



ballot title set by the Ballot Title Setting Board for Proposed Initiative 2025-2026 #123.

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2025-2026 #123**

Proposed Initiative 2025-2026 #123 was filed with Legislative Council on July 8, 2025. A review and comment hearing was held July 22. The initiative was filed with the Title Board, and an initial hearing was held on August 6, 2025.

At the August 6, 2025 hearing, the Title Board declined to set title on the grounds that the measure did not constitute a single subject.

Proponents Michael Fields and Steven Ward timely filed a Motion for Rehearing to challenge the Board's single subject finding. A rehearing occurred on August 20, 2025, and the Board denied the Motion for Rehearing in its entirety. Petitioners now appeal the Title Board's decision on single subject.

### **B. Jurisdiction**

Petitioners are entitled to review before the Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners were present at the initial hearing and rehearing. Additionally, Petitioners timely filed this Petition for Review seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed; and (4) the ruling on the Motion for Rehearing.

Petitioners believe that the Title Board erred by denying the Motion for Rehearing and refusing to set a ballot title.

### **GROUND FOR APPEAL**

Initiative #123 has the singular purpose of requiring voter approval on certain government charges. These include certain fees and taxes. The Board incorrectly separates taxes and fees as different subjects. However, they are properly and necessarily connected because both a tax and a fee involve money traveling from the pocket of the citizen to the government coffers.

Initiative #123 is designed to reinstate the right of Colorado residents to consent whenever the government demands more money from them. “[J]ust because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected [does not mean] that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected.” *In re Title v. John Fielder*, 12 P.3d 246, 254 (Colo. 2000), citing *In re Proposed Initiative for 1999-2000 # 25*, 974 P.2d at 463.

The following is an advisory list of the issue to be addressed in Petitioners' brief:

1. Whether the Board improperly determined that Proposed Initiative 2025-2026 #123 contains multiple subjects.

**PRAYER FOR RELIEF**

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that Proposed Initiative 2025-2026 #123 constitutes a single subject and remand the initiative to the Title Board for immediate correction.

Respectfully submitted this 27<sup>th</sup> day of August, 2025

s/Suzanne Taheri  
Suzanne M. Taheri, #23411  
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*Attorney for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>rd</sup> day of August, 2025, a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2025-2026 #123 (“VOTER APPROVAL OF NEW FEES AND FEE INCREASES”)** was served via the Colorado Court’s E-Filing System to the following:

Emily Buckley  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203  
*Counsel for the Title Board*

/s/ Suzanne Taheri

Suzanne Taheri

*Duly signed original on file at West Group*



DATE FILED  
August 27, 2025 12:17 PM

# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2025-2026 #123 ‘Voter Approval of New Fees and Fee Increases’” .....

.....

**IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 20<sup>th</sup> day of August, 2025.

*Jena Griswold*

SECRETARY OF STATE



2025-2026 #123 - Final

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, section 20 of article X, **amend** (4)(a); and **add** (2)(d.5), (2)(h) and (4.5) as follows:

**Section 20. The Taxpayer's Bill of Rights.**

**(2) Term definitions.** Within this section:

(d.5) "FEE" MEANS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN EXCHANGE 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 SAID SPECIFIC BENEFIT.

(h) "TAX EXPANSION" MEANS A TAX NOT PREVIOUSLY ASSESSED; A TAX INCORRECTLY CATEGORIZED AS A FEE; THE REMOVAL OF A TAX EXEMPTION OR SUBTRACTION; OR A CHANGE IN TAX CLASSIFICATION.

**(4) Required elections.** Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, TAX EXPANSION, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

**(4.5) Voter approval of fees.**

(a) ON OR AFTER JANUARY 1, 2027, ANY FEE IMPOSED BY STATE LAW ESTABLISHED OR INCREASED WITH A PROJECTED OR ACTUAL REVENUE OF OVER \$100,000,000 TOTAL IN THE FIRST FIVE FISCAL YEARS MUST BE APPROVED AT A STATEWIDE ELECTION. BALLOT TITLES FOR SUCH FEES SHALL BEGIN, "SHALL A FEE BE (IMPOSED OR INCREASED) TO COLLECT REVENUE TOTALING (ESTIMATED FULL DOLLAR COLLECTION FOR FIRST FIVE FISCAL YEARS) IN ITS FIRST FIVE YEARS...?"

