

SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED December 2, 2025 6:22 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.	
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TITLE BOARD’S OPENING 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 2,726 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

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Senior Assistant Attorney General

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(Nov. 5, 2025),

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Proposed Initiative 2025-2026 #158 (“Initiative #158”) contains a single subject—voter approval for fees or fee increases under the Taxpayer’s Bill of Rights (“TABOR”)—even though it includes a provision defining “fee” “as used in Colorado law.”

STATEMENT OF THE CASE

Proponent-Respondents Suzanne Taheri and Michael Fields (“Proponents”) proposed Initiative #158 to amend article X, section 20 of Colorado’s Constitution, commonly known as TABOR, to require voter approval for certain fees or fee increases imposed by state law that generate over \$100 million in the first five years. *See Record* (Nov. 12, 2025), p 6. As relevant to the present challenge, Initiative #158 contains a definition of the term “fee,” which states that “[f]ee’ as used in Colorado law 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.” *Id.*, ¶ (d).

The Ballot Title Board (“Board”) held an initial hearing on Initiative #158 on October 15, 2025. *Id.* at 3. At this meeting, the Board concluded that the measure contained a single subject, held that the measure proposed the addition of language to the Colorado Constitution and therefore required 55% voter approval, and set a title, as follows:

An amendment to the Colorado Constitution creating new law that requires statewide voter approval for certain fees imposed by state law, and, in connection therewith, amending the Taxpayer’s Bill of Rights to: Require statewide voter approval for any such new or increased fee if the first five fiscal years’ projected or actual combined revenue from the fee, and other fees collected to fund similar purposes, is greater than \$100 million, excluding institutions of higher education fees; and define a “fee” for purposes of Colorado law as a governmental charge voluntarily paid in exchange for a specific benefit.

Id.

Petitioner filed a Motion for Rehearing on October 22, 2025. *Id.* at 2. The Board conducted a rehearing on Initiative #158 at its November 5, 2025 hearing. *Id.* at 4-5. During that hearing, both the Petitioner and the Proponents had an opportunity to be heard. *See Rehearing Before Title Board on Proposed Initiative 2025-2026 #158* (Nov. 5, 2025) (“Rehearing”), https://csos.granicus.com/player/clip/526?meta_id=19524.

Specifically, Petitioner argued that Initiative #158 contains more than one subject because it creates a new definition of “fee” that is “somewhat independent” from the other provisions of the measure. *Id.* at 3:28. Petitioner argued that this definition, while “certainly understandable,” is “quite different” than the definition of “fee” that developed through judicial opinions such as *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36, and has no time limitation.¹ *Id.* at 4:22.

Proponents responded that they were establishing the definition of “fee” that is not present in statute and was already approved in *In re Title, Ballot Title & Submission Clause for 2013–2014 #129*, 2014 CO 53.² *Id.* at 19:15.

The Board granted the motion for rehearing in part and modified the title by inserting the following bolded language to the title in order

¹ Petitioner also raised other challenges that he does not pursue in this appeal.

² Proponents refer to this case by the petitioner and proponents’ names, “*Milo v. Coulter*.”

to make it more clear and address concerns regarding the possibility of a single subject violation:

An amendment to the Colorado Constitution creating new law that requires statewide voter approval for certain fees imposed by state law, and, in connection therewith, amending the Taxpayer's Bill of Rights to: Require statewide voter approval for any such new or increased fee if the first five fiscal years' projected or actual combined revenue from the fee, and other fees collected to fund similar purposes, is greater than \$100 million, excluding institutions of higher education fees; and define **any existing or new "fee" authorized by Colorado law and imposed by the state or any local government or special district** as a governmental charge voluntarily paid in exchange for a specific benefit.

Record, pp 4-5 (emphasis added); Rehearing at 37:24, 38:29. Otherwise, the Board denied the motion. Record, p 5.

Proponents initiated this Court's review under C.R.S. § 1-40-107(2), arguing that the title contains two distinct subjects. Pet. for Review (Nov. 12, 2025), p 4.

