

IN THE SUPREME COURT FOR THE STATE OF MONTANA

CASE NO. OP _____

MONTANANS FOR ELECTION REFORM ACTION FUND, ROB COOK,
FRANK GARNER, BRUCE TUTVEDT, DOUG CAMPBELL, TED
KRONEBUSCH, and BRUCE GRUBBS,

Petitioners,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY
GENERAL; and Christi Jacobsen, in her official capacity as MONTANA
SECRETARY OF STATE,

Respondents.

**PETITION FOR DECLARATORY RELIEF ON
ORIGINAL JURISDICTION**

EXPEDITED CONSIDERATION REQUESTED

Rob Cameron
JACKSON, MURDO & GRANT, P.C.
203 North Ewing Street
Helena, MT 59601
(406) 389-8244
rcameron@jmgattorneys.com

Martha Sheehy
SHEEHY LAW FIRM
P.O. Box 584
Billings MT 59103
(406) 252-2004
msheehy@sheehylawfirm.com

Sean T. Morrison
MORRISON LAW FIRM PLLC
111 N Last Chance Gulch, 3B
Helena, MT 59601
(406) 443-1040
sean@treasurestatelaw.com

Attorneys for Petitioners

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For their Petition for Declaratory Judgment, Montanans for Election Reform Action Fund (“MER”) and its Directors state as follows:

RELIEF REQUESTED

Petitioners seek this Court’s declaration (1) that the Attorney General’s (“A.G.”) determination that Ballot Issue 12 (Ex. 1) is legally insufficient is incorrect, and (2) directing the A.G. to prepare ballot statement pursuant to Mont. Code Ann. § 13-27-226 and forward the statements to the Montana Secretary of State (“Secretary”) within five days of this Court’s decision.

FACTS

1. MER was incorporated on July 26, 2023, to advocate for electoral reforms.
2. MER’s Board of Directors includes Bruce Grubbs, Ted Kronebusch, Bruce Tutvedt, Frank Garner, Doug Campbell, Tom Jacobson, and Mary Sexton.
3. On August 16, 2023, MER, through its agent Rob Cook, submitted to the Secretary the (1) text of a proposed constitutional initiative for the 2024 ballot, which the Secretary designated as Ballot Issue 12 (“BI-12”); and (2) proposed ballot statements. (Ex. 2).
4. BI-12 would amend Montana Constitution Article IV, creating a new Section 9, to change Montana’s current party primary election system to a primary election for specified offices open to all candidates and voters with the top four candidates advancing to the general election.

5. On September 5, 2023, after responding to suggested changes by the Legislative Services Division, (Ex. 3), MER submitted finalized initiative text and ballot statements for BI-12 to the Secretary. (Ex. 4).
6. On September 6, 2023, the Secretary referred BI-12 to the A.G. and Office of Budget and Planning (“OBP”). (Ex. 5).
7. OBP determined BI-12 will not have an impact on State revenue and expenditures. (Ex. 1, p. 1).
8. On October 13, 2023, the A.G. determined BI-12 “is legally insufficient because it violates Article XIV, Section 11 of the Montana Constitution.” (Ex. 1, p. 1).
9. On October 16, 2023, the Secretary provided notice to MER through its agent Rob Cook of the A.G.’s legal insufficiency determination. (Ex. 6, attaching Ex. 1).
10. This Court has original jurisdiction pursuant to Rule 14(1), M.R. App. P., and Mont. Code Ann. § 13-27-605(1)(2023).

ANTICIPATED LEGAL ISSUES

MER only disputes the A.G.’s determination that BI-12 is legally insufficient. (Ex. 1).¹ The A.G.’s insufficiency determination raises the following issues:

¹ MER accepts the A.G.’s revised ballot statement and does not dispute the A.G.’s conclusions regarding the fiscal note and the absence of conflict with other proposed ballot measures.

1. Whether the open primary provisions (BI-12’s proposed Section 9(3)(a), (g), (i), (j), (k)) are closely related to the implementation of a top-four primary election;
2. Whether the provision applying the top-four primary system to federal and state-level partisan offices (BI-12’s proposed Section 9(1)) is closely related to the implementation of a top-four primary election;
3. Whether the provision governing signature gathering (BI-12’s proposed Section 9(3)(h)) is closely related to the implementation of a top-four primary system; and
4. Whether BI-12 impermissibly invades the province of the legislature.

STANDARDS OF REVIEW

The A.G.’s determinations of law, including the legal insufficiency of BI-12, are reviewed for correctness. *City of Missoula v. Fox*, 2019 MT 250, ¶ 6, 397 Mont. 388, 450 P.3d 898.

To determine compliance with Article XIV, Section 11’s separate-vote provision, “the proper inquiry is whether, if adopted, the proposal would make two or more changes to the Constitution that are substantive and not closely related.” *Monforton v. Knudsen*, 2023 MT 179, ¶ 12, 2023 WL 6224973, *quoting Mont. Ass’n of Counties (“MACo”) v. State*, 2017 MT 267, ¶ 28, 389 Mont. 183, 404 P.3d 733.

PURPOSE OF TOP-FOUR PRIMARY REFORM

Montana's current system of state-run and financed party primary elections, which serves to select party nominees for the general election, is broken. It restricts voter choice, diminishes electoral competition and officeholder accountability, and increases partisan polarization and extremism. BI-12 seeks to replace this failing system with an open top-four primary system that creates a level playing field for all candidates and gives voters more choices. BI-12's top-four primary election allows all qualified candidates' names to appear on a single primary ballot regardless of their partisan affiliation (or lack thereof), allows all voters to participate in the primary regardless of their partisan affiliation (or lack thereof), advances the top four candidates for each office to the general election, and includes provisions critical to protecting political parties' constitutional rights under relevant United States Supreme Court precedent.