(b) FEES COLLECTED TO FUND SIMILAR PURPOSES CREATED OR INCREASED IN THE SAME CALENDAR YEAR OR WITHIN THE FIVE PRECEDING YEARS SHALL BE AGGREGATED IN CALCULATING THE APPLICABILITY OF THIS SUBSECTION (4.5).

(c) THE REQUIREMENTS FOR VOTER APPROVAL CONTAINED IN THIS SUBSECTION (4.5) DO NOT APPLY TO FEES CHARGED BY INSTITUTIONS OF HIGHER EDUCATION.

(d) The provisions of this section (4.5) apply to fees enacted or increased on or after January 1, 2027.

## Ballot Title Setting Board

Proposed Initiative 2025-2026 #123<sup>1</sup>

*Hearing August 6, 2025:*

*Title setting denied on the basis that the Board lacks jurisdiction to set title on the grounds that the measure does not constitute a single subject (2-1, Gelender).*

*Board Members: Theresa Conley, Kurt Morrison, Jason Gelender*

*Hearing adjourned 1:11 P.M.*

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<sup>1</sup> Unofficially captioned “**Voter Approval of New Fees and Fee Increases**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



## Ballot Title Setting Board

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*Title setting denied on the basis that the Board lacks jurisdiction to set title on the grounds that the measure does not constitute a single subject (2-1, Gelender).*

*Board Members: Theresa Conley, Kurt Morrison, Jason Gelender*

*Hearing adjourned 1:11 P.M.*

*Rehearing August 20, 2025:*

*Motions for Rehearing (movant) denied in its entirety (2-1, Gelender).*

*Board members: Theresa Conley, Kurt Morrison, Jason Gelender*

*Hearing adjourned: 11:02 A.M.*

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<sup>1</sup> Unofficially captioned “**Voter Approval of New Fees and Fee Increases**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

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Michael Fields and Steven Ward, Objectors

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**MOTION FOR REHEARING ON INITIATIVE 2025-2026 #123**

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Michael Fields and Steven Ward, registered electors of the State of Colorado object to the determination of the Title Board regarding single subject for Proposed Initiative 2025-2026 #123 (“Initiative #123”). Proponents maintain that the measure constitutes a single subject and that the Board should set title accordingly.

On August 6, 2025, the Title Board considered Initiative #123 in a series of initiatives that were filed by the Proponents including two similar initiatives, 2025-2026 #121 and 2025-2026 #122. The Board set title for both initiatives preceding #123 but declined title setting for #123 on single subject grounds.

All three of the initiatives in the series make changes to TABOR to enhance taxpayer protection from taxes which are misclassified by the government as fees in order to escape the voter approval requirements of TABOR. Initiative #123 is distinguished from #121 and #122 because it further expands voter protections against unauthorized tax increases by defining “tax expansion” and including tax expansions in TABOR’s voter approval requirements.

The purpose of Initiative #123 is clear: it ensures that the voters possess the sole authority to decide upon the cost of government. Initiative #123 seeks to close the creative loopholes that elected officials have sewn into the fabric of TABOR since its passage. Such a task cannot be accomplished unless both taxes and fees are addressed simultaneously. Contrary to the Board’s findings, voter approval for taxes and voter approval for fees are a single subject. In the case of both taxes and fees, the government extracts money from the taxpayer’s pocket.

The single-subject requirement is designed to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures which might not otherwise be approved by voters on the basis of the merits of those discrete measures. *In re Proposed Initiative for an Amendment to the Constitution of the State of Colorado Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 589 (Colo. 1995) *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995) *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994)

The requirement must be liberally construed to “avoid unduly restricting the initiative process.” *Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155, 160 (Colo. 2014), quoting *In re Title, Ballot Title and Submission Clause for 2009-2010 #24*, 218 P.3d 350, 353 (Colo. 2009).

“[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law.” *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995*, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II, 898 P.2d 1076, 1080 (Colo.1995). The Title Board need only determine that the initiative “encompasses *related* matters” to establish a single subject. *In re 2013-2014 #89*, 328 P.3d at 177, citing *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 900 P.2d 104, 113 (Colo.1995) (Scott, J., concurring).

