

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to C.R.S. § 1-40-107(2)
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2013-2014
#129 (“Definition of ‘Fee’”)

Petitioner: ANTHONY MILO

v.

**Respondents: PETER COULTER and LISA
BRUMFIEL**

and

**Title Board: SUZANNE STAIERT; DANIEL
DOMENICO; and JASON GELENDER.**

Attorneys for Petitioner:

Chip G. Schoneberger (Reg. No. 41922)
Foster Graham Milstein & Calisher, LLP
360 S. Garfield Street, 6th Floor
Denver, Colorado 80209
Phone: (303) 333-9810
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E-Mail: cschoneberger@fostergraham.com

COURT USE ONLY

Case No.:

**PETITION TO REVIEW FINAL ACTION OF BALLOT TITLE SETTING
BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #129
 (“Definition of ‘Fee’”)**

Anthony Milo (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Board with respect to the title, ballot title, and submission clause for Initiative 2013-2014 #129 (“Definition of ‘Fee’”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #129

Peter Coulter and Lisa Brumfiel (“Proponents”) proposed Initiative 2013-2014 #129 (“Proposed Initiative”). A review and comment hearing was held before representatives of the Office of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on April 17, 2014 to establish the Proposed Initiative’s single subject and set title. On April 23, 2014, Petitioner filed a Motion for Rehearing, alleging that the Proposed Initiative violated the single-subject requirement, and that the title did not fairly and correctly express the true meaning of the Proposed Initiative and thus will mislead voters. The rehearing was held on April 25, 2014, at which time the Title Board denied the Motion for Rehearing.

B. Jurisdiction

Petitioner is entitled to a review before this Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. *See* C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by Petitioner; (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Title Board. Petitioner believes the Title Board erred in denying certain aspects of the Motion for Rehearing. Consequently, this matter is properly before this Court.

ADVISORY STATEMENT OF GROUNDS FOR APPEAL

The following is an advisory list of the issues to be addressed in Petitioner's brief:

1. Whether the Title Board lacked jurisdiction to set title because the Proposed Initiative violates the single-subject rule by purporting to have broad application across not only the Colorado Constitution, but all areas of Colorado law,

including “all public Colorado legal documents.” The Title Board cannot comprehend the breadth of the broad application and thus cannot forward the Proposed Initiative to the voters.

2. Whether the Title Board lacks jurisdiction to set title because the Proposed Initiative violates the single-subject rule by addressing the meaning of fee both at the time of imposition and once the fee revenue is held by a governmental entity (superseding *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008)).

3. Whether the title and submission clause unfairly characterizes the Proposed Initiative and fails to reflect its full intent by:

- a. Failing to disclose that it applies to the “Colorado Revised Statutes.”
- b. Failing to disclose that it applies to “codes.”
- c. Failing to disclose that it applies to “directives.”
- d. Failing to disclose that it applies to “all public Colorado legal documents.”
- e. Failing to disclose that it precludes consideration of “ancillary and/or extraneous benefits, as those terms are defined by Black’s Law Dictionary.”
- f. Failing to disclose that it supercedes “conflicting constitutional, state statutory, court findings of fact, local charter, ordinance, or resolution, and other state and local provisions.”
- g. Failing to disclose that it “supercede[s] the Colorado Supreme Courts Findings of Fact in *Barber v. Ritter*.”

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Proposed Initiative violates the single-subject rule and thus the Title Board lacked jurisdiction to set title, or, alternatively, that the title set for the Proposed Initiative is neither fair nor accurate and remand with instructions to cure the foregoing defects.

Respectfully submitted,

FOSTER GRAHAM MILSTEIN &
CALISHER, LLP

By: /s/ Chip G. Schoneberger
Chip G. Schoneberger

Chip G. Schoneberger (Reg. No. 41922)
FOSTER GRAHAM MILSTEIN & CALISHER, LLP
360 S. Garfield Street, 6th Floor
Denver, Colorado 80209
Phone: (303) 333-9810
Fax: (303) 333-9786
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2014, a true and correct copy of the foregoing **PETITION TO REVIEW FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #129 (“Definition of ‘Fee’”)** was served via e-mail, U.S. Mail and/or ICCES to the following:

Peter Coulter
151 Summer Street, #654
Morrison, Colorado 80465
coloradojusticeproject@gmail.com

Lisa Brumfiel
1499 S. Jasper Street
Aurora, Colorado 80017
indoorad@yahoo.com

Maurice Knaizer
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Maurice.Knaizer@state.co.us

/s/ Dyanna Spicher

Dyanna Spicher

In accordance with C.A.R. 30(f), a printed copy of this document with original signature(s) is maintained by Foster Graham Milstein & Calisher, LLP, and will be made available for inspection by other parties or the Court upon request.



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #129 'Definition of Fee'"

.....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 28th day of April, 2014.



A handwritten signature in blue ink, reading "Scott Gessler".

SECRETARY OF STATE

RECEIVED

APR 04 2014

SWARD

2:50 P.M.

