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2026 CO 13

No. 25SA334, *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2025-2026 #158 – Single Subject.*

The supreme court holds that Initiative #158 encompasses multiple subjects in violation of article V, section 1(5.5) of the Colorado Constitution and section 1-40-106.5, C.R.S. (2025). Initiative #158 violates the single subject requirement by combining voter approval requirements for certain fees with a change to the definition of any existing or new “fee” as that term is used in Colorado law. The court therefore reverses the actions of the Title Board and remands this matter to the Board with directions to strike the title, ballot title, and submission clause, and to return the Initiative to its Proponents.

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

2026 CO 13

Supreme Court Case No. 25SA334
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025)
Appeal from the Ballot Title Setting 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.

Title Board Action Reversed

en banc

March 9, 2026

Attorneys for Petitioner:

Tierney Lawrence Stiles LLC
Edward T. Ramey
Denver, Colorado

Attorneys for Respondents:

West Group Law & Policy

Suzanne M. Taheri
Englewood, Colorado

Attorneys for Title Board:

Philip J. Weiser, Attorney General

Lily E. Nierenberg, Senior Assistant Attorney General
Denver, Colorado

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

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 In this original proceeding pursuant to section 1-40-107(2), C.R.S. (2025), Joshua Mantell (“Petitioner”) challenges the actions of the Title Board in setting the title, ballot title, and submission clause for proposed Initiative 2025–2026 #158 (“Initiative #158” or “Initiative”).¹ We conclude that Initiative #158 encompasses multiple subjects in violation of article V, section 1(5.5) of the Colorado Constitution and section 1-40-106.5, C.R.S. (2025). Accordingly, we reverse the actions of the Title Board.

I. Background

¶2 Colorado’s Taxpayer’s Bill of Rights (“TABOR”), Colo. Const. art. X, § 20, limits the spending and taxing powers of state and local government. *Havens v. Bd. of Cnty. Comm’rs*, 924 P.2d 517, 519–20 (Colo. 1996). Among other things, TABOR generally requires voter approval of any “new tax, tax rate increase, . . . extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.” Colo. Const. art. X, § 20(4)(a). Given TABOR’s strict voter approval requirements, the determination that a particular charge is a “tax” is consequential. Yet TABOR itself does not define “tax” (or “tax rate increase,” or “tax policy change,” for that matter). Instead, the definition of what constitutes a

¹ The text and title of Initiative #158 are attached as Appendix A.

“tax,” as well as the distinction between a “tax” and a government-imposed “fee,” has been developed in case law by Colorado appellate courts. See *Griswold v. Nat’l Fed’n of Indep. Bus.*, 2019 CO 79, ¶ 12, 449 P.3d 373, 377; *Colo. Union of Taxpayers Found. v. City of Aspen*, 2018 CO 36, ¶¶ 26–27, 418 P.3d 506, 513–14; *Barber v. Ritter*, 196 P.3d 238, 241–42, 249–50 (Colo. 2008); *Tabor Found. v. Colo. Bridge Enter.*, 2014 COA 106, ¶¶ 21–26, 39–42, 353 P.3d 896, 901, 903.

¶3 The distinction that has developed in Colorado case law between a tax and a fee is important, as fees are not (presently) subject to TABOR’s voter approval requirements. Under that case law, a charge is a “tax” if its primary purpose is to defray general governmental expenses. *Barber*, 196 P.3d at 249. A charge that only incidentally or indirectly defrays general governmental expenses or raises revenue is not necessarily a tax. *Id.* at 249–50.

¶4 By contrast, a charge is a “fee” if “its primary purpose is to defray the cost of services provided to those charged.” *Id.* at 250.

[I]f 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.

Colo. Union of Taxpayers Found., ¶ 26, 418 P.3d at 513; see also *Griswold*, ¶ 12, 449 P.3d at 377. A fee must bear a reasonable relationship to the cost of services provided.

