IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #325 ("CONGRESSIONAL REDISTRICTING CRITERIA")

Initiative Proponents: Kathleen Chandler and Rick Enstrom

&

Objector: 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 #325, 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 #325:

> *Shall there be an amendment to the Colorado Constitution changing criteria for congressional redistricting maps, and, in connection therewith, repealing the requirement that the independent congressional redistricting commission maximize the number of politically competitive districts; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance; creating seven new geographic communities of interest, consisting of 50 Colorado counties; and requiring congressional redistricting maps be based upon United States citizen population data, if available, and specifying priorities to keep counties, cities, and geographic communities of interest together as much as possible?*

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #325 because it comprises multiple subjects.

A. *The first subject*: reconfiguration of criteria for setting congressional districts.

As the single subject statement in the title that this Board set states, one subject of this measure is "changing congressional redistricting criteria." The measure does this by creating a set of "geographic communities of interest" that apply to 50 of 64 counties in the state. Proposed Art. V, sec. 44(3)(d). It also sets an ordering in which aspects of these geographic communities of interest criteria apply. *Id*., sec. 44.3(2). It makes the requirement for applying traditional communities of interest optional. Compare Colo. Const., art. V, § 44.3(2)(a) with Proposed sec.

44.3(2)(h). And finally, it repeals the requirement to maximize the number of competitive districts drawn.

B. *The second subject:* limiting the fundamental constitutional right of initiative.

Section 2 of Initiative #325 provides that any congressional redistricting plan "adopted… by initiative must not be created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind." Proposed Section 44.3(1)(d).

In other words, two designated representatives cannot "create[]" their measure by using voter registration or electoral performance information. The use of "must" in this subsection makes this a mandatory restriction on any submitted proposed initiative.

The Supreme Court has decided this issue. A substantive restriction on a fundamental constitutional right that is paired with procedural changes to the same constitutional structure is a multi-subject initiative. In *In re Title, Ballot, and Submission Clause for 2003-2004 # 32 & # 33*, 76 P.3d 460, 462 (Colo. 2003), the Court found that an initiative that changed certain petition procedures around the initiative and referendum process but also prohibited all attorneys from being involved in the title setting process comprised two subjects. "By foreclosing any possibility that an attorney could serve on the title board, these initiatives restrict the political rights of all attorneys…. [T]his exclusion from the political process is a substantive matter, not a procedural change to the petitions process." *Id.* at 462, citing *Evans v. Romer*, 854 P.2d 1270 (Colo. 1993), cert. denied, 510 U.S. 959 (1993) (invalidating a substantive restriction imposed by initiative on a fundamental constitutional right).

Clearly, if restricting the manner in which petition matters can be authorized to proceed to the ballot (through limiting the composition of the Title Board) is a second subject, restricting the manner in which initiated congressional redistricting proposals can be formulated so as to be on the ballot is a second subject of this measure. A substantive limitation such as this one cannot be paired with a procedural change, redefining and reordering redistricting criteria, and survive a single subject analysis. Thus, no title for it should have been set by the Board.

C. *The third subject:* limiting the fundamental constitutional rights of speech and association.

This initiative also restricts what can be said in an initiative campaign to convince voters to adopt a congressional redistricting plan. As noted, a new map "must not be… influenced by" the use of voter registration or electoral performance data "of any kind." Proposed Section 44.3(1)(d).

As a result, no advocate of the map can advance it to influence the election based on a position, opinion, or belief that the map favors or disfavors any political party or political candidate. This prior restraint of speech in the political context is a substantive restriction on what voters can say, hear, and consider when voting on a redistricting initiative. "Restrictions on speech based on its content are 'presumptively invalid' and subject to strict scrutiny." *Ysursa v.*

Pocatello Educ. Ass'n, 555 U.S. 353, 358 (2009), citing *Davenport v. Wash. Educ. Ass'n*, 551 U.S. 177, 188 (2007).

As was true above, this substantive restriction is not part of a single subject with purely procedural changes to the redistricting process. Therefore, no title can be set on #325.

D. *The fourth subject:* limiting the constitutional rights of state legislators under the Colorado Constitution's speech and debate clause.

As noted above, the initiative restricts "[a]ny congressional redistricting plan adopted… by the general assembly… [from being] created with, or influenced by, the use of partisan voter registration data or partisan electoral performance of any kind." Proposed Section 44.3(1)(d). In short, this means that legislators can neither consider nor advocate for a map based on its factual electoral backdrop in terms of voter registration or performance.

The speech or debate clause in the Colorado Constitution is located in article V, § 16. That clause "plainly protects legislators from inquiry into legislative acts or their motives for performing them." *Romer v. Colo. General Assembly*, 810 P.2d 215, 222 (Colo. 1991), citing *United States v. Brewster*, 408 U.S. 501, 509 (1972). After all, the purpose of the speech or debate clause is to "protect the integrity of the legislative process by insuring the independence of individual legislators." *Anderson v. Senthilnathan*, 2023 COA 88, ¶ 61 (citations omitted).

