

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 9, 2024 4:16 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2)</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #283 (“Government Fees”)</p>	
<p>Petitioner: Norma B. Akright,</p>	
<p>v.</p>	
<p>Respondents: Michele Haedrich and Steven Ward,</p>	<p>▲ COURT USE ONLY ▲</p>
<p>and</p>	
<p>Title Board: Theresa Conley, Jason Gelender, and Kurt Morrison</p>	<p>Case No. 2024SA137</p>
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<p>THE TITLE BOARD’S OPENING 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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 2,096 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

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 or 28.1, and C.A.R. 32.

s/ Torrey Samson

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Assistant Attorney General

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ISSUES ON REVIEW

Whether the Title Board correctly determined that Proposed Initiative 2023-2024 #283 contains a single subject.

Whether the title for Proposed Initiative 2023-2024 #283 satisfies the clear title standard.

STATEMENT OF THE CASE

Michele Haedrich and Steven Ward (“Proponents”) filed Initiative 2023-2024 #283 (“#283”) with the Colorado Secretary of State. Proposed Initiative 2023-2024 #283 seeks to amend the Taxpayer’s Bill of Rights, Article X, Section 20 of Colorado’s Constitution (“TABOR”), to define the term “fee” and differentiate it from a tax. *See Record*, p 3, filed May 2, 2024. Specifically, #283 seeks to define “fee” as “a voluntarily incurred governmental charge in exchange for specific benefit conferred on the payer, which fee should reasonably approximate the payer’s fair share of the costs incurred by the government in providing said specific benefit.” *Id.* In essence, #283 seeks to incorporate into the state’s constitution the Colorado Supreme Court’s holding in *Barber v. Ritter*,

which held that a fee’s “primary purpose is to defray the cost of services provided to those charged.” 196 P.3d 238, 241 (Colo. 2008).

At its April 17, 2024 meeting, the Title Board (the “Board”) concluded that the measure contained a single subject and proceeded to set a title. *See Record*, p 5. Norma B. Akright (“Petitioner”) filed a timely motion for rehearing. *Id.* at 9–13. The Board considered the motion at its April 25, 2024 hearing. *Id.* at 7. After substantial argument, the Board granted the motion for rehearing in part and made changes to the original title. *Id.*

Petitioner now challenges whether #283 contains a single subject and whether the title satisfies the clear title standard.

SUMMARY OF ARGUMENT

Petitioner objects that the initiative will create downstream impacts if the definition of “fee” is changed or narrowed, converting #283 into multiple subjects. But those alleged impacts are necessarily and properly connected to the changed definition of “fee.” The measure therefore satisfies the purposes of the single subject rule and the Court

should affirm the Board here, as it did in *In re Title, Ballot Title & Submission Clause for 2013-2014 #129*. See 2014 CO 53.

Petitioner’s clear title objections fail to overcome the strong deference this Court extends to the titles set by the Board. First, the use of “new or increased fees” does not rise to the level of making the title misleading or inaccurate. Petitioner’s speculation about the practical effects on automatically increasing fees does not render the title misleading. Pet., p 3, filed May 2, 2024. Additionally, Petitioner complains that any governmental charge not voluntarily paid in exchange for a specific benefit provided to the payer will be a tax, which requires voter approval. *Id.* But this is specifically explained in the title, negating Petitioner’s assertion that the title is misleading. Record, p 7. This is not enough to sustain a clear title objection.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. See Colo. Const. art. V, § 1(5.5). The Court will

“overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8.

The Board agrees this issue is preserved. *See Record*, pp 9–11.

B. Petitioner’s constitutional arguments do not show that #283 has multiple subjects.

The Title Board determined that #283 contains a single subject of changing the definition of “fee” in TABOR. Petitioner makes two arguments that #283 contains multiple subjects. First, Petitioner argues that #283 converts fees into taxes if they are paid by a third party or do not confer specific benefit on the payer. *See* Pet., p 3. Second, following the same logic, Petitioner argues #283 converts charges into taxes if the charge benefits the public, instead of a specific taxpayer. *See id.* But the impacts proposed by Petitioner are all “necessarily and properly connected” to the change in definition of “fee.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

This measure and title closely mirror Proposed Initiative 2013-2014 #129 (“#129”), which proposed a change in the definition of “fee” in TABOR, as found here in #283:

<u>2013-2014 #129</u>	<u>2023-2024 #283</u>
An amendment to the Colorado constitution defining a “fee” as a voluntarily incurred governmental charge in exchange	An amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, defining a “fee”, which

<p>for a specific benefit conferred on the payer, which fee should reasonably approximate the payer's fair share of the costs incurred by the government in providing the benefit.</p> <p><i>In re 2013-2014 #129</i>, 2014 CO 53, Appendix.</p>	<p>does not require voter approval, as opposed to a tax, which does require voter approval, as a governmental charge voluntarily paid in exchange for specific benefit provided to the payer in an amount that should reasonably approximate the payer's share of the costs incurred by the government in providing the benefit.</p> <p>Record, p 7.</p>
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As here, an objector in 2014 challenged the title set for #129 as containing multiple subjects, but the Court affirmed the title. *See In re 2013-2014 #129*, 2014 CO 53, ¶ 19. The Court found that, though changing the definition of “fee” “applies broadly, its breadth does not necessarily make its provisions disconnected or incongruous.” *Id.* at ¶ 17. “In other words, Initiative #129 ‘tends to effect or carry out one general objective or purpose’—that is, changing the definition of ‘fee.’” *Id.* (quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 253–54 (Colo. 2000)). This finding applies here—Petitioner argues that changing the definition of “fee” will

have broad impacts, but these impacts are directly related to the single subject proposal here.

