

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025-2026 #240
("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 #240, 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 #240:

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, creating a temporary map to be used in 2028 and 2030 congressional elections that replaces the current congressional district map drawn by the independent congressional redistricting commission and requiring the commission to draw congressional district maps in 2031 and every 10 years thereafter?

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

- 1. 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.”¹ Most importantly, this requirement “is intended to ensure that each proposal depends upon its own merits for passage.”² Thus, a court (and Title Board) must ask “whether there is a danger of logrolling: Have measures been combined to secure

¹ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13, 374 P.3d 460, 465.

² *Id.*

the enactment of one that could not be carried out on its own.”³ 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.”⁴

A. The measure alters the constitutional framework by suspending the Commission’s authority and temporarily shifting redistricting authority to statutorily-enacted initiative.

The initiative first and foremost prohibits the current constitutional redistricting commission from creating a congressional map during the 2028 and 2030 election cycles. By suspending this power and replacing it with a citizen initiated statutory map, the proposed dramatically changes who does redistricting, and under what authority. To be sure, the proponents have described the suspension of the commission and enactment of a new statutory map as a minor matter, but this approach fails to recognize that the proposed initiative suspends 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 a new, constitutional body, “affect[ed] separate redistricting processes *derived from different sources of constitutional authority*.”⁵ 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.”⁶

Here, Proposed Initiative 2025-2026 #240 alters the source of constitutional authority for redistricting for four years, 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.”⁷ But the current proposal now removes constitutional authority (set forth in Colo. Const. art. V, § 44) from the Independent Congressional Redistricting Commission,

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

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

⁵ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 30 (emphasis supplied).

⁶ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 19.

⁷ *Research Publication No. 702-2*, P.8 (Legislative Council of the Colorado General Assembly, 2018).

and transfers it back to the legislative branch, by creating a statutorily-authorized map. Importantly, the new constitutional provision *prohibits* the Commission from creating a map at any time during the 2028 and 2030 election cycles. Furthermore, the General Assembly exercises plenary power – broadly construed power to legislate “for all purposes of civil government” subject only to constitutional limitations.⁸ Accordingly, the new, statutory map will be subject to the authority and control of the General Assembly. And once again the General Assembly will have plenary power to draw its own maps at any time before the resumption of the constitutional Commission.

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 map 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 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 redistricting 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.”⁹ Indeed, the Colorado Supreme Court has

⁸ *Colorado State Civil Service Emp. Ass’n v. Love*, 448 P.2d 624, 628 (Colo. 1968).

⁹ *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 15, 333 P.3d 101, 104–05.

recently recognized that “necessarily and properly connected” is a strict requirement, when it determined that the definition of the word “fee” while connected to the treatment of fees, was not “necessarily” connected.¹⁰ Here, no necessary and proper connection exists between repeal of the redistricting commission and the creation of new maps.

Here, the initiative not only creates a new map, but it also prohibits the Commission from creating a replacement map for four years. One can create a new map (and place it in statute or constitution) without suspending the Commission’s authority.

The proponents argue that the Commission must be suspended 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.”¹¹ Nothing in this language requires suspension of the Commission due to the creation of a new statutory map.

First, under the plain language of the Constitution, nothing in that language prohibits a constitutional initiative that would simply create a new map. When interpreting the constitution and initiatives, courts “employ the general rules of statutory construction and give words and phrases their plain and ordinary meanings.”¹² 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.¹³ 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 districts. Yet the new initiative changes this, by barring the Commission until 2031 from creating a new map.

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

By including both a map and a new citizen-initiated statutory map, the initiative appeals to two separate constituencies among voters. First are those dissatisfied with the current congressional boundaries and want a new map to counter efforts in other states. Second are those dissatisfied with the constitutionally mandated Commission, who agree that its operations should at a minimum be suspended. This is the essence of logrolling: garnering support for an initiative from factions that may have different or even conflicting

¹⁰ *Matter of Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 23.

¹¹ Colo. Const. art. V, § 44(2).

¹² *Matter of Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 14.

¹³ C.R.S. § 2-4-401(13.7)(a).

interests.

2. The ballot title and submission clause are 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,¹⁴ 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.

B. 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 #240 for lack of jurisdiction. If the Board 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,

GESSLER BLUE LLC

s/ Scott E. Gessler

Scott E. Gessler

Gessler Blue, LLC

7350 E. Progress Place, Suite 100

Greenwood Village, CO 80111

Tel.: (720) 839-6637

¹⁴ Proposed C.R.S. § 2-1-105(1.5)(b).