2013-2014 #129 - Original

1 Colorado Secretary of State

2 **PROPOSED BALLOT INITIATIVE (ORIGINAL)**

3 **DEFINITION OF "FEE"**

4 TEXT OF THE MEASURE

5
6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

7
8 THE OFFICIAL DEFINITION OF "FEE" AS USED IN THE COLORADO
9 CONSTITUTION, COLORADO REVISED STATUTES, CODES, DIRECTIVES
10 AND ALL PUBLIC COLORADO LEGAL DOCUMENTS IS AS FOLLOWS:

11
12 A FEE IS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN
13 EXCHANGE FOR A SPECIFIC BENEFIT CONFERRED ON THE PAYER,
14 WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER'S FAIR
15 SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING
16 SAID SPECIFIC BENEFIT.

17
18 ANCILLARY AND/OR EXTRANEOUS BENEFITS OF ANY FEE SHALL NOT
19 BE CONSIDERED IN DETERMINING THE VALUE OF SAID FEE.

20
21 SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS.

22
23 ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT
24 AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE
25 OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE
26 CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR
27 RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

28
29 EFFECTIVE DATE.

30
31 UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS
32 OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL
33 DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE
34 GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.
35
36
37

1 Designation of parties representing the proponents for
2 ballot initiative.

3 DEFINITION OF "FEE"

4 Proposal tracking no. 129 Draft version: ORIGINAL DRAFT
5 AMENDED DRAFT, FINAL DRAFT

6 Lisa Brumfiel

7 1499 South Jasper Street Aurora, Colorado 80017

8 Phone 720-275-9730

9 Fax no. 888 698-2967

10 Email: indoorad@yahoo.com

11

12 Peter Coulter (Primary Contact for this initiative.)

13 151 Summer Street #654, Morrison, Colorado 80465

14 Phone 303 720-1811

15 Fax no. 888 698-2967

16 Email: ColoradoJusticeProject@gmail.com

17

18

19

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RECEIVED

APR 04 2014

Colorado Secretary of State

SWARD 2:50 PM

APR 04 2014

Colorado Secretary of State

1 **PROPOSED BALLOT INITIATIVE (AMENDED)**

2 **DEFINITION OF "FEE"**

3 TEXT OF THE MEASURE

4
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

6
7 **SECTION 1. IN THE CONSTITUTION OF THE STATE OF COLORADO,**
8 **AMEND ARTICLE X SECTION 20 ADD AS FOLLOWS:**

9
10
11 THE OFFICIAL DEFINITION OF "FEE" AS USED IN THE COLORADO
12 CONSTITUTION, COLORADO REVISED STATUTES, CODES, DIRECTIVES
13 AND ALL PUBLIC COLORADO LEGAL DOCUMENTS IS AS FOLLOWS:

14
15 A FEE IS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN
16 EXCHANGE FOR A SPECIFIC BENEFIT CONFERRED ON THE PAYER,
17 WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER'S FAIR
18 SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING
19 SAID SPECIFIC BENEFIT.

20
21 ANCILLARY AND/OR EXTRANEOUS BENEFITS, AS THOSE TERMS ARE
22 DEFINED BY BLACKS LAW DICTIONARY, OF ANY FEE SHALL NOT BE
23 CONSIDERED IN DETERMINING THE VALUE OF SAID FEE.

24
25 SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS.

26
27 ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT AS
28 SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE
29 OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE
30 CONFLICTING CONSTITUTIONAL, STATE STATUTORY, COURT FINDINGS
31 OF FACT, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER
32 STATE AND LOCAL PROVISIONS. ALL PROVISIONS OF THIS SECTION
33 SPECIFICALLY SUPERSEDE THE COLORADO SUPREME COURTS FINDINGS
34 OF FACT IN BARBER VS. RITTER.

35 EFFECTIVE DATE.

36
37 UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS
38 OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL

1
2
3
4
5

DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE
GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

Colorado Secretary of State

1 PROPOSED BALLOT INITIATIVE (FINAL VERSION)

2 DEFINITION OF "FEE"

3 TEXT OF THE MEASURE

4
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

6
7 SECTION 1. IN THE CONSTITUTION OF THE STATE OF COLORADO,
8 AMEND ARTICLE X SECTION 20 **ADD** AS FOLLOWS:

9
10
11 THE OFFICIAL DEFINITION OF "FEE" AS USED IN THE COLORADO
12 CONSTITUTION, COLORADO REVISED STATUTES, CODES, DIRECTIVES
13 AND ALL PUBLIC COLORADO LEGAL DOCUMENTS IS AS FOLLOWS:

14
15 A FEE IS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN
16 EXCHANGE FOR A SPECIFIC BENEFIT CONFERRED ON THE PAYER,
17 WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER'S FAIR
18 SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING
19 SAID SPECIFIC BENEFIT.

20
21 ANCILLARY AND/OR EXTRANEIOUS BENEFITS, AS THOSE TERMS ARE
22 DEFINED BY BLACKS LAW DICTIONARY, OF ANY FEE SHALL NOT BE
23 CONSIDERED IN DETERMINING THE VALUE OF SAID FEE.

