

COLORADO TITLE SETTING BOARD

Michael Fields and Steven Ward, Objectors

MOTION FOR REHEARING ON INITIATIVE 2025-2026 #123

Michael Fields and Steven Ward, registered electors of the State of Colorado object to the determination of the Title Board regarding single subject for Proposed Initiative 2025-2026 #123 (“Initiative #123”). Proponents maintain that the measure constitutes a single subject and that the Board should set title accordingly.

On August 6, 2025, the Title Board considered Initiative #123 in a series of initiatives that were filed by the Proponents including two similar initiatives, 2025-2026 #121 and 2025-2026 #122. The Board set title for both initiatives preceding #123 but declined title setting for #123 on single subject grounds.

All three of the initiatives in the series make changes to TABOR to enhance taxpayer protection from taxes which are misclassified by the government as fees in order to escape the voter approval requirements of TABOR. Initiative #123 is distinguished from #121 and #122 because it further expands voter protections against unauthorized tax increases by defining “tax expansion” and including tax expansions in TABOR’s voter approval requirements.

The purpose of Initiative #123 is clear: it ensures that the voters possess the sole authority to decide upon the cost of government. Initiative #123 seeks to close the creative loopholes that elected officials have sewn into the fabric of TABOR since its passage. Such a task cannot be accomplished unless both taxes and fees are addressed simultaneously. Contrary to the Board’s findings, voter approval for taxes and voter approval for fees are a single subject. In the case of both taxes and fees, the government extracts money from the taxpayer’s pocket.

The single-subject requirement is designed to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures which might not otherwise be approved by voters on the basis of the merits of those discrete measures. *In re Proposed Initiative for an Amendment to the Constitution of the State of Colorado Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 589 (Colo. 1995) *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995) *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994)

The requirement must be liberally construed to “avoid unduly restricting the initiative process.” *Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155, 160 (Colo. 2014), quoting *In re Title, Ballot Title and Submission Clause for 2009-2010 #24*, 218 P.3d 350, 353 (Colo. 2009).

“[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law.” *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995*, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II, 898 P.2d 1076, 1080 (Colo.1995). The Title Board need only determine that the initiative “encompasses *related* matters” to establish a single subject. *In re 2013-2014 #89*, 328 P.3d at 177, citing *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 900 P.2d 104, 113 (Colo.1995) (Scott, J., concurring).

Initiative #123 has the singular purpose of requiring voter approval on certain government charges. These include certain fees and taxes. The Board incorrectly separates taxes and fees as different subjects. However, they are properly and necessarily connected because both a tax and a fee involve money traveling from the pocket of the citizen to the government coffers. Initiative #123 is designed to reinstate the right of Colorado residents to consent whenever the government demands more money from them. “[J]ust because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected [does not mean] that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected.” *In re Title v. John Fielder*, 12 P.3d 246, 254 (Colo. 2000), citing *In re Proposed Initiative for 1999-2000 # 25*, 974 P.2d at 463.

The initiative will not lead to the “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative” because there are no embedded provisions that would lead to voter surprise or fraud. *In re 2011-2012 No. 45*, 274 P.3d at 582. The initiative is limited to a single matter of requiring a vote on certain government charges, whether they are taxes or taxes masquerading as fees. There are no hidden provisions that are unrelated to the initiative’s “central theme.” See *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101, 104 (Colo. 2014).

Past caselaw related the adoption of Colo. Const. Art. 10, § 20 (“TABOR”) does not lead to a conclusion that fees and taxes are distinct subjects. Although the Colorado Supreme Court has found in past dicta that TABOR would not have survived a single subject challenge, this is because TABOR adopted several disconnected provisions. Tabor provisions require voter approval on taxes, government spending and multi-year fiscal debt obligations. TABOR also prohibits state mandates, limits emergency reserves, changed the property valuation process and changed election procedures not necessarily related to TABOR. No case drilled down into the details of types of government charges as the cause of single subject issues.

In 1995, after the passage of the single subject rule, the Court analyzed an initiative that established an array of tax credits and amended procedures related to future voter initiatives. It was not the various tax credits that caused the single subject problem, rather it was the change to the tax credits coupled with a change in initiative processes for all future initiatives. *In re Amend Tabor# 25*, 900 P.2d 121 (1995). The Court further commented in that case, “Amendment 1 itself was not subject to the single subject requirement and contains multiple subjects.” *Id.* at 126.

In 1996 another proposal to amend TABOR was found to have multiple subjects where the initiative was found to cover, “subjects ranging from the property valuation administrative

process to elections to emergency taxes.” Court v. Pool (In re Initiative 1996-4), 916 P.2d 528, 533 (Colo. 1996).

This measure is unlike the TABOR initiative cases cited above, as it is limited to only expanding the voting requirement for certain government charges. There are no surreptitious or disconnected subjects that would lead to voter confusion. Voters choosing to expand their voting options on government charges will support the measure and those that don’t won’t.

Initiative #123 is a single subject, and the Board should proceed to set title.

Respectfully submitted this 13th day of August, 2025.

/s/ Suzanne Taheri

West Group
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