ADVANCE SHEET HEADNOTE
September 8, 2025

2025 CO 53

No. 24SA178, *MetroPCS v. Lakewood*—Colorado Taxpayer's Bill of Rights—Business and Occupation Tax.

In this direct appeal, the supreme court considers whether two municipal ordinances, City of Lakewood, Colo., Ordinance O-96-43, § 1 (1996) (the "1996 Ordinance"), and City of Lakewood, Colo., Ordinance O-2015-3, § 13 (2015) (the "2015 Ordinance"), imposed "new taxes" for purposes of Colorado's Taxpayer's Bill of Rights, Colo. Const. art. X, § 20 ("TABOR"), such that the City of Lakewood was required to obtain voter approval before enacting those Ordinances.

The court now concludes that both the 1996 Ordinance and the 2015 Ordinance imposed new taxes within the meaning of TABOR. Accordingly, TABOR required Lakewood to obtain voter approval before enacting them. Because Lakewood did not do so, both Ordinances violated TABOR.

The court therefore affirms the district court's judgment.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 53

Supreme Court Case No. 24SA178
Appeal from the District Court
Jefferson County District Court Case No. 22CV30412
Honorable Chantel Contiguglia, Judge

Plaintiff-Appellee/Cross-Appellant:

MetroPCS California, LLC,

v.

Defendant-Appellant/Cross-Appellee:

City of Lakewood, Colorado.

Judgment Affirmed
en banc
September 8, 2025

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 This case requires us to decide whether two municipal ordinances imposed "new taxes" for purposes of Colorado's Taxpayer's Bill of Rights, Colo. Const. art. X, § 20 ("TABOR"). In 1969, the City of Lakewood enacted a business and occupation tax on certain telecommunications services, City of Lakewood, Colo., Ordinance O-69-5, § 1 (1969) (the "1969 Ordinance"). Then, in 1996, it amended that Ordinance, City of Lakewood, Colo., Ordinance O-96-43, § 1 (1996) (the "1996 Ordinance"), and it did so again in 2015, City of Lakewood, Colo., Ordinance O-2015-3, § 13 (2015) (the "2015 Ordinance"). Lakewood did not obtain voter approval before enacting either the 1996 Ordinance or the 2015 Ordinance. After a district court concluded that both the 1996 Ordinance and the 2015 Ordinance violated TABOR, Lakewood appealed to this court pursuant to section 13-4-102(1)(b), C.R.S. (2024), contending that it did not need to obtain voter approval because neither Ordinance imposed a new tax.[1] MetroPCS California,

[1] Specifically, Lakewood raised the following issues on appeal:

1. Whether the District Court erred in declaring Lakewood, Colorado's 1996 and 2015 business and occupation tax Ordinances unconstitutional "beyond a reasonable doubt" under the Taxpayer's Bill of Rights ("TABOR") because they allegedly were "new taxes," even though:

   A. These Ordinances did not enact a new charge but merely clarified the application of a 55-year-old telecommunications business and occupation tax; and

LLC, which had successfully challenged the Ordinances in the district court, cross-appealed.[2]

¶2 We now conclude that both the 1996 Ordinance and the 2015 Ordinance imposed new taxes within the meaning of TABOR. Accordingly, TABOR required Lakewood to obtain voter approval before enacting them. Because Lakewood did not do so, both Ordinances violated TABOR.

¶3 We therefore affirm the district court's judgment.

I. Facts and Procedural History

¶4 In 1969, Lakewood enacted a business and occupation tax, which provided, in pertinent part, "There is hereby levied on and against utility companies

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B. The Plaintiff, MetroPCS California, LLC, did not establish the subsequent revenue increases were not incidental to the Ordinances' stated primary purposes and *de minimis* to Lakewood's overall revenues and annual budgets.

2. Whether the District Court erred in finding the Ordinances enacted new taxes instead of tax policy changes, which could not violate TABOR because Lakewood's voters waived revenue limits when they chose to debruce.

[2] MetroPCS raised the following issues on appeal:

1. Whether, as independent or additional grounds for affirming the district court's ruling, the 1996 Ordinance produced revenue increases that were not de minimis.

2. Whether, in addition to violating TABOR by enacting "new taxes" without advance voter approval, the Ordinances violated TABOR by enacting "tax rate increases" without advance voter approval.

operating within [Lakewood] a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in [Lakewood] and of supplying local exchange telephone service to the inhabitants of the city." 1969 Ordinance, § 1. Between 1969 and 1996, Mountain States Telephone & Telegraph Co. ("Mountain Bell") or its individual successors-in-interest were the only telecommunications providers subject to this business and occupation tax.

