

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025-2026 #241
("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 #241, 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 #241:

Shall there be an amendment to the Colorado Constitution and a change to the Colorado Revised Statutes replacing the constitutional independent congressional redistricting commission with an identical statutory independent congressional redistricting commission if a ballot measure creating a new temporary congressional district map to be used in 2028 and 2030 congressional elections is approved by a vote of the people?

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

1. The Board should make a finding that the measure adds to 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 The Title Board made a finding that the initiative does not require a 55% approval threshold. But it erred, as discussed below.

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

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.”² Most importantly, this requirement “is intended to ensure that each proposal depends upon its own merits for passage.”³ 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.”⁴ “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.”⁵

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 a new, constitutional body, “affect[ed] separate redistricting processes *derived from different sources of constitutional authority*.”⁶ 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.”⁷

Here, Proposed Initiative 2025-2026 #239 reverses the source of constitutional authority for redistricting, by undoing what Colorado voters approved in 2018. In 2018,

² *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 13, 374 P.3d 460, 465.

³ *Id.*

⁴ *Matter of Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 15, 526 P.3d 927, 930.

⁵ *Matter of Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 7.

⁶ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 30 (emphasis supplied).

⁷ *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 19.

“Amendment Y transfer[red] the authority to draw congressional district maps from the state legislature to a newly created Independent Congressional Redistricting Commission.”⁸ 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.⁹ 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 maps immediately following a census, or draw its own maps at any time during the decade following a census.

B. The measure amends the 50% constitutional requirement for passage of an initiative.

Under the Colorado Constitution,

All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and *all* such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, *and not otherwise*.¹⁰

Accordingly, the Colorado Constitution very clearly identifies the requirements to enact an initiative. Namely, a majority vote. And the Colorado Constitution states this is the only requirement, and that this requirement applies to all initiatives and referenda.

In contrast, Proposed Ballot Initiative 2025-2026 #241 has a provision that amends this constitutional requirement, by adding a requirement for passage. It states:

SECTION 18. Effective Date.

This measure takes effect only if, at the November 2026 statewide election, a ballot issue amending section 2-1-105, Colorado Revised Statutes, to create temporary new congressional districts to be used in the 2028 and 2030 election cycles is approved by the people.

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

⁹ *Colorado State Civil Service Emp. Ass’n v. Love*, 448 P.2d 624, 628 (Colo. 1968).

¹⁰ Colo. Const. art. V, § 1(4) (emphasis supplied).

(emphasis supplied). Thus, even if a majority of voters approve of the initiative, it will not go into effect unless another condition is met; voters must approve a separate initiative.

Creating a new requirement for passage of an initiative changes the constitutional threshold. Legally, this new section, couched within the “Effective Date” language, is no different than a statement that the initiative will only go into effect if 60% of voters approve of the initiative, or if Congress takes some action, or even if 39% of voters approve of the initiative. In all cases, it is an amendment to the constitution that creates another legal requirement for passage of an initiative.

C. Suspending the Commission and increasing the requirements for the initiative’s passage are two separate subjects.

Removing and replacing the commission, and changing the constitutional threshold for passage of the initiative, are not necessarily connected to one another. The change to the redistricting process does not require a change to the procedure by which voters can enact an initiative, and vice versa. One governs the procedure for redistricting, while the other governs the requirements for passage of an initiative. The two are plainly separate.

Furthermore, the combination of the two creates a classic case of logrolling. Any voter who supports the removal of the constitutional redistricting commission but does not like the new congressional map in another initiative, faces a difficult choice. If she votes in favor of this proposed initiative, her vote will not matter if the other initiative fails. Therefore, she must choose whether to vote for a new congressional map, even if she opposes that map. By tying this initiative to a newly-enacted map, the initiative explicitly engages in a form of logrolling, whereby one must vote for a separate initiative, in order to gain passage of this initiative.

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 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.

B. The new 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.

FOR THESE REASONS, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #241 for failure to meet the single subject requirement, and if the Board does not do so, it should revise the titles so that they are accurate and not misleading.

Respectfully submitted this 25th day of March 2026,

GESSLER BLUE LLC

s/ *Scott E. Gessler*

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CERTIFICATE OF SERVICE

I certify that on March 25, 2026, a true and correct copy of the **MOTION FOR REHEARING** was sent via email to counsel for the proponents at:

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