Colo. Union of Taxpayers Found., ¶ 27, 418 P.3d at 514; see also *Bloom v. City of Fort*

Collins, 784 P.2d 304, 310–11 (Colo. 1989); *Tabor Found.*, ¶¶ 40, 42, 353 P.3d at 903 (holding that a charge is a fee “as long as [the] 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 the actual and direct individual usage of that benefit).

II. Facts and Procedural History

¶5 Twelve years ago, we considered a ballot initiative that sought to narrow the definition of “fee” under Colorado law. See *In re Title, Ballot Title & Submission Clause for 2013–2014 #129 (“Initiative #129”)*, 2014 CO 53, ¶¶ 16–19, 333 P.3d 101, 105. Initiative #129 sought to amend TABOR by redefining “fee” as “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.* at ¶ 3, 333 P.3d at 103. This proposed definition applied to “fee” “as used in the Colorado Constitution, Colorado Revised Statutes, Codes, Directives, and all Public Colorado Legal Documents [sic].” *Id.* (error in the text of Initiative #129). We upheld the Title Board’s setting of title for Initiative #129, reasoning that despite the broad applicability of the proposed changed definition of “fee,” the initiative did not violate the single subject requirement. *Id.* at ¶¶ 2, 16–19, 333 P.3d at 103,

105. Although the title was set for Initiative #129, the measure ultimately did not proceed to the ballot.

¶6 In this case, Michael Fields and Suzanne Taheri (“Proponents”) are the designated proponents of Initiative #158, which they seek to place on the ballot for the 2026 general election. Proponents assert that the single subject of Initiative #158 is to “require voter approval of certain fees.” Initiative #158 would add a new subsection (4.5) to TABOR entitled “Voter approval of fees.” This new subsection would require voter approval of certain fees imposed by state law (unless charged by an institution of higher education) and would redefine any existing or new “fee” as that term is “used in Colorado law.”

¶7 Specifically, subsection (4.5)(a) of the proposed amendment provides that, starting on January 1, 2027, voter approval at a statewide election would be required for any fee established or increased with projected or actual revenue totaling over \$100,000,000 in the first five fiscal years. Subsection (4.5)(a) also sets forth specific language to be included in the ballot titles presented to voters. To calculate whether the projected or actual revenue of a fee would meet the threshold to trigger the statewide voter approval requirement, subsection (4.5)(b) requires the aggregation of fees collected to fund “similar subjects or purposes created or increased in the same calendar year or within the five preceding years.”

Subsection (4.5)(c) excludes fees charged by institutions of higher education from the statewide voter approval requirements.

¶8 Next, subsection (4.5)(d) redefines “[f]ee” as used in Colorado law” to mean “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.” This language is identical to the definition proposed twelve years ago in Initiative #129.² *In re 2013–2014 #129*, ¶ 3, 333 P.3d at 103. Although the voter approval provisions of Initiative #158 apply only prospectively, the proposed new definition of “fee” is not so limited. The title set for the Initiative states that it would “define any *existing* or new ‘fee,’” and the parties do not dispute this. (Emphasis added.)

¶9 Through this proposed amendment to TABOR, Initiative #158 would make substantial changes to the definition of “fee” throughout Colorado law. Under current case law, for example, a fee must simply defray the cost of services provided to those charged. *Barber*, 196 P.3d at 241–42. But under the proposed

² Although Initiative #129 applied to “the Colorado Constitution, Colorado Revised Statutes, Codes, Directives, and all Public Colorado Legal Documets [sic],” *In re 2013–2014 #129*, ¶ 3, 333 P.3d at 103 (error in the text of Initiative #129), Initiative #158’s broad phrasing “as used in Colorado law” is not meaningfully different in scope. As relevant here, the proposed change to the definition of “fee” is identical in both initiatives.

new constitutional definition, to qualify as a fee, a charge would have to be “voluntarily incurred” in exchange for a “specific benefit conferred on the payer.” And while the judicially developed definition of a “fee” merely requires the charge to bear a reasonable relationship to the cost of services provided, *Colo. Union of Taxpayers Found.*, ¶ 27, 418 P.3d at 514, the proposed new definition would require that the charge “reasonably approximate the payer’s fair share of the costs.” In short, the proposed new constitutional definition significantly narrows the types of charges that currently qualify as a “fee.”