SUMMARY OF ARGUMENT

Initiative #158 contains a single subject: voter approval for fees or fee increases under TABOR. The inclusion of a provision defining "fee" for purposes of Colorado law is necessarily and properly connected to

this subject. TABOR does not include a separate definition of “fee,” and therefore the inclusion of a definition is necessary to implement the initiative and does not create a second subject. The title also explains the inclusion of the definition and therefore mitigates any potential for voter confusion. Finally, Petitioner’s concerns regarding the possible effect of the definition of “fee” in Initiative #158 is irrelevant to this Court’s inquiry into the single subject requirement.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Board’s jurisdiction is limited to proposed initiatives containing a single subject. Colo. Const. art. V, § 1(5.5). Section 1(5.5) of article V provides in relevant part:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

Id. In 1994, the General Assembly enacted C.R.S. § 1-40-106.5 to implement the single subject requirement. The General Assembly intended “[t]o forbid the treatment of incongruous subjects in the same measure” and prevent voter fraud and surprise. *Id.* § 1-40-106.5(1)(e)(I), (II). The General Assembly stated its intent that article V, section 1(5.5) “be liberally construed, so as to avert the practices against which [it is] ... aimed and, at the same time, to preserve and protect the right of initiative and referendum.” *Id.* § 1-40-106.5(2).

The Court begins by examining the initiative’s wording to determine whether it comports with constitutional requirements. *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶ 9. The Court employs the general rules of statutory construction, giving words and phrases their plain and ordinary meanings. *Id.*

The Court liberally construes the single subject requirement. *In re Title, Ballot Title & Submission Clause for 2019–2020 #315*, 2020 CO 61, ¶ 17 (“We liberally construe the single subject requirement both because of the Title Board’s considerable discretion in setting the title and the ballot title and submission clause and in order to avoid unduly

restricting the initiative process.”); *see also* C.R.S. § 1-40-106.5(2) (“It is the intent of the general assembly that section 1(5.5) of article V ... be liberally construed, so as to avert the practices against which [it is] aimed and, at the same time, to preserve and protect the right of initiative”).

The Court also affords the Board with considerable discretion and entertains all legitimate presumptions in favor of the Board’s actions. *In re Title, Ballot Title & Submission Clause for 2015–2016 #156*, 2016 CO 56, ¶ 8 (quotations omitted) (“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause.”); *In re Title, Ballot Title & Submission Clause for 2009–2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010) (“[W]e employ all legitimate presumptions in favor of the propriety of the Board’s actions.”). The Court will only overturn an action of the Title Board when it clearly violates the constitutional single-subject requirement. *In re Title, Ballot Title, & Submission Clause for 2011–2012 #45*, 2012 CO 26, ¶ 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”).

In its review, the Court does not consider the initiative’s efficacy, construction, or the future application of the initiative. *In re 2011–2012 #45*, ¶ 9; *In re 2013–2014 #129*, ¶ 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).

The choice of particular language is the sort of decision where the Board is owed the greatest deference. *See, e.g., In re 2019–2020 #315*, ¶ 27 (“We will generally defer to the Board’s choice of language unless the titles set contain a material and significant omission, misstatement, or misrepresentation.”) (quotations omitted).

Petitioner preserved his objection to Initiative #158 based on the single subject requirement. Record, p 2.

B. The definition of fee is necessarily and properly connected to the subject of statewide voter approval of fees.

To satisfy the single subject requirement, the provisions of Initiative #158 must be “necessarily and properly connected rather than disconnected or incongruous.” *See In re 2011–2012 #3*, ¶ 9; *In re 2019–2020 #315*, ¶ 13 (quoting *In re Title, Ballot Title & Submission Clause for 2015–2016 #73*, 2016 CO 24, ¶ 14) (same); accord *In re 2009–2010 #91*, 235 P.3d at 1077 (“[W]hen an initiative’s provisions seek to achieve purposes that bear no necessary or proper connection to the initiative’s subject, the initiative violates the constitutional rule against multiple subjects.”). “Said another way, the single-subject requirement is not violated unless the text of the measure ‘relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other.’” *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)). A proposed measure that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Title, Ballot Title &*

Submission Clause, & Summary for 1999–2000 #25, 974 P.2d 458, 463 (Colo. 1999).

Here, Initiative #158 addresses a single subject because the matters encompassed by it, including the definition of “fee,” are necessarily and properly connected. The Initiative’s central subject is the inclusion of certain fees within the statewide voter approval requirements of TABOR. TABOR contains no separate definition of fee. Rehearing at 4:01, 20:05; *Colo. Union of Taxpayers Found. v. City of Aspen*, ¶ 37 (Coats, J., dissenting). The definition of “fee” is thus properly connected to Initiative #158’s central theme because it defines the larger category to which this new voter approval requirement might apply. Thus, the definition is not independent from the other provisions of the measure, which work in concert.

