

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025-2026 #239
("Congressional Redistricting")**

Initiative Proponents: Tanya Nathan and Lindsey Rasmussen

v.

Objector: Republican National Committee

MOTION FOR REHEARING

By undersigned counsel, Robert Balink, a registered voter of El Paso County, Colorado objects to the titles set for Initiative #239, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On March 18, 2026, the Title Board Set the following ballot title and submission clause for Initiative #239:

Shall there be an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes concerning congressional redistricting and adopting a new temporary congressional map, and, in connection therewith, replacing the independent congressional redistricting commission in the constitution with an identical commission in statute, creating a temporary congressional district map that replaces the current map and will be used in 2028 and 2030 congressional elections and requiring the new statutory independent congressional redistricting commission to draw a congressional district map after the 2030 census?

In so doing, the Board erred for the following reasons:

1. The Board should make a finding that the measure only repeals part of the Colorado Constitution.

The Colorado constitution requires that “[f]or every proposed constitutional amendment, the title board shall determine whether the proposed constitutional amendment only repeals in whole or in part a provision of the state constitution for purposes of section 1(4)(b) of article V of the state constitution.”¹ Although the Title Board made a finding that the initiatives do not require a 55% approval threshold, it should also (1) make a finding that

¹ Colo. Rev. Stat. Ann. § 1-40-106(3.5).

it repeals part of the constitution, and (2) make a finding that the amendment will require signatures “in an amount equal to at least two percent of the total registered electors in the senate district provide.”²

2. The measure contains two separate and distinct subjects that are not necessarily connected to one another.

Under well-trod standards, proponents may not combine “subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests.”³ Most importantly, this requirement “is intended to ensure that each proposal depends upon its own merits for passage.”⁴ Thus, a court (and Title Board) must ask “whether there is a danger of logrolling: Have measures been combined to secure the enactment of one that could not be carried out on its own.”⁵ Logrolling is the “practice of combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—[in order to] lead to the enactment of measures that would fail on their own merits.”⁶

A. The measure shifts constitutional authority from a constitutionally mandated Commission, and places it in statute subject to legislative authority.

By eliminating the constitutionally mandated redistricting commission, and replacing it with a new, statutorily authorized commission, the proposed dramatically changes who does redistricting, and under what authority. To be sure, the proponents have described the elimination of one commission and creation of a new commission as merely a continuation of the same process, but this approach fails to recognize that the proposed initiative reverses entirely the constitutional framework adopted by voters in 2018. Indeed, the Colorado Supreme Court has held that a “proposal to remove [] constitutional authority for congressional redistricting from the General Assembly and transfer it to the newly created Redistricting Commission” is a distinct subject. In that case, involving Proposed Ballot Initiative 2017-2018 #132, the Court did not limit its analysis to merely a transfer of authority from the General Assembly to a commission. Rather, it focused on the upending of the *constitutional* framework. It found that shifting authority from the legislative branch to

² Colo. Const. art. V, § 1.

³ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13, 374 P.3d 460, 465.

⁴ *Id.*

⁵ *Matter of Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 15, 526 P.3d 927, 930.

⁶ *Matter of Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 7.

a new, constitutional body, “affect[ed] separate redistricting processes *derived from different sources of constitutional authority*.”⁷ In short, the proposed initiative effectuated a “fundamental reallocation of the power to draw the districts for Colorado’s seats in the U.S. Congress.”⁸

Here, Proposed Initiative 2025-2026 #239 reverses the source of constitutional authority for redistricting, by undoing what Colorado voters approved in 2018. In 2018, “Amendment Y transfer[red] the authority to draw congressional district maps from the state legislature to a newly created Independent Congressional Redistricting Commission.”⁹ But the current proposal now removes constitutional authority (set forth in Colo. Const. art. V, § 44) from the Independent Congressional Redistricting Commission, and transfers it back to the legislative branch, by creating a statutorily-authorized commission. The General Assembly exercises plenary power – broadly construed power to legislate “for all purposes of civil government” subject only to constitutional limitations.¹⁰ Accordingly, the new, statutory commission will be subject to the authority and control of the General Assembly. And once again the General Assembly will have plenary power to eliminate the commission, draw its own immediately following a census, or draw its own maps at any time during the decade following a census.

B. The proposed initiative creates a new congressional electoral map.

A second subject is the creation of a new congressional electoral map. Here, the proposed measure removes the current electoral district for all Colorado members of Congress and replaces it with a new electoral map for the 2028 and 2030 general elections, and any special election prior to the creation of new maps following the 2030 decennial census. This is no small thing: it represents a massive shift in the source of electoral power and Colorado’s representation in the U.S. Congress.

Notably, this new map does not result from the commission’s redistricting process. It is entirely separate and completely replaces the commission’s procedures.

C. The change in redistricting authority, and the new congressional maps are two separate subjects.

(1) *The two subjects are hard-wired into the very title and submission clause.*

The title and submission clause themselves plainly show that it is impossible to describe the two separate purposes in one subject. Specifically, the title states “Shall there be

⁷ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 30 (emphasis supplied).

⁸ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 19.

⁹ *Research Publication No. 702-2*, P.8 (Legislative Council of the Colorado General Assembly, 2018).