¶10 On October 3, 2025, Proponents submitted a final version of Initiative #158 to the Secretary of State. On October 15, 2025, the Title Board conducted a hearing for the Initiative and set the title in accordance with section 1-40-106(1), C.R.S. (2025). On October 22, 2025, Petitioner filed a motion for rehearing, arguing that the Initiative violated the single subject requirement and that the title failed to describe important aspects of the measure. In relevant part, Petitioner argued that changing the definition of “fee” as it is “used in Colorado law” without an effective date could have the unintended effect of retroactively nullifying existing fees, superseding judicial precedent, and overriding the public’s understanding of what constitutes a “fee.”

¶11 Following a rehearing on November 5, 2025, the Title Board concluded that the Initiative contained a single subject but modified the title in response to

concerns raised by Petitioner. Specifically, the Title Board added language explaining that the definition of “fee” applies to “any *existing* or new ‘fee’ authorized by Colorado law and imposed by the state or any local government or special district.” (Emphasis added.) Following the rehearing, the title set for Initiative #158 states:

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.

¶12 Petitioner now challenges the Title Board’s actions under section 1-40-107(2). Petitioner contends that the Title Board erred in setting the title because the Initiative contains multiple subjects in violation of article V, section 1(5.5) of the Colorado Constitution and section 1-40-106.5. Specifically, Petitioner argues that the Initiative contains two subjects: (1) requiring statewide voter approval for certain fees and (2) substantively changing the definition of “fee” for both new and existing government charges.

III. Standard of Review

¶13 In reviewing Title Board decisions, “we employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title & Submission Clause for 2015–2016 #132*, 2016 CO 55, ¶ 10, 374 P.3d 460, 464 (quoting *In re Title, Ballot Title & Submission Clause for 2011–2012 #3*, 2012 CO 25, ¶ 6, 274 P.3d 562, 565). Only in a clear case will we overturn the Title Board’s finding that an initiative contains a single subject. *Id.*

¶14 Because our review of the Title Board’s actions is limited, we do not address the merits of a proposed initiative or suggest how it might be applied if enacted. *Id.* at ¶ 11, 374 P.3d at 464. However, we do examine its wording to determine whether the proposed initiative comports with the single subject and clear title requirements. *Id.* As we conduct this limited review, we employ the general rules of statutory construction and give words and phrases their plain and ordinary meanings. *Id.*

IV. Analysis

A. The Single Subject Requirement

¶15 In Colorado, “every constitutional amendment or law proposed by initiative” must be “limited to a single subject, which shall be clearly expressed in its title.” § 1-40-106.5(1)(a); *see also* Colo. Const. art. V, § 1(5.5) (“No measure shall

be proposed by petition containing more than one subject, which shall be clearly expressed in its title . . .”).

¶16 The single subject requirement serves two functions. First, it “ensure[s] that each proposal depends upon its own merits for passage.” *In re 2015–2016 #132*, ¶ 13, 374 P.3d at 465 (quoting *In re Proposed Initiative “Pub. Rts. in Waters II,”* 898 P.2d 1076, 1078 (Colo. 1995)); *see also* § 1-40-106.5(1)(e)(I) (explaining that the single subject requirement “forbid[s] the treatment of incongruous subjects in the same measure . . . for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits”). In other words, the single subject requirement prevents proponents from engaging in “log rolling” tactics: combining multiple subjects in hopes of attracting support from various factions with different or conflicting interests. *In re 2015–2016 #132*, ¶ 13, 374 P.3d at 465 (quoting *In re Title, Ballot Title & Submission Clause for 2013–2014 #76*, 2014 CO 52, ¶ 32, 333 P.3d 76, 85).

¶17 Second, the single subject requirement “prevent[s] surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II). It seeks to stop the “inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *In re 2015–2016 #132*, ¶ 14, 374 P.3d at 465 (quoting *In re Title*,

Ballot Title & Submission Clause for Proposed Initiative 2001–2002 #43, 46 P.3d 438, 442 (Colo. 2002)).