ARGUMENT

I. THE A.G. INCORRECTLY DETERMINED BI-12 VIOLATES THE CONSTITUTION'S SEPARATE-VOTE REQUIREMENT.

BI-12 would amend Article IV by adding a new section (9), creating a top-four open primary election for certain offices. (Ex. 4). The amendment contains provisions the A.G. incorrectly determined are not "closely related" to the creation of the top-four primary system, but that are, in fact, integral.

Section 11 of Article XIV mandates that each amendment submitted at the same election “shall be so prepared and distinguished that it can be voted upon separately.” This separate-vote requirement has two objectives: to avoid voter confusion and deceit of the public by ensuring a proposal is not misleading and the proposal’s effects are not concealed; and to avoid “logrolling,” *i.e.*, “combining unrelated amendments into a single measure which might not otherwise command majority support.” *Monforton*, ¶ 10. The separate-vote requirement is not intended to “unduly restrict[] constitutional change.” *MACo*, ¶ 30.

A. BI-12’s Provisions Are Closely Related and Integral to an Open Top-Four Primary System.

The A.G. erroneously determined that Section 9 (1) and (3) (a), (g) – (k) of BI-12 are not closely related to an open top-four primary system. To the contrary, each of these subsections is integral to the creation of an open top-four primary system, including (1) a prohibition against any party endorsement or nomination serving as a prerequisite to appear on the primary ballot; (2) a limitation on signature-gathering requirements to reasonably protect candidate access to the primary ballot; (3) provisions protecting political parties’ First Amendment rights; and (4) identification of the offices to which the new system would apply. These elements of BI-12 are not only closely related because an open top-four primary system would not work absent these integral parts, but they are also critical to the creation of a top-four primary system that comports with the United States

Supreme Court’s holding in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008).

In analyzing the separate-vote provision, “the proper inquiry is whether, if adopted, the proposal would make two or more changes to the Constitution that are substantive and not closely related.” *Monforton*, ¶ 12; *MACo*, ¶ 28. Borrowing from Arizona case law, this Court considers several factors in determining whether the provisions of a proposed constitutional amendment are ‘closely related,’ including: whether the provisions are facially related, whether all the matters addressed concern a single section of the constitution, whether the voters or the legislature historically has treated the matters addressed as one subject, and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law. *Id.* at ¶ 29, citing *McLaughlin v. Bennett*, 225 Ariz. 351, 238 P.3d 619, 622 (Ariz. 2010).

In *Save Our Vote, Opposing C-03-2012 v. Bennett*, the Arizona Supreme Court applied the same “closely related” analysis this Court employed in *MACo* and *Monforton* to a top-two open primary initiative very similar to BI-12’s top-four system. Arizona’s “Proposition 121 would amend the Constitution to replace partisan primary elections with an open ‘top two primary’ in which all candidates appear on the same ballot and the two receiving the most votes, regardless of party, advance to the general election.” 291 P.3d 342, 344 (Ariz. 2013). Much like BI-

12, the Arizona initiative added a new section to the Arizona Constitution with multiple sub-parts, including a provision addressing candidate signature gathering requirements to qualify for the primary election ballot. The Arizona initiative also went further, including a provision prohibiting the use of public funds to elect party officers or endorse or support candidates. *Id.* at 349.

The lower court ruled that the public-funds prohibition was a separate amendment, asserting that “there is no good reason” that a vote on the public-funds prohibition “should be bundled with a vote on an open primary.” *Id.* at 346. The Arizona Supreme Court reversed, examining Proposition 121 *de novo* and concluding that its various provisions “are not only facially related, but also logically related” and therefore satisfied the separate-vote rule of the Arizona Constitution. *Id.* The Court further explained that “[r]eplacing the partisan primary with an open primary in which candidates and voters participate without regard to party affiliation is qualitatively similar in its effect to the broader provisions in Proposition 121 mandating a level playing field regardless of party.” *Id.* at 348.

So it is in the present case with respect to each provision of BI-12.

1. BI-12’s party affiliation provisions are not only closely related but are integral to a top-four primary as a matter of law.

The A.G. determined the provisions of BI-12’s proposed Section 9 (3) which preclude party endorsements on the primary ballot are not “closely related to the creation of a top-four primary.” (Ex. 1, p. 2). The A.G. mistakenly concluded that “collectively, these provisions represent a choice separate from the creation of the top-four primary – namely whether Montana should allow political parties to nominate or endorse candidates on the ballot.” *Id.*

Proposed Section 9(3)(a) allows all candidates access to the same primary election ballot regardless of their political party preference, affiliation, or nomination or lack thereof. To preserve such open access, 9(3)(g) prohibits requiring a candidate to receive a party nomination or endorsement to qualify for the primary. The A.G. describes BI-12 as adopting an “all-party primary” and alleges it is not closely related to a top-four primary and would “effectively ban Montana’s current system of political party nominations.” The A.G. is incorrect in describing BI-12 as creating an “all-party primary.” BI-12 instead creates an open primary election system that does not serve the function of selecting party nominees like the system upheld in *Grange*.

The crucial feature of such an open primary system is that the state-run primary election no longer serves the function of selecting political parties’

nominees, but rather simply serves the function of winnowing the number of candidates for the general election. It is not an “all-party” primary, but rather a primary election that is separate from any party nomination or endorsement process. Critically, the general election ballot under such a system no longer serves the function of informing voters which candidates were nominated by a party, because the primary election no longer serves to select party nominees. In this way, BI-12 fundamentally changes the function of the primary election and removes the current role of the state in selecting party nominees. As the United States Supreme Court explained in *Grange*:

The I-872 [Washington top-two] primary does not, by its terms, choose parties’ nominees. The essence of nomination—the choice of a party representative—does not occur under I-872. The law never refers to the candidates as nominees of any party, nor does it treat them as such. To the contrary, the election regulations specifically provide that the primary “does not serve to determine the nominees of a political party but serves to winnow the number of candidates to a final list of two for the general election.” (Citation omitted). The top two candidates from the primary election proceed to the general election regardless of their party preferences. Whether parties nominate their own candidates outside the state-run primary is simply irrelevant.