In her Motion for Rehearing, Petitioner argued this Court should disregard the precedent set in *In re 2013-2014 #129* as distinguishable. Record, p 11. However, in both, objectors argue the title violates the single subject rule because of potential ramifications of the change in definition of “fee.” Compare Record, pp 9–11 with *In re 2013-2014 #129*, 2014 CO 53, ¶¶ 17–18. Further, while the Court clarified the difference between fee and tax in *Colo. Union of Taxpayers Found. v. City of Aspen*, the Court did not modify the standard for single issue titles. See 2018 CO 36. The Court did not modify or overturn the precedent set in *In re 2013-2014 #129*.

Initiative #283 specifically states that the proposed definition of “fee” would *only* be a governmental charge paid in exchange for specific benefit provided to the payer. Record, p 7. So, governmental charges *not* paid for specific benefit provided to the payer would no longer be a “fee.” Petitioner’s alleged impacts are therefore “necessarily and properly

connected” to the fee definition “rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. This Court’s precedent in *In re 2013-2014 #129* confirms what the plain language of #283 makes clear: that it contains a single subject and that its provisions are necessarily and properly connected.

II. The title set by the Board satisfies the clear title standard.

A. Standard of review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.*

The Board agrees this issue is preserved. *See Record*, pp 12–13.

B. The Board acted within its discretion in using the words “new and increasing.”

Petitioner argues that the title is misleading by stating the measure is limited to new or increased fees. Pet., p 3. She argues the “fiscal impact analysis states the effect of [#283] does not support this unconditional statement.” *Id.* But the Fiscal Summary does support the title language. The Fiscal Summary states that “[t]he measure increases workload and expenditures for state agencies and local governments for legal services *when issuing new fees and fee increases.*” Record, p 15 (emphasis added). Further, the title aligns with the effective date of the proposed amendment, which “applies to fees enacted or increased on or after the effective date of this act.” *Id.* at 3. The title replicates this language by limiting the measure to new and increased fees.

The Fiscal Summary also states the measure may reduce revenue if “the measure is interpreted as limiting the scope of charges that governments can impose without voter approval.” *Id.* at 15. But neither the Board nor this Court may “speculate as to the measure’s efficacy, or

its practical or legal effects.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). Petitioner may think another word or phrase would work better, but the Board need not “set the best possible title.” *In re 2019-2020 #3*, 2019 CO 107, ¶ 17. Because the title’s use of the words “new or increased fees” accurately describes both the purpose and effect of the measure, the title is not “insufficient, unfair, or misleading” and should be affirmed. *In re 2013-2014 #90*, 2014 CO 63, ¶ 8.

C. The title fairly conveys the major import #283.

Petitioner wrongly contends that the title is misleading by failing to disclose that a fee “if paid by a third party or that provides benefits to third parties, will require voter approval.” Pet., p 3. But the title for #283 conveys the initiative’s singular purpose: to provide a clear, consistent definition of a “fee.”

The Court must consider whether the title “fairly reflects the proposed initiative so that the petition signers and voters will not be misled” in their support for, or opposition to, the initiative. *In re Title*,

Ballot Title, & Submission Clause for 2009-2010 #45, 234 P.3d 642, 656 (Colo. 2010). “Unless the [title] adopted by the Board is clearly misleading or does not fairly reflect the [initiative’s purpose], [the Court] will not interfere with the Board’s choice of language.” *In re Proposed Initiative Under the Designation “Tax Reform”*, 797 P.2d 1283, 1288 (Colo. 1990). Moreover, a title “is not intended to fully educate people on all aspects of the proposed law, and it need not set out in detail every aspect of the initiative.” *Id.* at 1289. “The titles and summary are intended to alert the electorate to the *salient* characteristics of the proposed measure.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #255*, 4 P.3d 485, 497 (Colo. 2000) (emphasis added).

Here, the title adequately conveys the meaning of a fee; it informs voters that a fee is “paid in exchange for *specific benefit provided to the payer.*” Record, p 7 (emphasis added). This accurately reflects that, if #283 is enacted, fees may not include governmental charges that benefit non-payers. The title does not mischaracterize #283 simply because it

fails to expressly inform prospective voters that a “specific benefit provided to the payer” may not include benefits provided to third parties—to the contrary, the Board cannot explain each potential impact of an initiative in the title. *See* § 1-40-106(3)(b), C.R.S. (“Ballot titles shall be brief[.]”). Petitioner’s bases for the title’s invalidation should be rejected.

CONCLUSION

The Board correctly determined that #283 contains a single subject and set an appropriate title. The Court should therefore affirm the title set by the Board on 2023-2024 #283.

Respectfully submitted on this 9th day of May, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 9th day of May, 2024, addressed as follows:

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