

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025 -2026 #256
("CONGRESSIONAL REDISTRICTING")**

Initiative Proponents: Elizabeth Caven and Suzanne Taheri

&

Objectors: Curtis Hubbard

MOTION FOR REHEARING

By undersigned counsel, Curtis Hubbard, a registered voter of the County of Boulder, objects to the titles set for Initiative #256, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 15, 2026, the Title Board set the following ballot title and submission clause for Initiative #256:

Shall there be an amendment to the Colorado Constitution concerning mid-cycle congressional redistricting, and, in connection therewith, repealing and reenacting the provisions of the Colorado Constitution that establish the process for congressional redistricting to add a prohibition against congressional redistricting mid-cycle unless the following limited criteria is met: three public meetings regarding the new map are held, the map preserves whole communities of interest, and does not purposefully favor one political party or minimize politically competitive districts, and the map is approved by an independent congressional redistricting commission and the Colorado Supreme Court?

- I. The Title Board lacks jurisdiction to set a ballot title for Initiative #256 because this measure comprises multiple subjects.**
 - A. *The first subject: amending the Constitution to limit mid-decade redistricting.*

The ostensible subject of Initiative #256 is to limit mid-decade congressional redistricting. It accomplishes this by imposing new procedural requirements that apply to the never-before-used mid-decade redistricting in Colorado: an approval requirement (commission and Supreme Court approval) and hearing requirement (holding at least three public hearings).

B. The second subject: changing substantive considerations for approval of plans or, at the least, eliminating the requirement that no redistricting map dilute the impact of racial groups’ electoral influence.

Proposed subsection (1.5) addresses the substantive criteria for plan approval. However, in doing so, proponents made a notable wording choice: instead of addressing the criteria for mid-cycle redistricting, the measure addresses the criteria for *any* plan:

(1.5) Upon adoption and approval of the final plan, no plan may be modified for the 2028 congressional election *or thereafter* except with the approval of the congressional commission and adoption by the Colorado supreme court. In reviewing the plan, the commission must hold at least three public meetings and *must not adopt any plan* that has the effect of dividing communities of interest or purposefully favoring one political party.

(Emphasis added.) The limited substantive criteria for plan approval stands in stark contrast to the current set of criteria:

Current Language (Section 44.3)	Initiative #256
<p>(2)(a) As much as is reasonably possible, the commission’s plan must preserve whole communities of interest and whole political subdivisions, such as counties, cities, and towns.</p> <p>(b) Districts must be as compact as is reasonably possible.</p> <p>(3)(a) Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.</p> <p>...</p> <p>(4) No map may be approved by the commission or given effect by the supreme court if:</p> <p>(a) It has been drawn for the purpose of protecting one or more incumbent members, or one or more declared candidates, of the United States house of representatives or any political party; or</p> <p>(b) It has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a language minority group, including diluting the impact of that racial or language minority group’s electoral influence.</p>	<p>... and must not adopt any plan that has the effect of dividing communities of interest or purposefully favoring one political party</p>

“Any plan” includes a plan that is adopted after the census—not just a mid-decade redistricting plan. “[T]he word ‘any’ means ‘all.’” *BP Am. Prod. Co. v. Colo. Dep’t of Rev.*, 2016 CO 23, ¶ 18, 369 P.3d 281, 286. The obligation to apply Initiative #256’s criteria instead of the current criteria is, moreover, mandatory given the use of “must.” *N.D. v. N.J.D.*, 2026 COA 18, ¶ 11 (“Under the canons of statutory construction, unless the context otherwise requires, courts interpret the word ‘shall’ or ‘must’ in a statute to be mandatory, not directory.”). Subsection (1.5) thus displaces for “any plan” the hierarchy of considerations that currently applies. Creating limiting procedures for mid-cycle redistricting is a separate subject from changing the criteria for plan approval in the ordinary course of redistricting after a census is conducted.

But even if subsection (c) were interpreted to apply only to mid-decade redistricting, there is still a single subject violation. A key element of Amendment Y that created the Independent Congressional Redistricting Commission can be found in Colo. Const., art. V, sec. 44.3(4)(b) that protects minority voters, independent of the applicability of the federal Voting Rights Act. That provision, currently in the Constitution and applicable to Congressional redistricting in the year after the U.S. Census is conducted, states:

No map may be approved by the commission or given effect by the supreme court if... [i]t has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a language minority group including diluting the impact of that racial or language minority group’s electoral influence.

As a result, any map that is “modified” for and after the 2028 general election is not required to meet racial protections that are authorized by Amendment Y. The resulting potential for under-representation of affected minority groups is a subject that is distinct from setting up procedural limitations on mid-decade redistricting. This is a legal change that is “coiled in the folds of the measure” such that voters would not understand that mid-decade maps would provide no Colorado constitutional protection for minority voting. *See In re Title, Ballot Title & Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 875-76 (Colo. 2007) (establishing new natural resource agency could not be coupled with a change to a new legal standard that would surprise voters).

