

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: June 2, 2016 4:09 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107 Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 # 132 (“Colorado Redistricting Commission”)</p> <p>Petitioners: Donna R. Johnson</p> <p>v.</p> <p>Respondents: Kathleen Curry and Frank McNulty</p> <p>and</p> <p>Title Board: Suzanne Staiert, Jason Gelender, and Frederick R. Yarger.</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No. 2016 SA 153</p>
<p>CYNTHIA H. COFFMAN, Attorney General MATTHEW D. GROVE, Assistant Solicitor General* Ralph L. Carr Colorado Judicial Center 1300 N Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6157 FAX: (720) 508-6041 E-Mail: matt.grove@coag.gov Registration Number: 34269 *Counsel of Record</p>	
<p>TITLE BOARD’S ANSWER BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. The brief complies with the word limits set forth in C.A.R. 28(g) because it contains 1,193 words.
2. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and C.A.R. 28(b) because, for the party raising the issue, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28, and C.A.R. 32.

/s/ Matthew D. Grove
Attorney for the Title Board

TABLE OF CONTENTS

	PAGE
Summary of the Argument.....	1
Argument.....	1
I. Standard of review and preservation.....	1
II. The Board correctly determined that the initiative addresses the single subject of how redistricting will be handled in Colorado. ..	2
Conclusion.....	7

TABLE OF AUTHORITIES

	PAGE
CASES	
In re Proposed Initiative Amend TABOR 25, 900 P.2d 121 (Colo. 1995)	2
In re Public Rights in Waters II, 898 P.2d 1076 (Colo. 1995).....	2
In re Proposed Initiative for 2011-2012 #3, 2012 CO 25,	4
In re Title, Ballot Title, and Submission Clause for 2013-14 No. 76, 2014 CO 52.....	4
In re Title, Ballot Title and Submission Clause for 2003-2004 #32 and #33, 76 P.3d 460 (Colo. 2003).....	5, 6
CONSTITUTIONAL PROVISIONS	
Colo. Const. art. V, § 44.....	2

Title Board members Suzanne Staiert, Sharon Eubanks, and Frederick R. Yarger (the “Board”), by and through undersigned counsel, hereby submit the following Answer Brief.

SUMMARY OF THE ARGUMENT

The title set for #132 should be affirmed. Rather than encompassing multiple subjects, each facet of the initiative relates to its central purpose: depoliticizing the redistricting process. The fact that #132 would pursue this goal by both restructuring the Colorado Reapportionment Commission and giving it responsibility for congressional redistricting does not create the risks that underpin the single-subject rule.

ARGUMENT

I. Standard of review and preservation.

The applicable standard of review is stated in the Title Board’s Opening Brief at pp. 3-4. The Board agrees that Petitioners have preserved their single-subject arguments.

II. The Board correctly determined that the initiative addresses the single subject of how redistricting will be handled in Colorado.

Petitioners argue that #132 contains no fewer than four separate subjects: (1) a shift in authority for congressional redistricting from the General Assembly to a newly configured independent commission; (2) a change in the existing process for setting state legislative districts; (3) a prohibition on the appointment of lobbyists to the newly configured commission; and (4) requiring the Supreme Court Nominating Commission to appoint certain members to the newly configured commission.

The proposed initiative does not violate the single subject rule because each of the “subjects” that Petitioners identify have a “necessary or proper connection” to the initiative’s central purpose.” *In re Proposed Initiative Amend TABOR 25*, 900 P.2d 121, 124–25 (Colo. 1995) (quoting § 1-40-106.5(1)(e)(I), C.R.S.). Accordingly, because #132 does not have “at least two distinct and separate purposes which are not dependent upon or connected with each other,” *In re Title, Ballot Title & Submission Clause, & Summary Pertaining to a Proposed Initiative "Public Rights in Waters II,"* 898 P.2d 1076, 1078-79 (Colo. 1995). the

title set by the Title Board should be affirmed. Each of Petitioners' arguments is addressed in turn below.

First, Petitioners argue that #132 violates the single subject rule by expanding the authority of the existing reapportionment commission—which currently extends only to drawing lines for state legislative districts—to cover congressional redistricting as well. As Petitioners note, the Colorado Constitution currently vests authority over congressional redistricting in the General Assembly. Colo. Const. art. V, § 44. Petitioners argue that by proposing to combine both types of district drawing into a single commission, #132 creates a dilemma for voters who favor changes to the state legislative redistricting commission, but also “value[] the existing congressional district line-drawing debate through the General Assembly, and if it fails, the judicial fact-finding and application of law to evaluate competing maps.”