552 U.S. at 453.

Under BI-12, political parties would remain free to nominate, endorse, and support candidates as they desire and express their preferences to Montana voters, but the state-run primary election would no longer give any special role to political parties (*i.e.*, special access to the primary ballot by virtue of party affiliation,

nomination, or endorsement), or serve as the mechanism by which parties select their nominees.

A top-four primary election system that still served the function of selecting party nominees or that identified candidates on the ballot as nominees of a party would thwart the very purpose of BI-12 and violate political parties' First Amendment rights. *Compare California Democratic Party v. Jones*, 530 U.S. 567, 586 (2000) (holding that California's blanket primary system open to all voters and candidates but that still served the function of selecting party nominees violated political parties' First Amendment rights) *with Grange*, 552 U.S. at 452 (upholding Washington's system, because "unlike the California primary, the [Washington] primary does not, by its terms, choose parties' nominees").

The elements of BI-12 the A.G. asserts are not closely related to the creation of a top-four primary are in fact the components of Washington's open primary system (upheld in *Grange*) that distinguished it from the California blanket primary system, struck down in *Jones*.

Subsections (3)(i), (j), and (k) are all complementary and necessary components under *Grange*. Candidates may have their party preference (if any) displayed next to their names on the ballot. In keeping with *Grange*, subsection (3)(i) requires that the candidate's preference be displayed as a *preference* only. Subsection (3)(j) prohibits the ballot from indicating that a candidate has been

endorsed or nominated by any political party. Subsection (3)(k) requires the inclusion of precisely the type of clear and conspicuous statement on the ballot described in *Grange* as necessary to inform voters that a candidate’s self-identified party preference is not an endorsement or nomination by the party and does not imply that the party approves of or associates with the candidate. 552 U.S. at 455–57.

Far from being separate from the creation of a top-four primary, these provisions are critical elements of a top-four primary system that protects political parties’ First Amendment rights. *See id.*

2. The application of the top-four primary system to specified offices is closely related to BI-12’s purpose.

Section 9 (1) would apply the top-four primary system to specific federal and state-level partisan offices, but not to non-partisan or local offices. The A.G. incorrectly determined that “the choice of which offices to include constitutes another separate decision point for voters.” (Ex. 1, p. 2). The A.G.’s argument suggests that the only way for the voters in Montana to adopt a top four primary system (or adopt any amendment affecting elections) would be to do so by holding a separate vote for each office or perhaps by applying the amendment to all offices. This is impractical and ignores the current differences in elections for different offices. *See, e.g.,* Mont. Code Ann. § 13-14-111, *et seq.* (adopting non-partisan elections for judicial offices). Moreover, requiring a separate vote for each office

would constitute the type of undue restriction on constitutional change that the Court sought to avoid in adopting the “closely related” test. *MACo*, ¶ 30 (“[c]onsideration of whether the proposed constitutional changes are closely related gives appropriate effect to the separate-vote requirement by ensuring each constitutional amendment receives its own vote *without unduly restricting constitutional change.*”) (emphasis added).

To support his conclusion, the A.G. cites to a single legislative bill, SB 566, which would have created a top-two primary system for the sole office of United States Senator. The fact that SB 566 included only one office does not establish that BI-12’s inclusion of federal and state-level partisan offices violates the Constitution’s separate-vote requirement. In fact, SB 566 was highly unusual in singling out one office. Election-related legislation has more commonly applied to various offices, and distinguished between partisan and non-partisan offices as does BI-12. *See, e.g.*, LR-127 (2014) (a legislatively referred statutory initiative to create a top-two primary election for partisan offices); HB 612 (2001 Montana Laws Ch. 537) (addressing primary elections, candidate signature gathering requirements and petitions, ballot measure petitions, and other election-related matters). A failed bill such as SB 566, which was aberrational in its focus on a single office, should not serve as the lodestar of this Court’s separate vote-requirement analysis.

Further, the A.G.’s position is inconsistent with his approval of Ballot Initiative 11 (since withdrawn), which would amend Article IV, Section 5 to provide *all* elections must be decided by a majority vote rather than a plurality. (See Ex. 7). In considering BI-11, unlike consideration of BI-12, the A.G. did not suggest that the voters must be presented with a separate amendment to adopt “majority vote” elections with respect to each separate office.

The applicable offices identified in BI-12 are facially related to the top-four primary. The voters are presented with a binary choice: apply the top-four system to all federal and state-level partisan offices provided for in the Montana Constitution, or reject the top-four system for those offices. BI-12 also amends a single section of the Constitution. The voters and the legislature historically treat federal and state-level partisan offices as one subject. For example, local elections often occur on different election days. Election of judicial officers have long been conducted in a non-partisan system, unlike the federal and state-level elections at issue in BI-12. Public Service Commission (“PSC”) members have historically been selected regionally and the PSC is not a constitutionally referenced body – unlike the offices included in BI-12. Moreover, while BI-12 creates a system for elections that differs from the existing constitutional framework, the top-four primary would have the same effect on the procedural and substantive law governing elections.

All these factors weigh in favor of finding the application of the top-four primary to state-level offices “closely related” to BI-12’s amendment of Article IV.

