

COLORADO SUPREME COURT 2 East 14 th Avenue Denver, Colorado 80203	DATE FILED December 2, 2025 7:49 PM
Original Proceeding Pursuant to C.R.S. §1-40-107(2), (2025-2026) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #158 Petitioner: Joshua Mantell v. Respondents: Michael Fields and Suzanne Taheri, and Title Board: Christy Chase, Kathleen Wallace, and Kurt Morrison	▲ COURT USE ONLY ▲
<u>Attorneys for Petitioner:</u> Edward T. Ramey, #6748 Tierney Lawrence Stiles LLC 225 East 16 th Avenue, Suite 350 Denver, CO 80203 Telephone: 303-949-7676 Email: eramey@TLS.legal	Supreme Court Case No. 2025SA334
PETITIONER'S OPENING BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

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

The principal brief does not exceed 9,500 words; It contains 2,233 words.

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

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/ Edward T. Ramey

Edward T. Ramey

Attorney for Petitioner

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Petitioner Joshua Mantell, through counsel, respectfully submits the following Opening Brief:

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Does Proposed Initiative 2025-2026 #158 (the “Proposed Initiative”) contain more than a single subject by seeking to amend the Colorado Constitution to both:

(1) require a statewide election to approve any “fee imposed by state law” (unless charged by an institution of higher education) that is established or increased on or after January 1, 2027, with projected or actual “revenue” of over \$100,000,000 in its first five fiscal years; and

(2) establish a substantively new definition of the term “fee” – for all purposes “as used in Colorado law” – immediately applicable to both new and existing governmental charges?

STATEMENT OF THE CASE

A. Procedural History

The Proposed Initiative was filed with the Title Board by its Proponents pursuant to §1-40-106, C.R.S. (2025), on October 3, 2025. An initial hearing before the Title Board was held on October 15, 2025, at which time the Title Board (1) determined that the measure addressed a “single subject,” (2) held that the measure proposed the addition of language to the Colorado Constitution and

therefore would require 55% voter approval, and (3) set a title and ballot title and submission clause for the measure. Petitioner filed a timely Motion for Rehearing on October 22, 2025, pursuant to §1-40-107(1)(a), (b), C.R.S. (2025), and a Rehearing was held on November 5, 2025, pursuant to §1-40-107(1)(c), C.R.S. (2025). At the rehearing, the Title Board granted Petitioner’s Motion to the extent that it made changes to the title, but denied the Motion to the extent Petitioner submitted that the measure contained more than a single subject.

Petitioner filed his Petition for Review with this Court on November 12, 2025, pursuant to §1-40-107(2), C.R.S. (2025). This Petition was accompanied by a certified copy from the Secretary of State of the documentation required by §1-40-107(2), C.R.S. (2025).

B. Summary of the Argument

Contrary to the requirements of COLO. CONST. art. V, sec. 1(5.5), and §1-40-106.5, C.R.S. (2025), Proposed Initiative 2025-2026 #158 contains more than a single subject. First, “[o]n or after January 1, 2027,” the Proposed Initiative requires “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” – unless charged by an institution of higher education – to be approved at a statewide

election.¹ This new statewide voter approval requirement is explicitly directed to fees “enacted or increased on or after the effective date” of the measure.

Second, however, the Proposed Initiative establishes a new constitutional definition of the term “fee” itself – “as used in Colorado law” (*i.e.*, for all purposes); this new definition is materially different from the current, largely judicially developed, understanding and application of that term; *and* troublingly – unlike the new voter approval requirement – it has explicit (albeit less than apparent) immediate retroactive application.

ARGUMENT

I. Standard of Review and Preservation of Issue.

“When a proposed initiative comprises multiple subjects, the [Title] Board lacks jurisdiction to set its title.” *In the Matter of Titles, Ballot Titles, and Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, and #128, 2022 CO 37*, ¶8, 526 P.3d 927 (Colo. 2022) – citing COLO. CONST. art. V, §1(5.5). While this Court accords “all legitimate presumptions in favor of the propriety of the Board’s actions” – *Id.* at ¶9 – “our deference here is not absolute; we have an

¹ State or local fees “collected to fund similar subjects or purposes created or increased in the same calendar year or within the five preceding years” are aggregated for purposes of applying this new statewide voter approval requirement.

obligation to ‘examine the initiative’s wording to determine whether it comports with the constitutional requirements.’” *Id.*, quoting *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶8, 500 P.3d 363, 366 (Colo. 2020).