¶5 Following the 1984 breakup of Mountain Bell's monopoly, Colorado enacted a law that provided, "Any tax, fee, or charge imposed by a political subdivision shall be competitively neutral among telecommunications providers." Ch. 75, sec. 1, § 38-5.5-107(2)(a), 1996 Colo. Sess. Laws 298, 301–02. (This statute was amended in 2014 to include "broadband providers." Ch. 149, sec. 5, § 38-5.5-107(2)(a), 2014 Colo. Sess. Laws 504, 507–08.) The federal government, in turn, enacted a law that provided, "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).

¶6 Shortly thereafter, partly in response to the foregoing legislation, Lakewood amended its business and occupation tax by enacting the 1996 Ordinance. That Ordinance amended certain portions of chapter 5.32 of the Lakewood Municipal Code, in pertinent part, as follows:

> § 5.32.015 Levy of tax.
>
> There is hereby levied a tax on and against each person engaged in the business or occupation of providing basic local telecommunications service within the City of Lakewood.
>
> § 5.32.020 Definition of basic local telecommunications service.
>
> Basic local telecommunications service is the electronic or optical transmission of information between separate points by prearranged means, which includes the provision of local dial tone line and local usage necessary to place or receive a call. Basic local telecommunications service does not include long distance service, cellular service or mobile radio telephone service. However, the provision of cellular or mobile radio service to any business or entity as its primary local telecommunications service shall be deemed basic telecommunication service for the purpose of determining the applicability of this business and occupation tax.

1996 Ordinance, § 1. This Ordinance further stated, "A business and occupation tax on providers of basic local telecommunications service should be uniform and nondiscriminatory and should not create barriers to entry into the business of providing basic local telecommunications service within Lakewood." *Id.* (amending section 5.32.010(E) of the Lakewood Municipal Code). Lakewood neither sought nor obtained voter approval before enacting the 1996 Ordinance.

¶7 Then, in 2015, Lakewood again amended the business and occupation tax by enacting the 2015 Ordinance. That Ordinance further amended certain portions of the Lakewood Municipal Code, this time, in pertinent part, as follows:

> 5.32.015 Levy of tax

> There is hereby levied a tax on and against each person engaged in the business or occupation of providing basic local exchange service within the City of Lakewood.
>
> 5.32.020 Definitions
>
> . . . .
>
> "Basic local exchange service" is the service that provides: (a) A local dial tone; (b) local usage necessary to place or receive a call within an exchange area; and (c) access to emergency, operator and interexchange telecommunications services. . . . The provision of cellular, mobile radio or any wireless voice service to any business, person or entity shall be deemed basic local exchange service for the purpose of determining the applicability of this business and occupation tax.

2015 Ordinance, § 13. This Ordinance also stated:

> The business and occupation tax set forth in this chapter is not a new tax, the extension of an existing tax or an increase in a tax, but is the reduction of an existing tax to new entrants in order to eliminate a potential barrier to the entry of new providers into the business of providing basic local exchange service within Lakewood . . . .

Id. (amending section 5.32.010(G) of the Lakewood Municipal Code). Lakewood neither sought nor obtained voter approval before enacting the 2015 Ordinance.

¶8 Subsequently, Lakewood conducted a business and occupation tax audit of MetroPCS, a subsidiary of T-Mobile US, Inc. that operates in Lakewood, and concluded that MetroPCS owed Lakewood unpaid business and occupation taxes totaling in excess of $1.6 million. After being advised of the results of this audit, MetroPCS sued Lakewood in district court, alleging that both the 1996 Ordinance

and the 2015 Ordinance constituted new taxes, tax rate increases, and tax policy changes directly causing a net tax revenue gain, thereby violating TABOR.

¶9 Following discovery, both parties filed motions for summary judgment, and the district court ultimately denied Lakewood's motion and granted MetroPCS's motion. *MetroPCS Cal., LLC v. City of Lakewood*, No. 22CV30412, at 10 (Dist. Ct., Jefferson Cnty., Apr. 16, 2024).