3. BI-12’s signature-gathering provision is closely related to the Amendment of Article IV.

Section 9 (3)(h) would cap the number of signatures that may be required for a candidate to qualify for the primary ballot at 5% of the total votes cast for the candidate elected for the same office in the last general election. The A.G. erroneously describes this as “another matter apart from the top four primary,” implying that the 5% cap is not “closely related.” (Ex. 1, p. 3). But the A.G. overlooks a central purpose of the top-four primary: to ensure candidates can reasonably access the top-four primary ballot and prevent the legislature from functionally converting the top-four primary into a top-two primary, through imposing an onerous signature-gathering requirement that limits competition and voter choice. As such, the 5% cap is an integral part of, and therefore “closely related” to, the purpose of the top-four primary. *See Save Our Vote*, 291 P.3d at 349 (holding that Proposition 121, which also contained a provision addressing candidate signature gathering requirements, did not violate the Arizona Constitution’s separate-vote requirement).

B. Separate Votes Would Endanger the Efficacy and Constitutionality of a Top-Four Primary System.

BI-12 proposes an efficient, effective, and constitutional revamping of the primary election system, carefully designed to increase voter choice and competition in our elections. The system has been adopted and approved in other states, and the number of states considering this system continues to grow.

In 2020, Alaska voters approved the Alaska's Better Elections Initiative (Initiative 2), creating a top-four primary election very similar to BI-12. Like BI-12, Alaska's Initiative 2 applied to various offices, created a primary election open to all candidates and voters, prohibited political party nominations in the primary election, and provided for the placement of candidates' political party preferences on the ballot in a manner that comports with *Grange*. Alaska Laws Initiative Meas. 2 (2020). California and Washington have adopted very similar open top-two primary systems. Washington's top-two system passed constitutional muster in *Grange* as described above.¹

¹Nebraska and Louisiana employ non-partisan primaries. See <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types>. Numerous states have or are currently considering top-two or top-four primary systems, including Arizona, Arkansas, Florida, Idaho, Missouri, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Wisconsin, and Wyoming.

In short, in proposing BI-12, MER specifically intends to present the voters with a clear, binary choice: adopt a workable, constitutional top-four primary system for the offices identified in the ballot title, or reject that system. BI-12 intentionally incorporates all elements necessary to create that system, and thus meets both objectives of the separate-vote requirement. First, by drafting a ballot measure which includes all necessary elements of a top-four system in the amendment of Article IV, BI-12 avoids voter confusion and reveals the proposal's effects. Second, by presenting the voters with the binary choice of adopting a top-four primary system, BI-12 avoids "logrolling" and averts piecemeal adoption of conflicting parts of the system. *Monforton*, ¶ 10.

Each element of BI-12 is essential and therefore "closely related" to the proposal's overhaul of the primary system. The A.G.'s revised ballot statement clearly explains the effect of BI-12, including specifically referencing each element of BI-12 that the A.G. incorrectly believes requires a separate amendment. There is, therefore, no danger here that BI-12 is concealing provisions from the voters. *See MACo*, ¶ 15 (noting that one objective of the separate-vote requirement is to "ensur[e] proposals are not misleading or the effects of which are concealed or not readily understandable."). As a result, none of the closely related elements require separate votes. Montana voters are entitled to consider adoption of a constitutional

and effective top-four primary system, and the separate-vote requirement should not be weaponized to unduly restrict constitutional change. *See MACo*, ¶ 30.

II. THE A.G. INCORRECTLY DETERMINED BI-12 REGULATES MATTERS TRADITIONALLY ENTRUSTED TO THE LEGISLATURE.

The A.G. wrongly determined BI-12’s signature-gathering provision “impliedly amends the Legislature’s authority to regulate the administration of elections,” citing Mont. Const., Art. IV, Sec. 3. (Ex. 1, p. 3). The A.G.’s determination appears to be simply part of the A.G.’s conclusion that BI-12 violates the separate-vote requirement – rather than an attack on the substantive constitutionality of BI-12. However, if the A.G. intended to raise the substantive constitutionality of BI-12, the A.G. provides no support for his contention that the Constitution may not be amended to alter the Legislature’s authority to administer elections. *See Moore v. Harper*, 600 U.S. 1, 22-37 (2023) (rejecting the so-called “independent state legislature theory” which asserts that state legislatures have authority over federal elections free from restrictions imposed by state law).

More important to the issue before the Court, the signature-gathering provision comports with the separate-vote requirement. This provision regulates eligibility for inclusion on the top-four primary ballot. Qualification for eligibility is a constitutional, not legislative, function. Article IV, Section 4 states: “Any qualified elector is eligible to any public office except as otherwise provided in this

constitution. The legislature *may* provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.” (Emphasis added).

Further, the A.G. incorrectly concluded that “[t]aken as a whole [BI-12] regulates a matter traditionally entrusted to the Legislature” – the administration of elections. (Ex. 1, p. 3). Article IV, Section 3 merely provides that “[t]he legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections.” Nothing in BI-12 impedes, hinders, or invades the Legislature’s authority to regulate residence, voter registration, absentee voting, or the administration of elections. Just the opposite, BI-12 proposes a new system of primary elections, which, if adopted, the Legislature would administer. Similarly, despite the A.G.’s protestations (Ex. 1, p. 3), BI-12 does not alter Article VI, Section 2, which provides that the state’s executive officers “shall be elected by the qualified electors at a general election provided by law.”

CONCLUSION

Montanans have the fundamental right to change their Constitution “for the good of the whole,” including the method of electing their officers. Art. II, Sec. 1. This Court should not allow the A.G. to unduly restrict constitutional change through misapplication of the “closely related” test. MER seeks this Court’s

declaration (1) that the A.G.'s determination that BI-12 is "legally insufficient" is incorrect, and (2) directing the A.G. to prepare ballot statements pursuant to Mont. Code Ann. § 13-27-226 and forward the statements to the Montana Secretary of State within five days of this Court's decision.

