement that the title clearly express the act’s provisions or the details by which its object is to be accomplished.” *People v. Sa’ra*, 117 P.3d 51, 58 (Colo. App. 2004); *see In re Title, Ballot Title & Submission Clause for 1997-1998 #74*, 962 P.2d 927, 930 (Colo. 1998) (rejecting argument that title required more detail and stating “we find it highly unlikely that support for Initiative No. 74 would turn on whether it includes renovated apartments or condominiums”).

Rather, the question is whether the proposed title “fairly and succinctly advise[s] the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed.” *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990) (quoting *Dye v. Baker*, 354 P.2d 498, 500 (Colo. 1960)).

Here, Initiative #325 clearly announces its purpose and effect: creating criteria for Congressional redistricting, which includes a prohibition on redistricting maps “created with partisan voter registration data or partisan electoral performance.” Record, p. 10.

To be sure, Initiative #325 introduces a new prohibition on partisan gerrymandering into Colorado law. But its title is descriptive of that purpose, not misleading, as the terms “partisan registration data” and “partisan electoral performance” trace “directly from the text of the Proposed Initiative[], and [their] inclusion in the title provides an accurate description of what the Proposed Initiative[] would do.” *In re 2013-2014 #85*, 328 P.3d 136, 146 (Colo. 2014). “The phrase” that Petitioner challenges “is descriptive and informative based on the

common understanding of the words used.” *In re 2019-2020 #3*, 454 P.3d 1056, 1062 (Colo. 2019).

To the extent Petitioner focuses on ambiguity in what it means for a map to be “influenced by” partisan data, his argument simply highlights a term that may be disputed in the future. But as discussed above, the fact that courts and legislatures may need to develop precise metrics for satisfying the Initiative’s criteria does not render its title invalid. *Supra* at 9, 11-12. Rather, the title here properly “enable[s] the electorate, whether familiar or unfamiliar with the subject matter” to understand what the proposed initiative would do. *In re Proposed Initiative Concerning “State Personnel System,”* 691 P.2d 1121, 1123 (Colo. 1984).

To be sure, the difficulties of defining and adjudicating what constitutes partisan gerrymandering have been well documented by courts in other jurisdictions. *Compare Rucho v. Common Cause*, 588 U.S. 684, 691 (2019) (“This Court . . . has struggled without success over the past several decades to discern judicially manageable standards for deciding [partisan gerrymandering] claims”), *with id.* at 734 (Kagan, J.,

dissenting) (“Over the past several years, federal courts across the country—including, but not exclusively, in the decisions below—have largely converged on a standard for adjudicating partisan gerrymandering claims.”), and *Lujan Grisham v. Van Soelen*, 539 P.3d 272, 285 (N.M. 2023) (holding egregious political gerrymander violates New Mexico Constitution). If Initiative #325 were passed, the Colorado judiciary undoubtedly would need to confront similar questions.

Yet any difficulties of interpreting what partisan gerrymandering means in the abstract only underscore that the Initiative’s title—which clearly states its intended purpose of prohibiting the use of certain partisan data in drawing congressional maps—is not an impermissible catchphrase. Rather, it is well established that the “Board need not consider and resolve potential or theoretical disputes or determine the meaning or application of the” measure. *In re Pet. on Sch. Fin.*, 875 P.2d at 210. Nor is a title unclear simply because a term’s “definition must await future legislative and judicial construction and interpretation.” *In re 1997-1998 #75*, 960 P.2d at 673. Weighed under that established legal framework, Petitioner’s hypotheticals about the problems of

implementing Initiative #325 only prove that the Title Board set an appropriate title.

Finally, to the extent any lack of clarity existed in the Initiative #325 *initial* proposal, the Title Board thoughtfully revised the text of the title and the submission clause at the rehearing. *Compare* Record p. 9, *with* Record p. 10. Indeed, it is telling that Petitioner’s five separate challenges to the title as “misleading” in his rehearing petition, Record, pp. 3-6, have now dwindled to just one challenge before this Court. And as explained above, that challenge lacks merit.

### **CONCLUSION**

For these reasons, this Court should affirm the title set by the Title Board on Initiative #325.

Respectfully submitted on this 7th day of May, 2026.

PHILIP J. WEISER  
Attorney General

*/s/ Joseph G. Michaels*

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JOSEPH G. MICHAELS,\* #40403  
Assistant Solicitor General  
Public Officials Unit  
State Services Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway  
Denver, CO 80203  
Telephone: (720) 508-6460  
E-Mail: joseph.michaels@coag.gov

*/s/ Kolya Glick*

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KOLYA D. GLICK,\* #26PPA1371\*\*  
Senior Assistant Attorney General  
Public Officials Unit  
State Services Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway  
Denver, CO 80203  
Telephone: 720-508-6159  
E-Mail: kolya.glick@coag.gov

*Attorneys for the Title Board*

\*Counsel of Record

\*\* Practice temporarily authorized  
pending admission under C.R.C.P.  
205.6.

**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 by Colorado Courts E-filing (CCE), this 7th day of May, 2026.

*/s/ Leslie Bostwick*

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Leslie Bostwick