¶10 The district court first considered the 1996 Ordinance and concluded that it constituted a new tax. *Id.* at 22. The court reasoned that the 1969 Ordinance contained narrow language to limit application of the business and occupation tax, and the 1996 Ordinance expanded the scope of that tax to previously untaxed services such that Lakewood collected tax revenue that it otherwise would not have been entitled to collect. *Id.*

¶11 In so concluding, the court rejected Lakewood's argument that the 1996 Ordinance did not constitute a new tax because it caused only an incidental and de minimis increase in revenue. *Id.* at 11–12. The court found that although harmonizing the business and occupation tax with state and federal law requiring competitive neutrality may have been one purpose of the Ordinance, the Ordinance was also intended to generate tax revenue by expanding the tax to previously untaxed services. *Id.* Thus, in the court's view, raising taxes was not merely an incidental outcome of the 1996 Ordinance. *Id.* at 12. The court then

observed that erratic increases and decreases in revenue generated from this Ordinance in the years it was in effect precluded the court from determining whether the Ordinance had a de minimis effect on revenue. *Id.* at 16–17. The court determined, however, that it need not answer that question because it had already concluded that the generation of tax revenue was not an incidental effect of the Ordinance. *Id.* at 17.

¶12 Turning to the 2015 Ordinance, the court concluded that that Ordinance also constituted a new tax because it further expanded the scope of the business and occupation tax, causing providers to incur tax obligations that they did not have previously. *Id.* at 26. And the court again rejected Lakewood's argument that raising revenue was only an incidental effect of the 2015 Ordinance. *Id.* at 18–19. The court determined that although this Ordinance served multiple purposes, at least one of its purposes was to expand the business and occupation tax base such that Lakewood could collect revenues from new sources. *Id.* at 18. The court further concluded that the revenue increase resulting from the 2015 Ordinance was substantial when viewed either through the lens of the business and occupation tax itself or through the broader lens of Lakewood's overall operating budget. *Id.* at 19.

¶13 Finally, the court rejected MetroPCS's arguments that the 1996 Ordinance and the 2015 Ordinance also comprised tax rate increases and tax policy changes

in violation of TABOR. *Id.* at 24, 26. Because the court had concluded that both Ordinances constituted new taxes and were enacted without advance voter approval, however, the court declared that the Ordinances were unlawful, unenforceable, and void under TABOR. *Id.* at 28.

¶14 Lakewood then appealed the district court's order directly to this court pursuant to section 13-4-102(1)(b), and MetroPCS cross-appealed.

II. Analysis

¶15 We begin by setting forth the applicable standard of review. We then describe the TABOR principles that are pertinent to this case. Finally, we apply those principles to the Ordinances at issue here.

A. Standard of Review

¶16 We review matters of constitutional and statutory interpretation de novo. *Griswold v. Nat'l Fed'n of Indep. Bus.*, 2019 CO 79, ¶ 30, 449 P.3d 373, 380. Statutes are entitled to a presumption of constitutionality, rooted in the separation of powers doctrine, that requires courts to respect the roles of the legislative and executive branches in enacting laws. *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 30, 467 P.3d 314, 322. As a result, declaring a legislative enactment unconstitutional is one of the gravest duties imposed on a court. *People v. Graves*, 2016 CO 15, ¶ 9, 368 P.3d 317, 322.

¶17 We also review a trial court's order granting or denying a motion for summary judgment de novo. *Griswold*, ¶ 22, 449 P.3d at 378. Summary judgment is appropriate if the pleadings and supporting documents show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c). In considering a motion for summary judgment, a court must afford the nonmoving party the benefit of all reasonable inferences that may be drawn from the undisputed facts and must resolve all doubts against the moving party. *Griswold*, ¶ 24, 449 P.3d at 379.

B. TABOR

¶18 Subject to exceptions not applicable here, TABOR provides, in pertinent part, "Starting November 4, 1992, districts must have voter approval in advance for . . . any new tax." Colo. Const. art. X, § 20(4)(a). Although TABOR does not define what constitutes a "new tax," we have provided some guidance. In particular, we have opined that the word "new" in "new tax" suggests creation, rather than alteration. *TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, ¶ 24, 416 P.3d 101, 106. Accordingly, the expansion of a tax to a new class of goods or activity may constitute a new tax. *See HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236, 242 (Colo. App. 2008) (concluding that the expansion of a use tax from covering only construction and building materials to covering all tangible personal property constituted a new tax).

¶19 A legislative change that causes only an incidental and de minimis revenue increase, however, does not constitute a new tax for TABOR purposes. *TABOR Found.*, ¶ 26, 416 P.3d at 106. To determine if a legislative change causes only an incidental and de minimis revenue increase, we consider whether any revenue increase projected to be generated by a legislative change is incidental to the legislation's purpose, "both as expressed and as effected," and whether that increase in revenue is de minimis as a percentage of the taxing authority's overall tax revenue and budget. *Id.* at ¶¶ 28–29, 416 P.3d at 106–07.

C. Application

¶20 Applying the foregoing principles to the facts before us, we conclude that both the 1996 Ordinance and the 2015 Ordinance constituted new taxes that required advance voter approval.