This issue was preserved. Please see paragraphs 1 and 2 of Petitioner’s Motion for Rehearing before the Title Board, together with the results of the November 5, 2025, rehearing whereby Petitioner’s Motion was denied on single subject grounds and granted only to the extent of revisions to the title.

II. Argument.

COLO. CONST. art. X, §20 – “The Taxpayer’s Bill of Rights” or “TABOR” – contains extensive restrictions and qualifications upon the ability of the State of Colorado and its local governmental entities to create, assess, modify, levy, collect, retain, and utilize revenue from “taxes.” These restrictions and qualifications include detailed statewide and local “district” election and voter approval requirements, prohibitions, restrictions, and limitations upon various forms of taxation, and limitations and restrictions upon the ability of state and local governmental entities to retain and spend revenue actually received from taxes.

Distinct from its extensive regulation of “taxes,” however, TABOR is largely quiet – and its extensive restrictions and qualifications nominally inapplicable –

with respect to governmentally imposed “fees.” While this makes the distinction between a “tax” and a “fee” quite important, TABOR itself does not attempt to address or define that distinction. Rather, that task has largely been left to the courts – on a case-by-case basis – and to this Court in particular.

A. The Proposed Initiative’s first subject: A new constitutionally imposed statewide voter approval requirement for certain “fees.”

The Proposed Initiative’s apparent first subject – as reflected in its new TABOR subsection (4.5) heading “Voter approval of fees” – is to adopt a new statewide voter approval requirement for “any fee imposed by state law² established or increased with a projected or actual revenue of over \$100,000,000 total in the first five fiscal years.” While “fees charged by institutions of higher education” are specifically excluded from this new requirement, other fees “collected to fund similar subjects or purposes” created or increased within a five-year timeframe – at either the state or local government level as long as “authorized” under state law – are to be aggregated in and across the state for purposes of calculating this new collective “revenue” threshold.

² Per the Title Board’s understanding (as reflected in the Title) – though less than apparent or clear from the text of the measure itself – fees “imposed by state law” include an aggregation of any fees “*authorized by Colorado law and imposed by the state or any local government or special district*” (emphasis added).

Notably, this new – and less than clear – statewide voter approval requirement is explicitly directed and limited in its application by paragraph (e) to “a fee enacted or increased on or after the effective date of this subsection (4.5)” – which presumably means either January 1, 2027, per paragraph (a) of the Proposed Initiative, or no later than thirty days after a successful vote has been canvassed per COLO. CONST. art. V, §1(4)(a), as specified by paragraph (e) of the Proposed Initiative. Either way, these explicit effective-date-predicates matter – particularly here since they have been omitted from both paragraph (d)’s promulgation of a new legal definition of the term “fee” itself – “as used in Colorado law” – *and* (notably) from paragraph (e)’s specification of a current effective date for everything else in the measure.

B. The Proposed Initiative’s second subject: Adoption and retroactive application of a new operative definition of the term “fee” – as distinguished from a “tax” – for all purposes “as used in Colorado law.”

As noted in the Summary of the Argument, above, the definitional distinction between a “tax” and a “fee” is critical under Colorado law, and particularly in the context of any application of the “Taxpayer’s Bill of Rights.” COLO. CONST. art. X, §20, does not presently define the term “fee” – or distinguish it from a “tax.” That task has largely been shouldered by the courts. And the result has been that the judicially developed definition of a “fee” has excluded various

governmental charges, at both the state and local level, from many of TABOR's fiscal constraints explicitly directed to "taxes."

Early in this process, this Court held that, for purposes of COLO. CONST. art. X, §20, "a charge is a 'fee,' and not a 'tax,' when the express language of the charge's enabling legislation explicitly contemplates that its primary purpose is *to defray the cost of services provided to those charged.*" *Barber v. Ritter*, 196 P.3d 238, 241 (Colo. 2008) (emphasis added). This was distinct from a "tax" – which, as this Court earlier held in *Bloom v. City of Fort Collins*, 784 P.2d 304, 308 (Colo. 1989) – is "designed to raise revenues *to defray the general expenses of government*" (emphasis added).