¶18 An initiative satisfies the single subject requirement when it tends to effect or carry out one general objective or purpose. *Id.* at ¶ 15, 374 P.3d at 465. While the initiative may include minor provisions necessary to effectuate its general objective or purpose, the subject matter of the initiative must be “necessarily and properly connected rather than disconnected or incongruous.” *Id.* (quoting *In re 2011–2012 #3*, ¶ 9, 274 P.3d at 565).

¶19 Conversely, an initiative violates the single subject requirement when it “relates to more than one subject and has at least two distinct and separate purposes.” *Id.* at ¶ 16, 374 P.3d at 465 (quoting *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶ 11, 328 P.3d 155, 159). It does not matter if the initiative’s purposes relate to the same general concept or subject, or if its provisions can be grouped under an overarching theme; an initiative that is susceptible to log rolling or that risks misleading voters will not satisfy the single subject requirement. *See id.*

B. Proposed Initiative #158 Violates the Single Subject Requirement

¶20 Petitioner argues that the new definition of “fee” is a surreptitious second subject “coiled in the folds” of Initiative #158. Petitioner contends that adopting a significantly narrower definition of “fee” to be used throughout Colorado law and

applicable to both existing and new fees is not necessary to create a new voter approval requirement for certain fees. As such, Petitioner argues, Initiative #158 hides a second subject from unwary voters. Petitioner also notes that some advocates of fiscal constraint view the current judicially developed distinction between taxes and fees as “a TABOR loophole in dire need of a remedy.” Opening Brief for Petitioner at 8. In other words, Petitioner identifies a constituency interested specifically in narrowing the definition of “fee,” suggesting a concern that this aspect of the Initiative invites log rolling.

¶21 Proponents counter that Initiative #158 contains only one subject because its central purpose is to require voter approval of certain fees, and defining “fee” is necessary to effectuate that purpose. They assert that “[w]ithout the new definition, the voter approval requirement embedded in the [I]nitiative would be unenforceable and meaningless.” Answer Brief for Respondents at 3. We are unpersuaded.

¶22 Instead, we agree with Petitioner that the redefinition of “fee” in this Initiative is neither necessarily nor properly connected to its purpose of requiring voter approval of fees. Rather, this Initiative proposes a significant—and retroactive—change to the definition of all fees under Colorado law, separate and apart from any voter approval requirement.

¶23 Despite Proponents' contentions, *changing* the current definition of "fee" is not necessary to effectuate the purpose of this Initiative. We see no reason, and Proponents do not explain, why the voter approval requirement would be unenforceable and meaningless without the proposed new definition of "fee." If the definitional provision were removed, then the current judicially developed understanding of "fee" would still give full effect to the aggregation and voter approval provisions. *See, e.g., Barber*, 196 P.3d at 250 ("[A] charge is a 'fee,' . . . 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.").

¶24 Importantly, we have previously held that changing the current definition of "fee" is a subject unto itself. In *In re 2013–2014 #129*, we considered a definition identical to the one before us today. There, we held that "Initiative #129 'tends to effect or carry out one general objective or purpose'—that is, changing the definition of 'fee.'" *In re 2013–2014 #129*, ¶ 17, 333 P.3d at 105 (quoting *In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 #256*, 12 P.3d 246, 253 (Colo. 2000)). The identical change to the definition of "fee" to be "used in Colorado law" incorporated into Initiative #158 thus presents one objective or purpose. *See id.* Initiative #158, however, plainly presents a second purpose: requiring statewide voter approval of certain fees. Put succinctly, Initiative #158

is Initiative #129 *plus* a new voter approval requirement. As a result, Initiative #158 presents a danger of log rolling because it may attract a “yes” vote from voters who support statewide voter approval of fees, but who would not support narrowing the definition of existing and new fees under Colorado law. Conversely, it could attract support from voters who support changing the existing definition of “fee” throughout Colorado law, but who would not support a new statewide voter approval requirement for certain fees.

