

SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED December 22, 2025 2:20 PM
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) 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, Proponents.	▲ COURT USE ONLY ▲
and	Case No. 2025SA334
Title Board: Christy Chase, Kathleen Wallace, and Kurt Morrison.	
PHILIP J. WEISER, Attorney General LILY E. NIERENBERG, Senior Assistant Attorney General * Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, CO 80203 Telephone: (720)508-6851 E-Mail: lily.nierenberg@coag.gov Registration Number: 45451 *Counsel of Record <i>Attorney for the Title Board</i>	
TITLE BOARD'S ANSWER BRIEF	

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 1,145 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/ Lily E. Nierenberg

LILY E. NIERENBERG, #45451

Senior Assistant Attorney General

TABLE OF CONTENTS

INTRODUCTION.....	1
ARGUMENT	1
I. Petitioner’s concerns regarding the effect of a new definition of “fee” on existing law are not relevant to this Court’s consideration.....	1
II. To the extent Petitioner raises any valid single subject objections, they are without merit.....	4
CONCLUSION	6

TABLE OF AUTHORITIES

CASES	PAGES
<i>In re Pet. Procs.</i> , 900 P.2d 104 (Colo. 1995)	5
<i>In re Title, Ballot Title & Submission Clause & Summary for 1997–1998 #74</i> , 962 P.2d 927 (Colo. 1998)	4
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #25</i> , 974 P.2d 458 (Colo. 1999)	3
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #200A</i> , 992 P.2d 27 (Colo. 2000)	4
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #256</i> , 12 P.3d 246 (Colo. 2000)	3, 6
<i>In re Title, Ballot Title, & Submission Clause for 1999-2000 #235(a)</i> , 3 P.3d 1219 (Colo. 2000)	3
<i>In re Title, Ballot Title & Submission Clause for 2001-2002 #43</i> , 46 P.3d 438 (Colo. 2002)	3
<i>In re Title, Ballot Title & Submission Clause for 2005–2006 #74</i> , 136 P.3d 237 (Colo. 2006)	5
<i>In re Title, Ballot Title, & Submission Clause for 2011–2012 #3</i> , 2012 CO 25 20	2
<i>In re Title, Ballot Title, & Submission Clause for 2011–2012 #45</i> , 2012 CO 26	2, 6
<i>In re Title, Ballot Title, & Submission Clause for 2013–2014 #90</i> , 2014 CO 63	3

<i>In re Title, Ballot Title, & Submission Clause for 2013–2014 #129,</i> 2014 CO 53.....	2, 3
<i>In re Title, Ballot Title, & Submission Clause for 2013–2014 #76,</i> 2014 CO 52.....	6
<i>In re Title Ballot Title & Submission Clause for 2015-2016 #63,</i> 2016 CO 34.....	5

INTRODUCTION

Petitioner's objections to Initiative #158 are primarily about the possible effect of the definition of "fee" on existing law. But Petitioner's concerns regarding the impact of a new definition of "fee" are irrelevant to this Court's inquiry into the single subject requirement. Thus, much of the argument in Petitioner's Opening Brief is misdirected.

The only relevant question before this Court is whether Initiative #158 contains a single subject. Petitioner's own arguments regarding the impact of including a definition of "fee" show that this definition is necessarily and properly connected to the central subject of Initiative #158: voter approval for fees or fee increases under TABOR.

Therefore, the Board's actions should be affirmed.

ARGUMENT

I. Petitioner's concerns regarding the effect of a new definition of "fee" on existing law are not relevant to this Court's consideration.

The thrust of Petitioner's arguments is that the definition of "fee" in Initiative #158 operates as a change in Colorado law. *E.g.*, Pet'r's Opening Br. at 3 ("this new definition is materially different from the

current, largely judicially developed, understanding and application of that term”); *id.* at 9 (referring to “paragraph (d)’s crucial redefinition of the term ‘fee’ – and thus expansion of the meaning of ‘tax’”).

But as noted in the Board’s Opening Brief, Petitioner’s concerns regarding any such effect of the definition are not proper for this Court’s consideration. Bd.’s Opening Br. at 13-14. Neither the Board nor this Court is tasked with considering the initiative’s efficacy, construction, or the future application of the initiative. *In re Title, Ballot Title, & Submission Clause for 2011–2012 #45*, 2012 CO 26, ¶ 9; *In re Title, Ballot Title, & Submission Clause for 2013–2014 #129*, 2014 CO 53, ¶ 18 (“[W]e cannot consider ‘[t]he effects this measure could have on Colorado ... law if adopted by voters.’ Those concerns, however valid, ‘are irrelevant to our review of whether [the proposed initiative] and its Titles contain a single subject.’”) (citing *In re Title, Ballot Title, & Submission Clause for 2011–2012 #3*, 2012 CO 25, ¶ 20 n.2). This Court’s “limited review of the Title Board’s actions” do not allow the Court to “determine the future application of an initiative in the process of reviewing the action of the Title Board in setting titles for a proposed

initiative.” *In re Title, Ballot Title, & Submission Clause for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000).