¹⁰ *Colorado State Civil Service Emp. Ass’n v. Love*, 448 P.2d 624, 628 (Colo. 1968).

an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes concerning congressional redistricting *and* adopting a new temporary congressional map.” The Title itself states that the measure concerns both congressional redistricting and adopts a new map. This language itself shows that one cannot set a single subject without describing both the redistricting process, and a new map, entirely separate from that process.

(2) *The two subjects are not necessarily connected to one another.*

Different components within a measure must be “necessarily and properly connected rather than disconnected or incongruous.”¹¹ Indeed, the Colorado Supreme Court has recently recognized that “necessarily and properly connected” is a strict requirement, when it determined that the redefinition of the word “fee” while connected to the treatment of fees, was not “necessarily” connected.¹² Here, no necessary and proper connection exists between repeal of the redistricting commission and the creation of new maps.

The proponents argue that the Commission must be removed and replaced by pointing to constitutional language that sets forth the Commission’s powers and procedures. Specifically, they cite article V, § 44, which states “[w]hen a new apportionment is made by Congress, the commission shall divide the state into congressional districts accordingly.”¹³ Nothing in this language requires repeal of the constitutionally-mandated commission and creation of a new, statutory commission.

First, under the plain language of the Constitution, nothing in that language prohibits an initiative that would create new maps. When interpreting the constitution and initiatives, courts “employ the general rules of statutory construction and give words and phrases their plain and ordinary meanings.”¹⁴ Here, the plain language states that “when” a new apportionment is made, “the commission *shall* divide . . .” General usage and Colorado law make clear that the word “shall” means that a person has a duty.¹⁵ Thus when a reapportionment is made, the Commission has a duty to create new congressional districts. This is a duty, not a prohibition. The Commission’s duty does not limit it from doing other things. For example, if the Commission were somehow reconstituted mid-decade, nothing in the current constitutional language would prohibit it from creating new congressional

¹¹ *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 15, 333 P.3d 101, 104–05.

¹² *Matter of Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 23.

¹³ Colo. Const. art. V, § 44(2).

¹⁴ *Matter of Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 14.

¹⁵ C.R.S. § 2-4-401(13.7)(a).

districts. Likewise, nothing in the language prohibits the people of the State of Colorado from creating a new congressional map.

Second, the phrase “shall divide . . .” appears in the very language of the proposed initiative, emphasizing that the language does not restrict redistricting only immediately following a census. Were the Proponent’s interpretation to prevail, the initiative would create an irreconcilable statutory conflict by creating a new map while also retaining the language from Section 44(c) in a newly-enacted statute. On one hand, the measure would (according to Proponents) enact statutory language prohibiting mid-decade redistricting. On the other hand, the measure would create a new congressional map, in the middle of the decade. But the proponents cannot have it both ways. The only way to harmonize the statutory language that creates a new map and the statute that creates a new district is to interpret the language in Section 44(c) to allow mid-decade redistricting.

(3) *The two subjects appeal to different constituencies.*

When considering Proposed Initiatives 2025-2026 ##241 and 242, one Title Board member recognized that some voters could support the removal and replacement of the redistricting commission, while still opposing the new map, and vice versa. Indeed, he thought that those two separate initiatives “[e]liminate[d] a log rolling concern.” And he was correct. By including both a map and a new statutory process for redistricting, the initiative appeals to two separate constituencies among voters. First are those who are dissatisfied with the current congressional boundaries and want a new map to counter efforts in other states. Second are those who may be dissatisfied with the constitutionally-mandated Commission, instead believing that those in the legislature who are popularly elected should have the option to create maps through statute. This is the essence of logrolling: garnering support for an initiative from factions that may have different or even conflicting interests.

3. The ballot title and submission clause is misleading and incomplete.

Here, the ballot title and submission clauses are misleading and incomplete, for the following reasons:

A. The title does not describe the new congressional districts.

The animating purpose behind the initiative is to draw new districts. Indeed, the Proponents admit that the only reason they wish to change the redistricting process is to remove an obstacle to enacting new maps. Here, the Proponents seek new maps in response to Republican redistricting efforts in other states,¹⁶ and the new maps fundamentally change the partisan make-up of the congressional districts. This is a big thing. And the title should describe it.

¹⁶ Proposed C.R.S. § 2-1-105(1.5)(b).

B. The initiative fails to identify a new court appellate process.

One of the reasons for creating the constitutional Redistricting Commission was to end lengthy court battles through direct appeal to the Colorado Supreme Court. To that end, it changed the original jurisdiction of that court. This initiative reverses it, opening the door to district court factfinding and two layers of appeals. This major provision is improperly omitted from the title.

C. The commission is not identical.

The title states that the new commission is identical to the prior commission. It is not. In addition to new appellate procedures, it is an entirely new commission, placed in statute, no longer deriving its authority from the Colorado Constitution. The word “identical” misleadingly indicates that everything involving the redistricting process will be the same, and therefore that word should be removed.

D. The new maps apply to special elections.

As the Title Board recognized, the new congressional maps apply to special elections. Accordingly, the title is incomplete and inaccurate. The title should adopt language similar to the initiative itself, which states that the new map applies to “*every Colorado Congressional election*” until the new commission creates redistricting maps.”

FOR THESE REASONS, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #239 for lack of jurisdiction. If it does not do so, it should revise the title so that it is accurate and not misleading.

Respectfully submitted this 25th day of March 2026,

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