DATED: October 26, 2023.

JACKSON, MURDO & GRANT, P.C.

/s/ Rob Cameron

Rob Cameron
203 North Ewing
Helena, MT 59601
(406) 389-8244
rcameron@jmgattorneys.com

Martha Sheehy
SHEEHY LAW FIRM
P.O. Box 584
Billings MT 59103
(406) 252-2004
msheehy@sheehylawfirm.com

Sean T. Morrison
MORRISON LAW FIRM PLLC
111 N Last Chance Gulch, 3B
Helena, MT 59601
(406) 443-1040
sean@treasurestatelaw.com

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 3,963 words, excluding certificate of service and certificate of compliance.

DATED: October 26, 2023.

/s/ Rob Cameron

Rob Cameron

Jackson, Murdo & Grant, P.C.



MEMORANDUM

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: October 13, 2023
Re: Legal sufficiency review of Proposed Ballot Measure No. 12

Ballot Measure #12, a constitutional initiative, creates a new Section 9 in Article IV, to change Montana's primary election system to allow the top four vote getters to advance to the general election, define the offices the new top four system applies to, prohibit political party endorsements or nominations from appearing on the ballot, and limiting the number of signatures that may be required to qualify a candidate for the ballot.

The proposed measure is legally insufficient pursuant to Section 11(1)–(2), Chapter 647, Laws of 2023 (SB 93).

Further, pursuant to Section 11(3), the Attorney General determines that the sponsor's proposed ballot statements do not comply with Section 2 and Section 3. As such, the Attorney General has enclosed ballot statements that comply with statutory requirements.

The budget director determined that Ballot Measure 11 will not have an impact on State revenue or expenditures, therefore, a fiscal statement under Section 11(4) is unnecessary.

Finally, pursuant to Section 11(5), the Attorney General determines Ballot Measure 12 does not conflict with any other proposed Ballot Measures.

Ballot Measure 12 is legally insufficient because it violates Article XIV, Section 11 of the Montana Constitution.

"If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately." Mont. Const. art. XIV, § 11. "The plain language of the provision conveys an anticipatory, pre-election purpose—to ensure that constitutional ballot issues are prepared and submitted so they 'can be voted upon' separately." *Monforton v. Knudsen*, 2023 MT 179, ¶ 10.

DEPARTMENT OF JUSTICE

215 North Sanders
PO Box 201401
Helena, MT 59620-1401

(406) 444-2026
Contactdoj@mt.gov
mtdoj.gov

“The separate-vote requirement has two well-recognized objectives. The first is to avoid voter confusion and deceit of the public by ensuring proposals are not misleading or the effects of which are concealed or not readily understandable. The second is to avoid ‘logrolling’ or combining unrelated amendments into a single measure which might not otherwise command majority support. By combining unrelated amendments, approval of the measure may be secured by different groups, each of which will support the entire proposal in order to secure some part, even though not approving all parts of a multifarious amendment.” *Monforton v. Knudsen*, 2023 MT 179, ¶ 10.

“[T]o determine compliance with Article XIV, Section 11 separate-vote provision ‘the proper inquiry is whether, if adopted, the proposal would make two or more changes to the Constitution that are substantive and not closely related.’” *Monforton v. Knudsen*, 2023 MT 179, ¶ 12; *see also Mont. Ass’n of Counties* (“MACo”) v. State, 2017 MT 267, ¶ 50 (the separate-vote provision is narrower than the single subject rule for legislation in Article V, § 11(3)). Voters must be able to “express their opinions as to each proposed constitutional change” separately. *MACo*, ¶ 52.

Ballot Measure 12 fails this test.

Ballot Measure 12’s primary purpose is to constitutionally mandate a top-four primary for specified offices. Ballot Measure 12, Section 1(2).

Section 1(3) then adds numerous provisions that are not closely related to the creation of a top four primary. Ballot Measure 12, Section 1(3). Multiple provisions in Section 1(3) effectively ban Montana’s current system of political party nominations. Section 1(3)(a) moves to an all-party primary. Section 1(3)(g) prohibits requiring political party endorsements or nominations to appear on the primary ballot. Section 1(3)(j) goes further and prohibits the placement of any political party endorsements or nominations on the ballot. Collectively, these provisions represent a choice separate from the creation of the top-four primary—namely, whether Montana should allow political parties to nominate or endorse candidates on the ballot.

Section 1(1) also defines the officers covered by Ballot Measure 12. That Section omits; for example, Montana Supreme Court Justices, District Court Judges, Public Service Commissioners, and local offices. The choice of which offices to include constitutes another separate decision point for voters. *See e.g.*, SB 566 (2023) (failed legislation that would have created a top two primary for only the office of United States Senator).

Section 1(3)(h) imposes a limitation on signatures that the Legislature may require for candidates to qualify for the ballot. The limitation impliedly amends the Legislature's authority to regulate the administration of elections. Mont. Const. art. IV, § 3. It also presents another matter apart from the top four system. Voters cannot, for example, vote for a top four system that prohibits any signature requirement, or that imposes a higher signature requirement. *Cf. compare* Mont. Const. art. XIV, § 9(1) to Mont. Const. art. III, § 4(2) to Mont. Const. art. III, § 5(2) (imposing different signature requirements to different types of ballot measures).

Taken as a whole Ballot Measure 12 regulates a matter traditionally entrusted to the Legislature. Mont. Const. art. IV, § 3. ("The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.") Ballot Measure 12 clearly and unmistakably limits the constitutional authority of the Legislature to regulate elections. *See MACo*, ¶¶ 41, 44 (a ballot measure that—in addition to its own effects—adds or subtracts from pre-existing constitutional provisions violates Article XIV, § 11).