This Court has approved initiatives containing measures that implement their central theme, without finding that they violate the single subject requirement. For instance, in *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 No. 200A*, this Court noted that “[i]mplementation details that are ‘directly tied’ to the

initiative's 'central focus' do not constitute a separate subject,” 992 P.2d 27, 30 (Colo. 2000) (quoting *In re Title, Ballot Title & Submission Clause & Summary for 1997–1998* #74, 962 P.2d 927, 929 (Colo. 1998)). It therefore held that information delivery, data gathering, and reporting requirements tied to an initiative that purported to require a women’s voluntary and informed consent prior to an abortion did not create a separate subject. *Id.* at 32.

Initiative #158 also does not create a risk of voter surprise. *Cf. In re Title, Ballot Title & Submission Clause for 2021–2022* #16, 2021 CO 55, ¶ 16 (“our application of the necessarily-and-properly-related test has often taken into account whether voters might favor only part of an initiative and the potential for voter surprise”) (citations omitted). Here, there is no evidence that voters who support Initiative #158 because they favor expanding TABOR to include approval of certain fees would not also favor defining fees for purposes of Colorado law. The definition relates to the same subject—fees under state law—and the definition is “not particularly lengthy or complex.” *In re Title, Ballot Title, & Submission Clause for 2013–2014* #89, 2014 CO 66, ¶ 19 (“Here,

however, there is no serious risk that the voters will be unaware of the primary effects of Initiative # 89 because each of the sections relates to the same subject, the plain language of Initiative # 89 creates a public right and then lays out the procedures for implementing and enforcing that right, and the proposal is not particularly lengthy or complex.”).

In this case, the ballot title set by the Board also ensures that there is no voter confusion. In addition to describing that Initiative #158 amends TABOR to require statewide approval for certain fees, the title also describes the definition of fee in sufficient detail to explain it to voters. The title specifies that Initiative #158 amends TABOR to “define any existing or new ‘fee’ authorized by Colorado law and imposed by the state or any local government or special district as a governmental charge voluntarily paid in exchange for a specific benefit.” Record, p 4. Thus, the title resolves any concern that voters would not understand the new definition of “fee.”

Further, the Court has previously held that the fact that a single subject has broad applicability is not dispositive of the Court’s inquiry. For instance, this Court previously held that an initiative that sought to

amend TABOR to add a provision defining “fee” did not violate the single subject requirement. *In re 2013–2014 #129*, ¶ 2. Specifically, the Court held that, despite the fact that the definition applied in a wide variety of contexts, “its breadth, by itself, does not necessarily violate the single-subject requirement.” *Id.*, ¶ 16 (citing *In re Title, Ballot Title & Submission Clause, & Summary for 1999–2000 #256*, 12 P.3d 246, 254 (Colo. 2000) (holding that an initiative does not violate the single-subject requirement simply because it covers a broad subject)).

Finally, Petitioner’s concerns regarding the effect of the definition are not proper for this Court’s consideration. *Cf.* Pet. at 4 (noting concerns that the new definition of fee would apply “for all purposes and [be] applicable to both new and existing state and local governmental charges” and is “materially different from the current generally understood (and largely judicially-developed) meaning of that term”). 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 1999–2000 #256*, 12 P.3d at 254 (citing *In re*

1999–2000 #25, 974 P.2d at 463); *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 2013–2014 #90*, ¶ 17. Such effects are not relevant to whether the proposed initiative contains a single subject. *Id.*; *In re 2013–2014 #129*, ¶ 18. Here, the ultimate impact of a new definition of “fee” for Colorado law is not a relevant single subject concern.

In sum, Initiative #158 concerns a single subject—statewide voter approval of certain fees. To implement that subject, it includes a definition of “fee” that is not otherwise present in TABOR. The impact of this definition is not relevant to the Court’s present inquiry.

CONCLUSION

The Board correctly determined that Initiative #158 contains a single subject and set an appropriate title. The Court should therefore affirm the title set by the Board on Initiative #158.

Respectfully submitted this 2nd day of December, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **TITLE
BOARD'S OPENING 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