¶21 The plain language of the 1969 Ordinance expressly limited its application to a narrow class of providers, namely, utility companies that maintained a telephone exchange and lines connected therewith and that supplied local exchange telephone service in Lakewood. 1969 Ordinance, § 1. The 1996 Ordinance expanded the class of providers subject to the tax to all persons, including non-utilities, who provided cellular service to any business or entity as its primary local telecommunications service. 1996 Ordinance, § 1 (amending sections 5.32.015 and 5.32.020 of the Lakewood Municipal Code). A provider thus

no longer had to be a utility company, maintain an exchange, or provide exchange service to be subject to the tax. The 2015 Ordinance then further expanded the business and occupation tax to cover the provision of *all* cellular service to *any* business, person, or entity. 2015 Ordinance, § 13 (again amending sections 5.32.015 and 5.32.020 of the Lakewood Municipal Code). As a result, the 2015 Ordinance brought within the tax's scope, for the first time, providers that supply cellular service to *any* person (rather than only to a business or entity) and to those providing cellular service when the service is not the recipient's primary local telecommunications service. *Id.*

¶22 Both the 1996 Ordinance and the 2015 Ordinance thus created new tax liabilities for previously untaxed types of providers and types of services. Accordingly, each Ordinance generated new revenue not only because new providers entered the market, but also because some providers were subject to the tax when they would not have been before each Ordinance's enactment.

¶23 We view this set of facts as analogous to that in *HCA-Healthone*. There, voters had approved a use tax that was "expressly limited" to construction and building materials purchased at retail. *HCA-Healthone*, 197 P.3d at 238, 241. Several years later, the City of Lone Tree amended this use tax to cover "any article of tangible personal property, purchased at retail." *Id.* at 238. A division of the

court of appeals concluded that such an "expansion" of the use tax constituted a new tax. *Id.* at 242.

¶24 Just as the original use tax in *HCA-Healthone* was expressly limited to a specific type of good, the business and occupation tax enacted in the 1969 Ordinance was expressly limited to a specific type of telecommunications provider and a specific type of telecommunications service. And just as the amended use tax in *HCA-Healthone* expanded the use tax's scope to reach a broader class of goods, both the 1996 Ordinance and the 2015 Ordinance expanded the scope of the business and occupation tax to reach a broader class of telecommunications providers and services.

¶25 We are unpersuaded by Lakewood's argument that neither the 1996 Ordinance nor the 2015 Ordinance created new taxes because Lakewood's business and occupation tax has always functioned as a tax on the business and occupation of providing telecommunications services. The Lakewood City Council could have drafted the 1969 Ordinance to enact a tax on the business and occupation of providing telecommunications services, but it did not do so. Rather, it used specific language to enact a tax "against utility companies" on the business and occupation of "maintaining a telephone exchange and lines connected therewith in [Lakewood] and of supplying local exchange telephone service to the inhabitants of the city." 1969 Ordinance, § 1. Confining the tax in this way to

utilities that maintained physical infrastructure was consistent with the intent to "compensate the public for the utilities' use of the public right-of-way," as recognized in the minutes of a January 30, 1978 Lakewood Finance and Operations Committee meeting, in which the Committee reviewed the history of the business and occupation tax for utilities in general and Mountain Bell in particular. In contrast, since before the adoption of the 1996 Ordinance, Lakewood has imposed a sales or use tax on "telecommunication services," City of Lakewood, Colo., Mun. Code, ch. 3.01.120(3)(a) (June 30, 1990) (predecessor to what is now City of Lakewood, Colo., Mun. Code, ch. 3.01.420(S)(1)), an indication that the City Council knows how to tax telecommunications services broadly when it wishes to do so.

¶26 Concluding that the 1996 Ordinance and 2015 Ordinance raised new revenues from the imposition of the amended business and occupation tax does not, however, end our inquiry. We must next decide whether the legislative changes reflected in these Ordinances caused only incidental and de minimis revenue increases because, if they did, then the Ordinances would not constitute new taxes for TABOR purposes. *See TABOR Found.*, ¶ 26, 416 P.3d at 106. We thus first consider whether the revenue generated by each Ordinance was incidental to its purpose "both as expressed and as effected." *Id.* at ¶ 28, 416 P.3d at 106.