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28 SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE
29 OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE
30 CONFLICTING CONSTITUTIONAL, STATE STATUTORY, COURT FINDINGS
31 OF FACT, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER
32 STATE AND LOCAL PROVISIONS. ALL PROVISIONS OF THIS SECTION
33 SPECIFICALLY SUPERSEDE THE COLORADO SUPREME COURTS FINDINGS
34 OF FACT IN BARBER VS. RITTER.

35
36 EFFECTIVE DATE.

37
38 UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS
39 OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL

1 DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE
2 GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

3

Ballot Title Setting Board

Proposed Initiative 2013-2014 #129¹

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

An amendment to the Colorado constitution establishing a definition of a "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 the benefit.

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

Shall there be an amendment to the Colorado constitution establishing a definition of a "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 the benefit?

Hearing April 17, 2014:

Single subject approved; staff draft amended; titles set. The Board made one technical correction to the final text of the measure.

Hearing adjourned 10:07 a.m.

¹ Unofficially captioned "Definition of Fee" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

APR 24 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Anthony Milo, Objector

Via email forwarded
by Mark Grueskin
6:22 P.M. S.WARD

vs.

Peter Coulter and Lisa Brumfiel, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #129

Anthony Milo, through legal counsel, Foster Graham Milstein & Calisher, LLP, objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #129 ("Definition of Fee").

On April 17, 2014, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution establishing a definition of a "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 the benefit?

ADVISORY GROUNDS FOR RECONSIDERATION

A. The Board Lacks Jurisdiction to Set a Title for #129 Under Article V, § 1(5.5) of the Colorado Constitution Because the Measure Contains Multiple Subjects

1. The measure is unconstitutional because it contains more than one subject. Colo. Const., Art. V, § 1(5.5); see also C.R.S. § 1-40-106.5. A measure violates the single-subject requirement when it 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. See *In re Initiative No. 25*, 974 P.2d 458, 463 (Colo. 1999). The measure purports to have broad application across not only the Colorado constitution, but all areas of Colorado law, including "Colorado revised statutes, codes, directives and all public Colorado legal documents."
2. The Board cannot set title because it cannot possibly comprehend the breadth of the measure's application to "all public Colorado legal documents" sufficient to state a single subject. See *In re Initiative No. 25*, 974 P.2d 458, 463 (Colo. 1999) ("if the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters").

3. The measure violates the single-subject requirement because it addresses both the meaning of fees at the point they are imposed (ln. 15-19) as well as the hidden subject of the use of those fee revenues once held by a governmental entity (ln. 32-34), by expressly superseding *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

B. Even if the Board has Jurisdiction to Set Title for #129, the Title it Set is Misleading and Not Reflective of the Proponents' Intent

1. The Board must set a title that clearly, accurately, and fairly characterizes the proposed initiative. *In re Initiative No. 200A*, 992 P.2d 27, 30 (Colo. 2000).
 - a. The title fails to disclose that it applies to the "Colorado Revised Statutes."
 - b. The title fails to disclose that it applies to "codes."
 - c. The title fails to disclose that it applies to "directives."
 - d. The title fails to disclose that it applies to "all public Colorado legal documents."
 - e. The title fails to disclose that it precludes consideration of "ancillary and/or extraneous benefits, as those terms are defined by Black's Law Dictionary."
 - f. The title fails to disclose that it supercedes "conflicting constitutional, state statutory, court findings of fact, local charter, ordinance, or resolution, and other state and local provisions."
 - g. The title fails to disclose that it "supercede[s] the Colorado Supreme Courts Findings of Fact in *Barber v. Ritter*."

Respectfully submitted this 23rd day of April, 2014.

FOSTER GRAHAM MILSTEIN &
CALISHER, LLP


/s/ Chip G. Schoneberger

Chip G. Schoneberger
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, 6th Floor
Denver, Colorado 80209
Tel: 303-333-9810
E-mail: cschoneberger@fostergraham.com


Objector's Address:
9471 Ashbury Cir., Unit 201
Parker, Colorado 80134

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #129** was sent this day, April 23, 2014, via U.S. First Class Mail, postage pre-paid to the proponents at:

Peter Coulter
151 Summer Street, #654
Morrison, Colorado 80465

Lisa Brumfiel
1499 S. Jasper Street
Aurora, Colorado 80017


Dyanna Spigler

Ballot Title Setting Board

Proposed Initiative 2013-2014 #129¹

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

An amendment to the Colorado constitution defining a "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 the benefit.

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

Shall there be an amendment to the Colorado constitution defining a "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 the benefit?

Hearing April 17, 2014:

Single subject approved; staff draft amended; titles set. The Board made one technical correction to the final text of the measure.

Hearing adjourned 10:07 a.m.

Hearing April 25, 2014:

Motion for Rehearing denied except to the extent that the Board made changes to the titles.

Hearing adjourned 11:26 a.m.

¹ Unofficially captioned "Definition of Fee" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.