Finally, Article VI, Section 2 further demonstrates Ballot Measure 12's problems. That section says that the constitutional executive officers "shall be elected by the qualified electors at a general election provided by law." Mont. Const. art. VI, § 2(1). The general language of that section fits nicely with Article IV, § 3's provisions that the Legislature "shall provide by law the ... administration of elections." Ballot Measure 12 goes further and attempts to provide for the rules governing the elections set forth in its Section 1(2) and that amends the Legislature's authority.

Because Ballot Measure 12 proposes multiple amendments it violates Article XIV, Section 11 of the Montana Constitution.

Ballot Statements

As submitted, the sponsor's proposed statements failed to describe Ballot Measure 12's full purpose. "A statement of purpose and implication expresses the true and impartial explanation of the proposal in plain, easily understood language." SB 93, Section 2(1). The statement "may not exceed 135 words." SB 93, Section 2(2).

The sponsor's proposed 134-word statement reads:

"CI-*** amends the Montana Constitution to provide a top-four primary election open to all voters and candidates followed by a general election. All candidates appear on a single primary election ballot, and the four

candidates receiving the most votes advance to the general election. The ballot may list a candidate's political party preference, but a candidate is not required to be nominated by a political party to qualify for the ballot. If candidates are required to gather signatures, the number required may not exceed five percent of the votes received by the winning candidate in the last election. CI-*** applies to elections for governor and lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, United States senator, and other offices as provided by law."

This statement omits reference to Ballot Measure 12 Section 1(3)(c) and Section 1(3)(k). Therefore, the Attorney General modifies the proposed statement as follows:

CI-*** amends the Montana Constitution to provide a top-four primary election. All candidates, regardless of political party, appear on one ballot. The four candidates receiving the most votes advance to the general election. A candidate may list a political party preference, but a candidate isn't required to be nominated by a political party. A candidate's political party preference isn't an endorsement by the political party. The legislature may require candidates gather signatures up to five percent of the votes received by the winning candidate in the last election to appear on the ballot. All voters may vote for one candidate for each covered office. CI-*** applies to elections for governor and lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, and United States senator.

Sincerely,



Brent Mead
Deputy Solicitor General

August 16, 2023

The Honorable Christi Jacobsen
Montana Secretary of State
Montana State Capitol
Helena, MT 59601

RE: Top Four Open Primary and Majority-Winner Constitutional Ballot Initiatives

Dear Secretary Jacobsen:

Please accept the attached ballot initiative language and ballot statements for review and processing pursuant to Montana Code Annotated 13-27-2X7. The primary sponsors of these ballot issues are the following Montana citizens:

Frank Garner
Kalispell, MT
fgarner001@yahoo.com

Bruce Tutvedt
Kalispell, MT
brucetutvedt@gmail.com

Doug Campbell
Bozeman, MT
dbcampbell2@live.com

Ted Kronebusch
Conrad, MT
tedandlori@3rivers.net

Bruce Grubbs
Bozeman, MT
brucegrubbs@gmail.com

I am the contact person for these initiatives. Please refer all communications regarding the review process to my attention. I can be reached at rcook@mtbus.net or (406) 868-3426, should you have any questions. Thank you and I look forward to working with you through the review process.

Sincerely,



Rob Cook
P.O. Box 315
Helena, MT 59601



Montana Legislative Services Division

Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

August 29, 2023

Rob Cook
P.O. Box 315
Helena, MT 59601
rcook@mtbus.net

Re: Review of Constitutional Amendment by Initiative to Provide for "Top-Four" Election Procedures for Certain Offices, #12

Dear Mr. Cook,

On August 17, 2023, the Legislative Services Division received the text of your proposed initiative to amend Montana's Constitution to provide for top-four primary elections for certain elected offices.

The text of the initiative and the ballot issue statements were reviewed pursuant to section 10(1), [Chapter 647, Laws of 2023](#), for clarity, consistency, and other factors normally considered when drafting proposed legislation. This letter constitutes the Legislative Services Division's review of your proposed statutory initiative.

I. Style Issues

Section 13-27-201(2), MCA, as amended by section 26, [Chapter 647, Laws of 2023](#), requires the text of an initiative to be in the bill form provided in the most recent issue of the [Bill Drafting Manual](#) furnished by the Legislative Services Division. Section 10(1), [Chapter 647, Laws of 2023](#), requires both the text of the initiative and the ballot statements to conform to the [Bill Drafting Manual](#), which is available on the Legislative Branch website at <https://leg.mt.gov/content/Publications/2022-bill-drafting-manual.pdf>.

A. Statement of Purpose and Implication

The text of the proposed constitutional initiative and the draft ballot issue statements must comply with sections 2, 3, and 7, [Chapter 647, Laws of 2023](#), and section 13-27-201(2), MCA, as amended by section 26, [Chapter 647, Laws of 2023](#). Ballot statements include: (1) the statement of purpose and implication, which may not exceed 135 words; and (2) the yes and no statements. Pursuant to section 2, [Chapter 647, Laws of 2023](#), the statement of purpose "expresses the true and impartial explanation of the proposal in plain, easily understood language." In addition, the statement of purpose may not be argumentative or written in a manner that creates prejudice for or against the issue. While it is not always feasible to include a complete explanation of each part of a ballot issue in the statement of purpose, the statement must at least explain both the purpose and implication of the ballot issue in easily understood, nonargumentative language. *See Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 12.