¶27 We acknowledge that neither Ordinance expressed revenue generation as a purpose. To the contrary, the 1996 Ordinance recognized the newly competitive nature of basic local telecommunications service and expressed that "[a] business and occupation tax on providers of basic local telecommunications service should be uniform and nondiscriminatory and should not create barriers to entry." 1996 Ordinance, § 1 (amending section 5.32.010(E) of the Lakewood Municipal Code). Likewise, the 2015 Ordinance expressed an intent to "eliminate a potential barrier to the entry of new providers into the business of providing basic local exchange service within Lakewood." 2015 Ordinance, § 13 (amending section 5.32.010(G) of the Lakewood Municipal Code). These expressed purposes are not alone dispositive, however, because a taxing district cannot exempt itself from TABOR's restrictions and requirements simply by declaring that a legislative change has a purpose other than revenue generation. *See Barber v. Ritter*, 196 P.3d 238, 250 n.15 (Colo. 2008) (acknowledging that a statutory charge may be labeled a fee but in effect be a tax); *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 38 (Colo. 2000) (noting that a legislative pronouncement regarding a legal question is instructive but not dispositive); *People v. Becker*, 413 P.2d 185, 186 (Colo. 1966) ("It is a familiar and well documented rule of law that taxation is concerned with realities and that, in considering tax matters, substance and not form should govern."); *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) ("It

is true that Congress cannot change whether an exaction is a tax or a penalty for *constitutional* purposes simply by describing it as one or the other.").

¶28 Turning, then, to the effected purpose of the Ordinances, we conclude that it was obvious when each Ordinance was enacted that it would have the effect of raising revenue. Each Ordinance expanded the business and occupation tax to previously untaxed telecommunications services. In fact, Lakewood explicitly recognized in each Ordinance the likelihood that new providers would be subject to the tax. For example, the 1996 Ordinance included the finding, "The City expects that in the future numerous companies may provide basic local telecommunications service within Lakewood." 1996 Ordinance, § 1 (amending section 5.32.010(C) of the Lakewood Municipal Code). And the 2015 Ordinance included the finding, "The City recognizes that multiple companies now provide basic local exchange service within Lakewood and more are likely to do so in the future." 2015 Ordinance, § 13 (amending section 5.32.010(C) of the Lakewood Municipal Code).

¶29 We further note that Lakewood could have achieved the expressed purposes of having a uniform and nondiscriminatory tax structure and eliminating barriers to entry by rescinding the pertinent business and occupation tax altogether, relying solely on the existing and indisputably applicable sales tax to generate revenue. Lakewood chose instead, however, to expand the reach of its

business and occupation tax. In making this observation, we, of course, do not suggest that any law required Lakewood to eliminate its business and occupation tax. We note only that Lakewood's decision to expand that tax as it did weighs against the conclusion that raising revenue was merely an incidental effect of its legislative changes.

¶30 In so concluding, we view the scenario before us as materially distinct from that in *TABOR Foundation*. There, the General Assembly passed a bill adding some exemptions and removing other exemptions from the sales taxes of two taxing districts, in order to make the exemptions consistent with state sales tax exemptions. *TABOR Found.*, ¶ 1, 416 P.3d at 102. We concluded that because the bill both started taxing some items and stopped taxing others, its function was consistent with the legislature's goal of simplifying the collection and administration of taxes for the districts, and thus, increasing revenue was only an incidental effect of the bill. *Id.* at ¶ 28, 416 P.3d at 106. In contrast, here, the Ordinances at issue changed Lakewood's business and occupation tax in only one direction: both Ordinances added new tax liability but did not remove any tax liability.

¶31 For these reasons, we conclude that although revenue generation may not have been the only purpose for which Lakewood enacted the Ordinances at issue, revenue generation was not merely incidental to their enactment. And because

we have concluded that the Ordinances caused more than incidental increases in revenue, we need not address whether these increases were also more than de minimis. *See id.* at ¶ 26, 416 P.3d at 106 (noting that a legislative change that causes both an incidental and a de minimis revenue increase is not a new tax for TABOR purposes).

¶32 Accordingly, we conclude that both the 1996 Ordinance and the 2015 Ordinance constituted new taxes that required advance voter approval under TABOR. Because Lakewood did not obtain such approval before enacting either Ordinance, both Ordinances violate TABOR and therefore are void.

¶33 In light of our foregoing conclusion, we need not address the remaining questions raised on appeal regarding whether the Ordinances also constituted tax rate increases or tax policy changes resulting in net revenue gains.

III. Conclusion

¶34 For these reasons, we affirm the district court's judgment concluding that the 1996 Ordinance and the 2015 Ordinance were enacted in violation of TABOR and therefore are void and unenforceable. Pursuant to C.A.R. 39.1, we exercise our discretion to remand this case to the district court to address MetroPCS's request for appellate fees and costs under TABOR, Colo. Const. art. X, § 20(1).