¶25 Finally, we have previously expressed concern about initiatives that propose to make significant changes beyond their central purpose. *In re 2015–2016 #132*, ¶¶ 17, 19, 374 P.3d at 465–66 (explaining that the initiatives violated the single subject requirement by “propos[ing] a significant change to the mission and role of the existing Supreme Court Nominating Commission” when their central purpose was “redistricting in Colorado”). Here, the proposed new constitutional definition of “fee” significantly narrows the types of charges that currently qualify as a “fee,” potentially triggering the reclassification of countless existing fees under Colorado law and rendering some no longer exempt from TABOR.³ These significant changes are not necessarily connected to Proponents’ stated central

³ We do not opine on how, precisely, this proposed new definition would apply to existing fees if enacted. We must, however, examine the wording of this Initiative to ensure it complies with the single subject requirement. *See In re 2015–2016 #132*, ¶ 11, 374 P.3d at 464.

purpose of Initiative #158, which is to prospectively require voter approval of fees that exceed a certain revenue threshold.

¶26 To be clear, we take no issue with an initiative that seeks to change the judicially developed definition of “fee” under Colorado law. Indeed, we have held that such an objective, alone, does not violate the single subject requirement. *In re 2013–2014 #129*, ¶ 19, 333 P.3d at 105. But Initiative #158 impermissibly combines that objective with the additional objective of imposing new statewide voter approval requirements for certain fees.

¶27 Because narrowing the definition of “fee” under all of Colorado law is not necessary or proper to create a voter approval requirement for fees, Initiative #158 runs the risk of surprising voters with a surreptitious, significant change to the definition of “fee” in Colorado. This proposed change is an impermissible second subject “coiled up in the folds” of its proposal. *In re 2015–2016 #132*, ¶ 26, 374 P.3d at 467 (quoting *In re 2013–2014 #76*, ¶ 32, 333 P.3d at 85).

¶28 In sum, we agree with Petitioner that Initiative #158’s change to the definition of any existing or new “fee” as that term is used in Colorado law constitutes an impermissible second subject in violation of article V, section 1(5.5) of the Colorado Constitution.

V. Conclusion

¶29 Initiative #158 violates the single subject requirement by combining voter approval requirements for certain fees with a change to the definition of any existing or new “fee” as that term is used in Colorado law. Accordingly, we reverse the actions of the Title Board and remand this matter to the Board with directions to strike the title, ballot title, and submission clause, and to return the Initiative to its Proponents.

APPENDIX A – Initiative #158 and Title

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, section 20 of article X, add (4.5) as follows:

Section 20. The taxpayer’s bill of rights.

(4.5) Voter approval of fees.

(a) ON OR AFTER JANUARY 1, 2027, 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 MUST BE APPROVED AT A STATEWIDE ELECTION. BALLOT TITLES FOR SUCH FEES SHALL BEGIN, “SHALL A FEE BE (IMPOSED OR INCREASED) TO COLLECT REVENUE TOTALING (ESTIMATED FULL DOLLAR COLLECTION FOR FIRST FIVE FISCAL YEARS) IN ITS FIRST FIVE YEARS . . . ?”

(b) FEES SUBJECT TO THE PROVISIONS OF SUBSECTION (4.5)(a) OF THIS SECTION COLLECTED TO FUND SIMILAR SUBJECTS OR PURPOSES CREATED OR INCREASED IN THE SAME CALENDAR YEAR OR WITHIN THE FIVE PRECEDING YEARS SHALL BE AGGREGATED IN CALCULATING THE APPLICABILITY OF THIS SUBSECTION (4.5).

(c) THE REQUIREMENTS FOR VOTER APPROVAL CONTAINED IN THIS SUBSECTION (4.5) DO NOT APPLY TO FEES CHARGED BY INSTITUTIONS OF HIGHER EDUCATION.

(d) “FEE” 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.

(e) SUBSECTIONS (4.5)(a) TO (4.5)(c) OF THIS SECTION APPLY TO A FEE ENACTED OR INCREASED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4.5).

Ballot Title Setting Board

Proposed Initiative 2025-2026 #158

The title as designated and fixed by the Board is 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 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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be 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?