Unless altered by a court pursuant to section 13-27-316, MCA, as amended by section 39, [Chapter 647, Laws of 2023](#), the statement of purpose becomes the title for the ballot issue that is circulated to the electorate and the ballot title if the ballot issue is placed on the ballot. However, proponents of a ballot issue are not entitled "to the ballot statements of their choosing," and the Attorney General and, if necessary, the Supreme Court may alter proposed statements of purpose and implication to comply with sections 2, 3, and 7, [Chapter 647, Laws of 2023](#). *See Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 11.

I have reviewed the statement of purpose and implication and the yes and no statement as required by sections 2 and 3, [Chapter 647, Laws of 2023](#) and find them to comply. I have no suggested revisions for the language of the statement of purpose and implication and the yes and no statement that you submitted.

B. Constitutional Amendment Text

In addition, the text of the proposed initiative is mostly in compliance with the [Bill Drafting Manual](#). However, I redrafted the text with recommendations to address sections that do not conform to the Manual. I recommend you review and accept the attachment.

II. Substantive Considerations

Please note that Article XIV, section 11, of the Montana Constitution provides:

If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

The separate vote requirement for constitutional initiatives prohibits a proposal that makes two or more changes to the Montana Constitution that are substantive and not closely related. Furthermore, if a proposed constitutional amendment adds new matter to the constitution, that proposition is at least one change in and of itself. Modifying an existing constitutional provision is considered at least one change, whether that effect is express or implicit. *See Mont. Ass'n of Counties v. State.*, 2017 MT 267, 389 Mont. 183, 404 P.3d 733.

The Montana Supreme Court has stated that the factors that may be considered in determining whether the provisions of a proposed constitutional amendment are "closely related" may include:

[W]hether various provisions are facially related, whether all the matters addressed by [the proposition] concern a single section of the constitution, whether the voters or the legislature historically has treated the matters addressed as one subject, and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law.

Mont. Ass'n of Counties, ¶ 29 (citing *McLaughlin v. Bennett*, 225 Ariz. 351, 238 P.3d 619, 622 (Ariz. 2010) (quoting *Ariz. Together v. Brewer*, 214 Ariz. 118, 149 P.3d 742, 746 (Ariz. 2007))).

Because of this constitutional prohibition, you may wish to review your proposal to ensure any provision that may be construed as not being "closely related" is prepared and distinguished so that citizens may vote on each one separately. This letter does not analyze whether the provisions of the proposed initiative are closely related or not. Rather, I point the law out for your consideration.

Please note that the attached text does not contain revisions addressing the substantive considerations that I have raised.

III. Other Considerations

Because of staggered election years and to reduce legal confusion about how this proposal might affect current officeholders, it is preferable to explicitly specify when this provision applies. Pursuant to Article XIV, section 9(3), of the Montana Constitution, a constitutional amendment becomes part of the constitution "effective the first day of July following its approval, unless the amendment provides otherwise." In this case, you have an effective date clause that states that the "act applies to elections for covered offices as defined in [section 1] held on or after January 1, 2025." It would be clearer for the proposed initiative to include both:

- (1) an effective date clause providing for a January 1, 2025, effective date; and
- (2) an applicability clause as outlined in the draft language I have provided.

If approved by the voters, this proposal would require a significant statutory revision. As written, this would require the 2025 Legislature to review and revise a significant number of statutes immediately after this proposal is approved by the voters. It may be prudent to allow the Legislature an interim (2025-2026) to study and revise the extensive statutory scheme affected by these changes before applying them to candidates. Rather than changing the effective date of the bill, this can be accomplished by delaying the date in the new applicability section. Please note, however, that the applicability section that has been inserted into the draft uses the same date as the current effective date of the bill. If you wish to give the Legislature additional time to revise the current statutory scheme before applying these provisions to elections for the covered offices, you should revise the inserted applicability date concerning affected elections to a later date.

IV. Conclusion

If you accept the suggested editorial and stylistic revisions, the text of your proposed initiative would read as it does on the attached pages. As noted above, the substantive considerations raised have not been addressed in the attached language.

Please note that pursuant to section 10(2)(b), [Chapter 647, Laws of 2023](#), you are required to respond in writing to this office accepting, rejecting, or modifying the recommended changes before submitting the final text of the proposed ballot issue and ballot statements to the Secretary of State. Your response will terminate the role of this office in this process. After responding to this office, further correspondence should be submitted to the Secretary of State.

Sincerely,

/s/ Julie A. Johnson

Julie A. Johnson
Staff Attorney

cc: Christi Jacobsen, Secretary of State

1 **** BILL NO. ****

2 ****

3 ****

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

6
7 NEW SECTION. **Section 1.** Article IV of The Constitution of the State of Montana is amended by
8 adding a new section 9 that reads:

9 **Section 9. Top-four primary election for certain offices.** (1) As used in this section, the term
10 "covered office" means the office of governor, lieutenant governor, secretary of state, auditor, attorney general,
11 superintendent of public instruction, state representative, state senator, United States representative, United
12 States senator, and other offices as provided by law.

13 (2) The election for a covered office must consist of a primary election followed by a general
14 election in which each of the four candidates for a covered office who receive the most votes in the primary
15 election, and only those candidates, shall appear on the general election ballot.

16 (3) In an election for a covered office, the following conditions apply:

17 (a) All candidates, regardless of political party preference, affiliation, nomination or lack of
18 nomination, shall appear on the same primary election ballot separated by office.

19 (b) Qualified electors, regardless of political party preference or affiliation or a lack thereof, may
20 participate in the primary election for each covered office for which they are eligible to vote.

21 (c) Each qualified elector may vote for no more than one candidate for each office in the primary
22 election.

23 (d) If it cannot be determined which four candidates received the most votes in the primary election
24 because two or more candidates are tied, the tie shall be broken as provided by law.

