SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED September 16, 2025 4:49 PM
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 # 123 **Petitioners:** Michael Fields and Steven Ward v. **Title Board:** Theresa Conley, Jason Gelender, and Kurt Morrison.	▲ **COURT USE ONLY** ▲ Case No. 2025SA259
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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 or C.A.R. 28.1, 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 1,816 words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

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☒In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

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/ Kyle M. Holter
Signature of attorney or party

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ISSUE ON REVIEW

I. Whether Initiative 2025-2026 #123 concerns a single subject.

STATEMENT OF THE CASE

Proposed Initiative 2025-2026 #123 ("#123" or the "Initiative") would amend provisions of the Taxpayer's Bill of Rights (TABOR), Colo. Const. art. X, § 20, to require voter approval of "tax expansions" and "fees." The Initiative defines "fee" to mean "a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer." Certified Record for #123 p 2, filed August 27, 2025 ("Record"). The Initiative defines "tax expansion" as 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." *Id.*

The Title Board declined to set title on the measure at its hearing on August 6, 2025, because it concerns multiple subjects. *Id.* at 3. Petitioners Michael Fields and Steven Ward filed a timely motion for rehearing under § 1-40-107, C.R.S. (2025). *Id.* at 5-7. Fields and Ward argued that title should have been set for #123 because, although the Initiative would expand TABOR's voter approval requirements to

include both "fees" and "tax expansions," those expansions concern a single subject: "government charges." *Id.* at 6.

The Title Board held rehearing on August 20, 2025, and it again declined to set title. *Id.* at 4. Fields and Ward timely appealed. § 1-40-107, C.R.S.; *see also* Petition for Review, filed August 27, 2025.

SUMMARY OF THE ARGUMENT

#123, which both expands the categories of taxes covered by TABOR and also extends TABOR's voter approval requirements to governmental fees, contains multiple subjects. Taxes and fees are distinct subjects, originating in distinct governmental powers, as confirmed by this Court's precedents and voters' recognized purpose behind TABOR. Because the Title Board cannot set a title for a measure with multiple subjects, it lacked jurisdiction to set title for #123.

ARGUMENT

I. The Initiative violates the single subject requirement.

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. 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. Instead, the Court "must examine the initiative's wording to determine whether it comports with the constitutional single-subject requirement." *Id.*

To satisfy the single-subject requirement, the "subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous." *In re 2013-2014 #76*, ¶ 8. Where an initiative "tends to . . . carry out one general objective" or central purpose, "provisions necessary to effectuate [that] purpose . . . are properly included within its text," and the "effects th[e] measure could

have on Colorado . . . law if adopted by voters are irrelevant" to the single subject inquiry. *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶¶ 11, 17 (quotations omitted). If an initiative advances separate and distinct purposes, however, "the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement." *In re Title, Ballot Title & Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶ 16.

The Title Board agrees that Fields and Ward preserved a single-subject argument in their motion for rehearing. Record, pp 5-7.

B. The Initiative has multiple subjects.

#123 has at least two subjects. First, it adds to the categories of *taxes* for which TABOR requires advance voter approval. Second, it requires voter approval before *fees* may be imposed by state law. This Court's precedents confirm that taxes and fees are different subjects—originating in distinct governmental powers—under Colorado law, and therefore the Title Board lacked jurisdiction to set title for the Initiative.

A government's power to levy taxes derives from the power to defray general expenses. Colo. Const. art. X, § 2 (permitting the General Assembly to use taxes to "defray the estimated expenses of the state government"); § 31-15-302(1)(c), C.R.S. ("The governing bodies in municipalities shall have the following general powers in relation to the finances of the municipality: . . . To levy and collect taxes for general and special purposes on real and personal property."); *see Colo. Union of Taxpayers Found. v. City of Aspen*, 2018 CO 36, ¶¶ 19-20. A government's power to impose fees or regulatory charges for the purpose of defraying the cost of a particular governmental service, however, derives from the police power. *Id.* ¶¶ 21-22; *see, e.g.*, *Post v. City of Grand Junction*, 195 P.2d 958, 959 (Colo. 1948) ("The authority of the state to regulate the sale of liquor is predicated upon the police power, and is exercised in the interest of the health, safety, morals, and general welfare of the people."); *Armstrong v. Johnson Storage & Moving Co.*, 268 P. 978, 980 (1928) (upholding vehicle registration fee as valid exercise of police power).

