COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #252

MOTION FOR REHEARING

NOTE: Due to the similarities between Initiatives 2025-2026 #251, #252, and #256, the motions for rehearing submitted for #252 and #256 raise many of the same issues and make the same arguments previously made against #251. However, there are some substantive differences. Most notably, the proposed Colo. Const. art. V § 44.4(7)(c) in Initiative #252 does not include the limiting language "outside the redistricting year" found in the Initiative #251. Consequently, the title is misleading because it specifically limits application of criteria to "congressional redistricting mid-cycle."

This *Motion for Rehearing* is submitted on behalf of Valerie M. Beck ("Beck"), a registered elector of the State of Colorado. Beck objects to the title and ballot title and submission clause adopted by the Title Board for Proposed Ballot Initiative 2025-2026 #252 ("Initiative #252"). Undersigned counsel hereby submits this *Motion for Rehearing* under § 1-40-107, C.R.S. (2026), and as grounds state as follows:

I. Introduction

Initiative #252 fails to meet the "single subject" and "clearly expressed" mandates of the Colorado Constitution. Additionally, the initiative, title, and ballot title submission clause include an impermissible "catch phrase." For those reasons, the Title Board should reverse its decision to set title or Initiative #252.

Argument

A. The Single-Subject Rule

Colorado Constitution Article V § 1(5.5) requires that "No measure shall be proposed by petition containing more than one subject." The single-subject rule is intended to prevent two dangers: (1) combining subjects with no necessary or proper connection for the purposes of garnering support for an initiative from various factions, and (2) to help avoid voter surprise or fraud due to passage of a surreptitious provision coiled up in the folds of an initiative. *In re Proposed Initiative on "Public Rights in Waters II,"* 898 P.2d 1076, 1078-79 (Colo.1995); *In re Ballot Title 2011-2012 No. 45*, 2012 CO 26; *In the Matter of the Title, Ballot Title & Sub. Clause for 2015-2016 No. 63*, 2016 CO 34. The single-subject rule prevents proponents from joining two distinct and separate purposes that are not dependent upon or connected with each other in order to garner support for the initiative. *In re Ballot Title 1999-2000 #104*, 987 P.2d 249, 253 (Colo.1999).

In this instance, the proponents have combined two separate subjects into Initiative #252:

1. Approval and adoption of modifications to maps by the congressional commission and Colorado Supreme Court.

2. Adding the new criteria "drawn purposefully to favor one political party."

Review and adoption of modified maps is not dependent on or connected to adding new criteria in this initiative. Similarly, adoption of new criteria for determining congressional districts is not dependent or connected to review and adoption of modified maps. To the contrary, both seemed tied together specifically to aggregate support from voters. For example, voters may not approve of the new criteria added, but want some type of approval or adoption process for modifications. In that context, it becomes evident that the two separate subjects have been included for the sole purpose of helping to aggregate support from multiple factions for the initiative as a whole.

Furthermore, joining these two subjects could lead to significant voter surprise in the title as written. Because adding new criteria is wrapped into one sentence that also includes criteria already in the Colorado Constitution (Colo. Const. article V § 44.3(2) already includes the "whole communities of interest" criteria while § 44.3(3) addresses "politically competitive districts"), it is not evident that new criteria is being added to congressional redistricting. To the contrary, sandwiched between existing criteria the new criteria is hidden from voters. In this

circumstance, the new criteria has literally been wrapped into the folds of the initiative in one clause disguised by already existing criteria. That is a perfect scenario to create surprise for voters who may believe that all the criteria listed already existed.

B. The title and ballot title and submission clause do not clearly express the initiative

In addition to the single subject requirement, it is also necessary that the "subject treated in the body of the proposed initiative be clearly expressed in its titles." *In Re Ballot Title 1999-2000 No. 258(A)*, 4. P.3d 1094, 1097 (Colo.2000). The Court has stated that:

> "we are bound to assume that the word 'clearly' was not incorporated into the constitutional provision under consideration by mistake … That this word was advisedly used, and was intended to affect the manner of expressing the subject, we cannot doubt. The matter covered by legislation is to be 'clearly,' not 'dubiously' or 'obscurely,' indicated by the title … The connection must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect, as well as the trained legal mind." *In Re Title, Ballot Title 1999-2000 25*, 974 P.2d 458, 462(Colo.1999) quoting *In re Breene*, 14 Colo. 401, 406, 24 P. 3, 4 (1890).