This distinction has carried forward in such judicial applications as the Court of Appeals' decision in *Tabor Foundation v. Colorado Bridge Enterprise*, 2014 COA 106, ¶40, 353 P.3d 896, 903 (Colo. App. 2014) – emphasizing that "as long as a charge is reasonably related to the overall cost of providing the service and is imposed on those who are reasonably likely to benefit from or use the service" – irrespective of actual and direct individual usage of that benefit – the charge is a fee and not a tax." In *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36, ¶26, 418 P.3d 506, 513 (Colo. 2018), this Court concluded that "if a charge is imposed as part of a comprehensive regulatory scheme, and if the

primary purpose of the charge is to defray the reasonable direct and indirect costs of providing a service or regulating an activity under that scheme, then the charge is not raising revenue for the general expenses of government, and therefore, not a tax.” And – therefore and importantly – the “fee” is not subject to the bulk of TABOR’s constraints.

It is not surprising that some advocates of fiscal constraint may view these distinctions as a TABOR loophole in dire need of a remedy. In the wake of this Court’s opinion in *Barber v. Ritter, supra*, an effort was made to float a ballot measure that would have amended COLO. CONST. art. X, §20 specifically to re-define – and narrow – the definition of the term “fee” (thus effectively expanding the meaning of “tax”) – as follows:

“A fee is 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.”

In re Title, Ballot Title and Submission Clause for 2013-2014 #29 (Milo v. Coulter), 2014 CO 53, ¶3, 333 P.3d 101, 103 (Colo. 2014) (emphasis added).

While this Court determined that this significant refinement of the definition and application of the term “fee” – independently and unconnected to any other issues or new applications – constituted a single subject, that measure did not proceed to the ballot.

Now, ten years later, precisely the same proposed redefinition of the term “fee” – “*as used in Colorado law*” (*i.e.*, for all purposes and in all contexts) – briefly posited independently in 2014 has resurfaced (word for word) and been folded quietly into paragraph (d) of the current measure. Everything else in Proposed Initiative #158 is addressed exclusively to establishing a new statewide voter-approval requirement for a specified aggregated category of large-dollar “fees” (albeit within the “Taxpayer Bill of Rights”) – presumptively as that term is presently defined and understood.

Paragraph (d), however, materially redefines and contracts this critical underlying operative definition and understanding – “as used in Colorado law” and within the “Taxpayer’s Bill of Rights” – generally and for all purposes. And while every other provision of the Proposed Initiative is explicitly limited to prospective application by its effective date, paragraph (d)’s crucial redefinition of the term “fee” – and thus expansion of the meaning of “tax” – is not. It is difficult to imagine a more surreptitious second subject “coiled in the folds” of a ballot measure. *Cf., In re Title, Ballot Title and Submission Clause for 2009-2010 #91,*

235 P.3d 1071, 1077 (Colo. 2010); *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998*, #84, 961 P.2d 456, 460-461 (Colo. 1998).³

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests the Court to reverse the action of the Title Board with regard to Proposed Initiative 2025-2026 #158, to find that the Initiative contains more than a single subject, and to direct the Board to return the measure to its Proponents.

Respectfully submitted this 2nd day of December, 2025.

s/ Edward T. Ramey

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³ Respectfully, the Title Board itself – quite understandably – missed the effective-date distinction at its initial hearing on the measure – at least clarifying the title at the rehearing to note that the material change in definition applied to “any existing or new ‘fee’ authorized by Colorado law and imposed by the state or any local government.” This, however, does not address the problem that even a purely prospective application of the new definition of a “fee” – altering years of judicial precedent – to a measure otherwise addressed to the creation and application of statewide voter approval requirements within the context of the “Taxpayer Bill of Rights” – at a minimum constitutes a material and elusive second subject.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December 2025, a true and correct copy of the foregoing **PETIONER'S OPENING BRIEF** was filed and served upon the following via the Court's E-filing system:

Suzanne Taheri, West Group, counsel for Respondents Michael Fields and Suzanne Taheri;

Emily Buckley, Senior Assistant Attorney General, counsel for the Ballot Title Board.

s/Edward T. Ramey
Edward T. Ramey