Pet. Open. Br. at 8.

As the Title Board correctly concluded, however, #132 does not create log-rolling concerns. That is, it does not “combin[e] 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.” *In re Proposed Initiative for 2011-2012 #3*, 2012 CO 25, ¶ 11. To the contrary, #132 does not appear to be written in a way designed to “bring[] together disparate factions in order to achieve their otherwise disparate agendas[.]” *In re Title, Ballot Title, and Submission Clause for 2013-14 No. 76*, 2014 CO 52, ¶ 39 (Eid, J., dissenting). Rather, irrespective of the sources of authority for state and congressional redistricting processes, #132 is written to appeal to voters who are concerned about the problem of gerrymandered district lines. Whether the lines are actually gerrymandered, *see Pet. Open. Br.* at 10-12, goes to the merits of #132 and is thus beside the point. Instead, the key question is whether vesting the congressional and legislative line-drawing processes in a single commission would result in support for the measure by two distinct constituencies. The Title Board reasonably concluded that #132 presents no such risk. Accordingly, #132’s expansion of the reconfigured redistricting commission’s authority to cover congressional redistricting does not violate the single subject rule.

Second, Petitioners contend that #132’s specific alterations to the legislative line-drawing process create a second subject. But these changes—which make clear the processes that the reconfigured commission must follow and the criteria it will apply—all have a necessary or proper connection to the central purpose of the initiative. It should come as a surprise to no one that an initiative whose central purpose is to prevent gerrymandering includes provisions that are designed to ensure that goal is met.

Third, relying on this Court’s holding in *In re Title, Ballot Title and Submission Clause for 2003-2004 #32 and #33*, 76 P.3d 460, 462 (Colo. 2003), Petitioners argue that the exclusion of “lobbyists” from those eligible to serve on the reconfigured commission constitutes a separate subject. In *#32 and #33*, this Court concluded that two proposed initiatives not only worked a procedural modification to the initiative and referendum process, but “limit[ed] the substantive rights of all attorneys” by prohibiting this identifiable population from participating in the title setting process. *Id.* at 462. Because the changes to attorneys’ substantive rights had “no necessary or proper connection to the purpose of the proposed measure, *i.e.*, to liberalize the

procedure for initiative and referendum petitions,” it was a second subject. *Id.* at 463.

In #32 and #33, this Court was careful to note that it was making “no prediction as to whether excluding lawyers from the title board is constitutional,” and instead emphasized that its ruling was based on the fact that the “exclusion [was] a substantive change in the law that should be separately addressed by voters.” *Id.* at 463. The Court should limit its review in the same way here, but because there *is* a “necessary or proper” connection between #132’s central purpose and the limits it would propose on the appointment of lobbyists, it should reach the opposite conclusion. Unlike the initiatives in #32 and #33, the central purpose of #132 is not procedural. Rather, its goal of eliminating gerrymandering is substantive and policy-driven. It is reasonable to conclude that barring lobbyists—who by definition work to influence the political process—has a necessary or proper connection to this goal.

Fourth, the initiative does not comprise multiple subjects by delegating certain appointment authority for the reconfigured commission to the Supreme Court Nominating Commission. Defining

the manner in which appointments to the commission must be made is part and parcel of the measure's substantive changes to the entire line-drawing process. Petitioners' concerns about politicizing the Supreme Court Nominating Commission speak to the merits of the measure, not to whether changing the nominating process adds a second subject.

CONCLUSION

The changes in the proposed initiative all relate to the manner in which the boundary lines for elected representatives are drawn in Colorado. #132 does not create new rights, and imposes no changes unrelated to the redistricting process. This Court should thus affirm the Board's conclusion that #132 contains only a single subject.

Accordingly, this Court should affirm the title set by the Title Board.

Respectfully submitted this 2nd day of June, 2016.

CYNTHIA H. COFFMAN
Attorney General

/s/ Matthew D. Grove

MATTHEW D. GROVE, *
Assistant Solicitor General
Public Officials Unit
State Services Section
Attorneys for Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Title Board's Answer Brief upon all parties herein by Integrated Colorado Courts E-filing System (ICCES) or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 2nd day of June 2016 addressed as follows:

Mark G. Grueskin
Recht Kornfeld, PC
1600 Stout St., Ste. 1000
Denver, CO 80202

Kelley B. Duke
Benjamin J. Larson
Ireland Stapleton Pryor &
Pascoe, PC
717 Seventeenth St., Ste. 2800
Denver, CO 80202

/s/ Matthew D. Grove _____