Neither the title nor the ballot title and submission clause clearly express that Initiative #252 introduces new criteria for congressional maps. To the contrary, both set the new criteria alongside criteria already included in the Colorado Constitution thereby confusing the electorate. It is impossible to distinguish that new criteria have been introduced in this initiative without searching through the Colorado Constitution and determining what already exists and what does not. That is the exact type of obscurity that the Court condemned.

More pressing, as highlighted in the note introducing this motion, Initiative #252 does not contain the same limiting language as Initiative #251 does in the proposed Colo. Const. art. V § 44.4(7)(c). The latter specifically limits application of the criteria to non-redistricting years through use of the limiting language "outside

the redistricting year." That is not the case for the former. Instead, Initiative #252 simply states that the "commission must not adopt any plan if it" does not meet the subsequent criteria. However, the current title does not reflect that reality. Instead, it applies a limitation where there is none. The title as currently set is therefore misleading and does not clearly express the actual language of Initiative #252.

C. The title and ballot title and submission clause includes an impermissible "catch phrase"

"It is well established that the use of catch phrases or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board." *In re Ballot Title 1999-2000 No. 258(A)*, 4. P.3d at 1100, quoting *In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo.1995). Such catch phrases prejudice electors to vote for an initiative "merely by virtue of those words' appeal to emotion." *Id.* Such catch phrases are "words that work to a proposal's favor without contributing to voter understanding" and that "generate support for a proposal that hinges on the content of the proposal itself, but merely on the wording of the catch phrase." *Id.* They may also form the basis of a slogan or campaign to support an initiative. *Id.* Catch phrases must be determined in the "context of contemporary political debate." *Id.*

Initiative #252 employs the catch phrase "drawn purposefully to favor one political party" precisely to be used in a campaign. The title and ballot title and submission clause incorporate the catch phrase, and, in so doing, violate the dictate against such use.

Initiative #252 exists in a contemporary political climate where redistricting and gerrymandering have become topics of heated discussion. In fact, Initiative #252 appears to have been a response to initiatives submitted by other proponents that would modify the current congressional maps. Consequently, using a catch phrase that attempts to capitalize on that environment would naturally help passage of the initiative.

Furthermore, the catch phrase itself does not help to enhance voter understanding; rather, it likely confuses voters. The phrase is undefined in the proposed initiative and it does not have an established legal meaning. Rather, it presents an amorphous and subjective phrase that could be interpreted by different voters in a host of divergent ways. For example, some voters may believe it refers to

single districts, others may believe that it bars favor across Colorado's full contingent of congressional districts, while still others might view it as referring to favoring one party in Congress as a whole. Similarly, what "favors" one party over another is so broad in potential scope that it cannot be understood as anything but an appeal to emotion. Similarly "purposefully" indicates some level of intentionality, but fails to inform voters about what that level might be. In each instance the catch phrase does not add to understanding of electors, but instead subjects them to the emotional draw of stopping gerrymandering.

The problem is exacerbated by its placement in the title and ballot title and submission clause. As noted above, "drawn purposefully to favor one political party" has been sandwiched between two criteria that already exist in the Colorado Constitution. That location makes the emotional pull on voters even stronger than if it stood on its own.

These circumstances should be contrasted with circumstances where the Colorado Supreme Court has found a phrase included in an initiative (and the title and ballot title submission clause) does not constitute a catch phrase. In reviewing the phrase "just cause" in *In the Matter of the Title, Ballot Title, and Submission Clause for 2007-2008 #62*, No. 08SA90, p. 18, 20 (Colo.2008), the Court highlighted that the titles noted that "just cause" was defined in the initiative and that the term "sets forth a legal standard commonly used in the law."

That is not the case here. Initiative #252 does not define any part of the catch phrase "drawn purposefully to favor one political party" or any part of it. Not only does this stand in contrast to "just cause," but it also stands in stark contrast to the criteria the catch phrase appears alongside (Colo. Const. art. V § 44.3(3)(d) defines "competitive" as used in the phrase "politically competitive districts"). Nor does "drawn purposefully to favor one political party" exist as a commonly used legal standard. The contrary, when asked at the hearing, the proponents admitted it would need to be defined by courts.

Conclusion

Proponents believe the information provided above is persuasive and should help the Title Board to reconsider its position, determine that Initiative #252 fails to meet the single-subject rule, the current title does not clearly express the subjects of the initiative, and that the initiative, title and ballot title submission clause all

impermissibly use a catch phrase. Consequently, the Title Board should reverse its decision and decline to set title.

Thank you for your time and consideration,

/s Mario Nicolais
Mario Nicolais
Counsel for Objector