Initiative #325 is a substantive restriction on the protected rights and prerogatives of legislators under Colorado's speech or debate clause. If they adopt a congressional redistricting plan, their legislative act and even their motives in adopting said plan are open to challenge. If #325's proponents are to open this substantive can of worms, they must do so via a separate initiative. Under *In re Title for 2003-2004 # 32 & # 33, supra*, they cannot both change the procedural guidelines for redistricting and restrict the materials that legislators consider or use in advancing a redistricting plan.

Thus, this measure as currently constructed cannot be titled, and it should be returned to Proponents to be separated into at least two single-subject initiatives.

E. *The fifth subject*: changing the basis for drawing Congressional districts from using total population and using, instead, only citizens as documented by the U.S. Census.

In the current era, the issue of targeting non-citizens is a particularly politically loaded topic. This is true in light of federal immigration enforcement and recent Colorado ballot measures.[1] Using a second subject to attract voters to a hot button issue, when they "might vote 'no' on one or more of the subjects if they were proposed separately," was one of the evils to be avoided in enacting the single subject requirement. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8.

[1] Just the potential of non-citizen involvement in the electoral process has driven up large vote totals in the past. For instance, Amendment 76 changed Colorado's constitution in 2020 from providing that "[e]very citizen" could vote to stating that "only" citizens could vote; it passed, 63% to 37%. https://www.coloradosos.gov/pubs/elections/Results/Abstract/2020/general/amendProp.html.

Notably, this initiative does not condition the use of only U.S. citizens in redistricting if that should become a federal requirement. It merely states that Colorado will use the number of citizens for districting only "[i]f the U.S. Census Bureau produces citizen population for the state of Colorado." Proposed Section 44.3(1)(a)(I). Thus, it is an incidental aspect (and superfluous subject) of a measure that deals with an unrelated refashioning of redistricting criteria.[2]

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

A. The title fails to refer to the fact that the initiative binds redistricting by the legislature and by the voters through initiative.

Given the multiple references to the expanse of this measure, the title should state that it applies to maps adopted by initiative or by the General Assembly.

B. The title fails to state that no plan can be "influenced by" partisan voter registration or electoral performance data of any kind.

Voters should understand that they are adopting a ballot measure that restricts the ability of any person to advocate for or against a map because it will have a projected partisan effect. If voters are going to curtail the type of information that can be relayed during a campaign of incredible importance to each of them, they should know that they are limiting their own speech and the speech of all other political voices if they adopt this measure.

Likewise, they should know that their elected legislators cannot speak of the potential change in representation if legislators are authorized to adopt a congressional redistricting map. But there is no such statement about or allusion to this fact in the Board-adopted title.

C. The title fails to state that one of the key elements of redistricting for the last half century – consideration of communities of interest that relate to federal issues – are now only a permitted, not a required, aspect of congressional redistricting.

Proposed Section 44.3(2)(h) states that traditional communities of interest "may" be considered in drawing up a new map. By law, "community of interest" means under current law "any group in Colorado that shares one or more substantial interests that may be the subject of federal legislative action… [to] be considered for inclusion within a single district for purposes of ensuring its fair and effective representation." In other words, this aspect of redistricting relates directly to the election of federal officeholders and their accountability to constituents.

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[2] Similarly, the vote to adopt Amendment 76 was a superficial but politically motivating add-on to then-existing law. As the Blue Book pointed out, the initiative did not address any current non-citizen voting. It simply prevented the state from changing its laws, assuming it might choose to do so at some undefined point in the future. Legislative Council of the Colorado General Assembly, *2020 State Ballot Information Booklet*, Res. Pub. No. 748-1 at 18 (https://content.leg.colorado.gov/sites/default/files/blue_book_english_for_web_2020_1.pdf).

Under current law, the Congressional Redistricting Commission "must preserve" these communities of interest as much as possible. Colo. Const., art. V, §44.3(2)(a). That requirement is struck by Proposed Section 44.3(2)(a). It is replaced by the mere possibility that such communities of interest are considered in the redistricting process. Proposed Section 44.3(2)(h). The fact that this mandatory accountability factor is now a mere option in drawing districts is not apparent to voters. That change that will eliminate the need to have common federal issues that unite congressional districts, a key aspect of "fair and effective representation." This new gap between constituents and their representatives, must appear in plain language in the title.

D. The title fails to state that 14 counties are excluded from the new redistricting factor, "geographic communities of interest" and, in particular, fails to state which counties are so excluded.

The title states there are 50 counties in the new "geographic communities of interest." It is unlikely all registered voters know there are 64 Colorado counties. It is likely not top-of-mind for many voters. The fact that over 1/5 of all Colorado counties are excluded from this redistricting consideration is a major element of this measure. The fact that larger counties such as Arapahoe, Jefferson, and Weld (as well as smaller counties such as Clear Creek, Fremont, and Gilpin) are excluded is more than just noteworthy. It is central to the way in which many Coloradans will be represented under new maps. And voters should not have to dig for these details in deciding whether or not to sign a petition to put this matter on the ballot, much less whether to make this differential treatment part of the Constitution. The title should name all excluded counties.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #325 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

RECHT KORNFELD, P.C.

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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 #325** was sent this day, April 22, 2026, via email to:

Scott Gessler
Counsel for proponents

Emily Burke Buckley
Senior Assistant Attorney General

s/ Erin Mohr