This is a marked departure from redistricting exercises that have occurred in recent years. For example, “Because the district court addressed the issue of dilution of minority voting strength repeatedly throughout its order, we can determine from the record that the... plan adopted by the district court, particularly with regard to District 1, but also with regard to the entire map, did not result in an unconstitutional dilution of minority voting strength.” *Beauprez v. Avalos*, 42 P.3d 642, 650 (Colo. 2002). Thus, the measure’s omission of protection for minority voters is change is a significant change in law from the substantive redistricting considerations that Coloradans have come to expect.

It is no defense for Proponents to argue that this is a mere effect of the measure. “The single-subject rule also serves to **prevent voter surprise by prohibiting proponents from**

hiding effects in the body of a complex proposal.... Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent.” *In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010) (emphasis added).

C. The third subject: reenacting the currently applicable constitutional provision

In this version of their measure, proponents chose to not simply add their limitation on mid-decade redistricting. Instead, in addition to that change, they repealed the entire constitutional provision addressing congressional redistricting and reenacted it. As a result, the measure creates the standards for decennial redistricting (by eliminating those provisions and then reenacting them) **and** adds a new substantive provision addressing a different issue (limitations on mid-decade redistricting). Creating the structure and processes for decennial redistricting bears no necessary or proper connection to the measure’s single subject of limiting mid-cycle redistricting. They are substantively different decisions: first, whether to retain the current structure and, second, whether to add a limitation on mid-cycle redistricting.

It also presents both of the evils the single subject requirement is meant to avoid. It presents logrolling problems, in that it attracts voters who supported the prior redistricting reform and who are led to believe they should support the measure to preserve it, along with voters who want to thwart mid-cycle redistricting but did not support the prior reform. It is a coiled within the folds problem because many voters will not understand what it means to repeal and reenact Amendment Y, with its various procedures, standards, and requirements.

Thus, this measure violates the single subject requirement.

II. The ballot title is misleading, unfair, and inaccurate.

A. The title inaccurately describes the measure’s requirements for approval of “any” plan.

The ballot title states that the substantive considerations contained in subsection (1.5) for plan approval applies only to mid-decade redistricting (“a prohibition against congressional redistricting mid-cycle unless the following limited criteria is met: ... the map preserves whole communities of interest, and does not purposefully favor one political party or minimize politically competitive districts ...”). As explained above, those criteria actually apply to “any plan,” not just “redistricting mid-cycle.” “Any plan” necessarily includes those redistricting maps that are drawn after a decennial census. The Board should revise the title to inform voters that the approval criteria for all plans are being changed in significant ways by this initiative.

Additionally, there appears to be a typographical error in the title. The comma in the above quoted language before “and” should be removed, such that the title read, “...communities of interest and does not purposefully...”

B. The title incompletely describes the repeal and reenactment of the current redistricting scheme.

The title acknowledges that the measure repeals and reenacts current law, but it includes no information informing the voter what that entails. In other words, a voter does not know what they are, in fact, being asked to repeal and then reenact. By way of comparison, the ballot title for Amendment Y provided:

Shall there be an amendment to the Colorado constitution concerning a change to the way that congressional districts are drawn, and, in connection therewith, taking the duty to draw congressional districts away from the state legislature and giving it to an independent commission, composed of twelve citizens who possess specified qualifications; prohibiting any one political party's control of the commission by requiring that one-third of commissioners will not be affiliated with any political party, one-third of the commissioners will be affiliated with the state's largest political party, and one-third of the commissioners will be affiliated with the state's second largest political party; prohibiting certain persons, including professional lobbyists, federal campaign committee employees, and federal, state, and local elected officials, from serving on the commission; limiting judicial review of a map to a determination by the supreme court of whether the commission or its nonpartisan staff committed an abuse of discretion; requiring the commission to draw districts with a focus on communities of interest and political subdivisions, such as cities and counties, and then to maximize the number of competitive congressional seats to the extent possible; and prohibiting maps from being drawn to dilute the electoral influence of any racial or ethnic group or to protect any incumbent, any political candidate, or any political party?

If voters required this level of information to understand Amendment Y, then they logically need the same information to decide whether to repeal it (i.e., sufficient information to understand what they are repealing) and reenact it (i.e., sufficient information to understand what structure for redistricting they are being asked to approve). It is no answer that some voters will remember Amendment Y's provision, as many will not and, in fact, many more did not even live in Colorado when the Amendment was considered in 2018. "The title and submission clause should enable the electorate, whether familiar *or unfamiliar with the subject matter of a particular proposal*, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 23 (emphasis added).

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #256 for lack of jurisdiction.

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

RECHT KORNFELD, P.C.

s/ Mark Grueskin

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025 -2026 #256** was sent this day, April 22, 2026, via email to:

Suzanne Taheri
Counsel for proponents

Emily Burke Buckley
Senior Assistant Attorney General

s/ Erin Mohr