TABOR reflects voters' intent to "limit[] the legislative taxing power." *Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶ 2; *see also Bickel v. City of Boulder*, 885 P.2d 215, 225 (Colo. 1994) (same); *Havens v. Bd. of Cnty. Comm'rs*, 924 P.2d 517, 519 (Colo. 1996) (same). Accordingly, TABOR requires the state or any local government to "obtain voter approval for [a] new tax via an election." *Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶ 17; *see* Colo. Const. art. X § 20(4)(a) (requiring voter approval for "any new tax, tax rate increase, 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"). TABOR does not require voter approval for fees or other types of governmental charges. *See Colo. Union of Taxpayers Found. v. City of Aspen*, 2015 COA 162, ¶ 11, *aff'd*, 2018 CO 36 ("While a tax is subject to the requirements of TABOR, a fee is not."). Colorado courts interpreting TABOR and other laws also recognize the consequential differences between taxes and fees, as demonstrated by the inquiry courts have developed to distinguish one from the other. *Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶¶ 26, 28-33 (applying test to distinguish taxes

from other governmental charges based on "the government's primary purpose for enacting the charge"); *see also Bloom v. City of Fort Collins*, 784 P.2d 304, 308 (Colo. 1989); *Zelinger v. City & Cnty. of Denver*, 724 P.2d 1356, 1358 (Colo. 1986).[1]

In light of this well-established legal framework, #123 proposes to alter TABOR in two distinct and significant ways. First, it would expand the categories of taxes to which TABOR applies to encompass "tax expansions," including "tax[es] not previously assessed," the "removal of a tax exemption or subtraction" or a "change in tax classification." Record at 2. That change is, without addressing #123's merits, an apparent extension of the intent behind TABOR, i.e., "limiting a government's legislative power to tax." *Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶ 26. Second, #123 would extend

[1] If the charge's primary purpose is "to raise revenue for general governmental use, it is a tax." *Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶ 26. If a charge's primary purpose is "to defray the reasonable direct and indirect costs of providing a service or regulating an activity" under a regulatory scheme, it is "not a tax." *Id.* In either case, the court's "core inquiry" focuses on the "practical realities of the charge's operation," including "whether there is a reasonable relationship between the direct or indirect cost to the government of providing the product or activity assessed and the amount being charged." *Id.* ¶ 27.

TABOR to require statewide voter approval for "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." Record at 2 (emphasis added). This change proposes to place a limit on governments' police powers, not the taxation powers voters intended to limit with TABOR. *See Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶ 26 (explaining "regulatory charges are not subject to TABOR[]" because TABOR's "voters were concerned *only* with limiting a government's legislative power to tax," not the police power (emphasis added)). Because #123 attempts to roll these two subjects and their distinct purposes into a single initiative, it violates the single subject requirement.

Fields and Ward attempt to unite #123's multiple subjects under the umbrella category of "governmental charges." *See* Record at 6-7. But the single subject requirement does not permit the passage of disparate proposals under such an "overarching theme." *In re 2013-2014 #76*, ¶ 34; *In re Pub. Rts. in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995) (rejecting "water" as a common theme); *In re Amend TABOR 25*, 900

P.2d 121, 125–26 (Colo. 1995) (rejecting "revenue charges" as a common theme). TABOR's recognized purpose is to limit the legislature's ability to tax. #123 proposes both to expand on that purpose and to add another, limiting the legislature's ability to impose regulatory fees under the police power.

Like the initiative in *In re 2013-2014 #76*, which unconstitutionally combined proposals to alter both the *process* of conducting recall elections and expanded the *scope* of recall to non-elected offices, #123's attempt to combine distinct purposes in a single initiative risks garnering support from voters with different or conflicting interests. ¶ 30. Some voters, for instance, might favor further limiting the legislature's power to tax by expanding TABOR's voter approval requirement to cover "tax expansions." Those same voters, however, might oppose limiting governments' power to impose regulatory fees—including those related to the direct provision of specific government services such a storm drainage improvements, *Zelinger*, 724 P.2d at 1359, or road maintenance, *Bloom*, 784 P.2d at 305—for fear that doing so may "cripple the government's ability to

provide" those specific services. *See Colo. Union of Taxpayers Found.*, 2018 CO 36, ¶¶ 17, 31 (quotation omitted). The fact that TABOR's voters intended to accomplish the first limitation, but not the second, demonstrates that the provisions have no "necessary" connection but instead relate to distinct objectives. *In re 2013-2014 #90*, ¶¶ 11, 17.

Accordingly, the Initiative contains multiple subjects and the Board lacked jurisdiction to set title.

CONCLUSION

The Court should affirm the Title Board's conclusion that it lacked jurisdiction to set title for #123.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE) this 16th day of September, 2025.

/s/ Carmen Van Pelt