This Court has repeatedly rejected the notion that “just because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected that it necessarily violates the single-subject requirement.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #256*, 12 P.3d 246, 254 (Colo. 2000) (citing *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #25*, 974 P.2d 458, 463 (Colo. 1999)); *see also In re Title, Ballot Title & Submission Clause for 2001-2002 #43*, 46 P.3d 438, 443 (Colo. 2002) (Court does not “address the merits of a proposed initiative or suggest how it might be applied if enacted”). Nor will an initiative be deemed to violate the single subject requirement because it “may have different effects” on other provisions of Colorado law. *In re Title, Ballot Title, & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶ 17. Such effects are not relevant to whether the proposed initiative contains a single subject. *Id.*; *In re 2013–2014 #129*, ¶ 18.

Accordingly, the impact of a new definition of “fee” for Colorado law is not relevant to the Court’s present inquiry.

II. To the extent Petitioner raises any valid single subject objections, they are without merit.

Any remaining objections must also be rejected. First, Petitioner appears to argue that because the definition of “fee” is not subject to the effective-date predicates that the other portions of the Initiative are, this creates a second subject. Pet’r’s Opening Br. at 6. But, as noted in the Board’s Opening Brief, the ballot title avoids any confusion on this subject. Bd.’s Opening Br. at 12. Here, the wording of the ballot title makes clear that the definition of “fee” applies to “any existing or new ‘fee’ authorized by Colorado law.” *Id.* (citing Record, p 4).

Petitioner also seems to concede that the definition of “fee” is “directly tied” to the central focus of Initiative #158.¹ *See In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #200A*, 992 P.2d 27, 30 (Colo. 2000) (quoting *In re Title, Ballot Title &*

¹ The Proponents of the initiative state that Initiative #158 included a definition of “fee” “[t]o prevent attempts to circumvent its voter approval requirements.” Resp’ts’ Opening Br. at 1.

Submission Clause & Summary for 1997–1998 #74, 962 P.2d 927, 929 (Colo. 1998)) (“Implementation details that are ‘directly tied’ to the initiative’s ‘central focus’ do not constitute a separate subject.”).

Petitioner acknowledges that, while the distinction between a “tax” and a “fee” is quite important under TABOR, TABOR itself does contain a definition of “fee,” leaving this definition largely to courts. Pet’r’s Opening Br. at 4-5, 6-7. Petitioner further acknowledges that without including a separate definition of “fees,” the term in the Initiative #158 would be interpreted “presumptively as that term is presently defined and understood”—meaning through existing case law. *Id.* at 9. In other words, the alleged dual subjects identified by Petitioner are dependent upon or connected with each other. *Accord In re Title, Ballot Title & Submission Clause for 2005–2006 #74*, 136 P.3d 237, 239 (Colo. 2006) (quoting *In re Pet. Procs.*, 900 P.2d 104, 109 (Colo. 1995)).

Finally, even an expansive definition does not undermine the single subject requirement if it is necessarily and properly connected to the central purpose of the measure. *Accord In re Title Ballot Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶ 14 (holding that

the initiative’s definition of “local government” was not a separate subject and stating that “an expansive definition of the governmental entities here is necessarily and properly connected to the initiative’s purpose, which is to establish and broadly effectuate the right to a healthy environment for all Coloradans.”).

In sum, Initiative #158 does not clearly violate the constitutional single-subject requirement and thus the title should be affirmed. *In re 2011–2012 #45*, ¶ 8; *In re Title, Ballot Title, & Submission Clause for 2013–2014 #76*, 2014 CO 52, ¶ 8 (noting that the Court will overturn the Board’s finding that an initiative contains a single subject only in a “clear case”); *see also In re 1999-2000 #256*, 12 P.3d at 255 (“In reviewing the actions of the Board, we grant great deference to the board’s broad discretion in the exercise of its drafting authority.”) (quotation omitted).

CONCLUSION

The Court should affirm the Title Board’s single subject finding and the title it set for Initiative #158.

Respectfully submitted this 22nd day of December, 2025.

PHILIP J. WEISER
Attorney General

/s/Lily E. Nierenberg

LILY E. NIERENBERG, 45451*
Senior Assistant Attorney General
Public Officials Unit
State Services Section
Attorneys for the Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **TITLE
BOARD'S ANSWER BRIEF** upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System.

s/ Carmen Van Pelt