Initiative #123 has the singular purpose of requiring voter approval on certain government charges. These include certain fees and taxes. The Board incorrectly separates taxes and fees as different subjects. However, they are properly and necessarily connected because both a tax and a fee involve money traveling from the pocket of the citizen to the government coffers. Initiative #123 is designed to reinstate the right of Colorado residents to consent whenever the government demands more money from them. “[J]ust because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected [does not mean] that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected.” *In re Title v. John Fielder*, 12 P.3d 246, 254 (Colo. 2000), citing *In re Proposed Initiative for 1999-2000 # 25*, 974 P.2d at 463.

The initiative will not lead to the “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative” because there are no embedded provisions that would lead to voter surprise or fraud. *In re 2011-2012 No. 45*, 274 P.3d at 582. The initiative is limited to a single matter of requiring a vote on certain government charges, whether they are taxes or taxes masquerading as fees. There are no hidden provisions that are unrelated to the initiative’s “central theme.” See *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101, 104 (Colo. 2014).

Past caselaw related the adoption of Colo. Const. Art. 10, § 20 (“TABOR”) does not lead to a conclusion that fees and taxes are distinct subjects. Although the Colorado Supreme Court has found in past dicta that TABOR would not have survived a single subject challenge, this is because TABOR adopted several disconnected provisions. Tabor provisions require voter approval on taxes, government spending and multi-year fiscal debt obligations. TABOR also prohibits state mandates, limits emergency reserves, changed the property valuation process and changed election procedures not necessarily related to TABOR. No case drilled down into the details of types of government charges as the cause of single subject issues.

In 1995, after the passage of the single subject rule, the Court analyzed an initiative that established an array of tax credits and amended procedures related to future voter initiatives. It was not the various tax credits that caused the single subject problem, rather it was the change to the tax credits coupled with a change in initiative processes for all future initiatives. *In re Amend Tabor# 25*, 900 P.2d 121 (1995). The Court further commented in that case, “Amendment 1 itself was not subject to the single subject requirement and contains multiple subjects.” *Id.* at 126.

In 1996 another proposal to amend TABOR was found to have multiple subjects where the initiative was found to cover, “subjects ranging from the property valuation administrative

process to elections to emergency taxes.” Court v. Pool (In re Initiative 1996-4), 916 P.2d 528, 533 (Colo. 1996).

This measure is unlike the TABOR initiative cases cited above, as it is limited to only expanding the voting requirement for certain government charges. There are no surreptitious or disconnected subjects that would lead to voter confusion. Voters choosing to expand their voting options on government charges will support the measure and those that don’t won’t.

Initiative #123 is a single subject, and the Board should proceed to set title.

Respectfully submitted this 13<sup>th</sup> day of August, 2025.

/s/ Suzanne Taheri

West Group  
*Attorney for Objectors*



## Fiscal Summary

### Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

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**Measure:** Initiative 123 – VOTER APPROVAL OF NEW FEES AND FEE INCREASES

**Analyst:** Josh Abram, [josh.abram@coleg.gov](mailto:josh.abram@coleg.gov), 303-866-3561

**Date:** August 4, 2025

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## Fiscal Summary of Initiative 123

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at [leg.colorado.gov/bluebook](http://leg.colorado.gov/bluebook). This fiscal summary identifies the following impact.

### State Revenue

The measure requires voter approval of any tax expansion that increases revenue by more than \$100 million over the first five years, and defines a tax expansion as a new tax, a tax incorrectly categorized as a fee, the removal of a tax exemption or subtraction, or a change in tax classification.

The measure has no direct impact on state revenue; however, beginning January 2027, if voters do not approve a qualifying fee, fee increase, or tax expansion, state revenue will decrease relative to current law. The amount of decrease, if any, will depend on future decisions made by voters.

### State Expenditures

The measure has no direct impact on state expenditures; however, if voters do not approve a future proposed fee or fee increase, less state revenue will be available to save or spend, and the state's TABOR refund obligation may be reduced in years when the state is over its revenue limit. By requiring a new type of voter approval, the measure also increases election related costs in the Department of State, and in the Legislative Department.

### Economic Impacts

The measure has no direct or immediate impact on the state's economy. If voters reject future fee increases or tax expansions, it will decrease public sector revenue and spending and increase the amounts available for private spending or saving.