25 (e) If four or fewer candidates for a covered office qualify for the primary election ballot, a primary
26 election is not required and all candidates shall appear on the general election ballot.

27 (f) A space for write-in candidates may appear on the primary election ballot as provided by law.

28 (g) A candidate may not be required to obtain the endorsement or nomination of any political party

1 or organization in order to qualify for the primary election ballot.

2 (h) If the legislature requires candidates to obtain signatures to qualify for the primary election
3 ballot, the number of signatures required may not exceed 5% of the total votes cast for the candidate elected
4 for the same office in the last general election for that office.

5 (i) A candidate may choose to have displayed next to the candidate's name on the ballot the
6 candidate's preference for a political party or that the candidate prefers no political party. The format options
7 must be as follows: "Party Preference _____" or "No Party Preference".

8 (j) The ballot may not indicate that a candidate has been endorsed by or nominated by any
9 political party.

10 (k) Each ballot must include a clear and conspicuous statement informing voters that a candidate's
11 indicated political party preference does not imply that the candidate is nominated or endorsed by the political
12 party or that the political party approves of or associates with the candidate.

13 (4) This section may not be construed to amend, repeal, or modify Article VI, section 2 of the
14 Montana constitution.

15 (5) This section does not apply to special elections for covered offices.

16
17 NEW SECTION. Section 2. {standard} Severability. If a part of [this act] is invalid, all valid parts that
18 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

20
21 NEW SECTION. Section 3. Effective date. [This act] is effective January 1, 2025.

22
23 NEW SECTION. Section 4. Applicability. [This act] applies to elections for covered offices as defined
24 in [section 1] held on or after January 1, 2025."

JACKSON, MURDO & GRANT, P.C.

ATTORNEYS AT LAW
203 North Ewing Street
Helena, MT 59601

NATHAN BILYEU
ROB CAMERON
KADEN KETO
MARIN KEYES
ERIN LYNDES
SEAN SLANGER
SCOTT M. SVEE
MICHAEL TALIA
BURT W. WARD
HANNA WARHANK
MURRY WARHANK

OF COUNSEL
TERRY B. COSGROVE
DAVE DALTHORP
GREGORY G. GOULD
JOHN H. GRANT
DAVID L. JACKSON
JACQUELINE T. LENMARK
ROBERT M. MURDO

Direct Dial: (406) 389-8244
Email: rcameron@jmgattorneys.com

September 5, 2023

VIA EMAIL AND CERTIFIED U.S. MAIL

(soselections@mt.gov; rdagnall@mt.gov)

The Honorable Christi Jacobsen
Montana Secretary of State
Montana Capitol Building, Room 260
P.O. Box 202801
Helena, MT 59620-2801

Re: Final Submission of Ballot Issue #12

Dear Secretary Jacobsen,

Please accept the attached as the final submission of the ballot statements and text of ballot issue #12, accepting, rejecting, or modifying revisions suggested by the Legislative Services Division, as required pursuant to section 7(3), Chapter 647, Laws of 2023.

Please also note that I will serve as your office's contact person for ballot issue #12 moving forward. I can be reached at rcameron@jmgattorneys.com or by telephone at (406) 389-8244.

Sincerely yours,

JACKSON, MURDO & GRANT, P.C.


Rob Cameron

Enclosure: Final proposed ballot issue #12
cc: Rob Cook (rcook@mtbus.net)

JACKSON, MURDO & GRANT, P.C.

ATTORNEYS AT LAW
203 North Ewing Street
Helena, MT 59601

NATHAN BILYEU
ROB CAMERON
KADEN KETO
MARIN KEYES
ERIN LYNDES
SEAN SLANGER
SCOTT M. SVEE
MICHAEL TALIA
BURT W. WARD
HANNA WARHANK
MURRY WARHANK

OF COUNSEL
TERRY B. COSGROVE
DAVE DALTHORP
GREGORY G. GOULD
JOHN H. GRANT
DAVID L. JACKSON
JACQUELINE T. LENMARK
ROBERT M. MURDO

Direct Dial: (406) 389-8244
Email: rcameron@jmgattorneys.com

September 5, 2023

VIA EMAIL AND CERTIFIED U.S. MAIL

(Julie.Johnson@legmt.gov)

Ms. Julie Johnson
Staff Attorney
Montana Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706

**Re: Review of Constitutional Amendment by Initiative to Require a Majority
Vote, Issue #12**

Hello Julie:

I've been retained by Montanans for Election Reform in connection with proposed Ballot Issues #11 and #12. On August 29, 2023, Mr. Rob Cook received your letter containing the results of your review of the text of proposed ballot issue #12 and draft ballot statements conducted by the Legislative Services Division pursuant to section 10(1), Chapter 647, Laws of 2023. I write on behalf of Mr. Cook as required by section 10(2)(b), Chapter 647, Laws of 2023 to accept, reject, or modify the changes recommended in your letter dated August 29, 2023. I wish to thank you for your thoughtful review of this initiative. Each of your recommended changes is addressed below.

I. Style Issues

B. Constitutional Amendment Text

We have accepted your recommended changes to address sections that do not conform with the most recent edition of the Bill Drafting Manual furnished by the Legislative Services Division.

One stylistic revision suggested by you was to strike the phrase “or a lack thereof” and substitute the phrase “or lack of nomination” in Section 9(3)(a) of the initiative which addresses candidate access to the primary election ballot. We have accepted this suggested stylistic revision by striking the phrase “or a lack thereof” and substituting the phrase “or lack of political party preference, affiliation, or nomination” to further clarify that a candidate may not be denied access to the primary election ballot on the account of lacking a political party preference, affiliation, or nomination. As you have identified this as a stylistic change, we do not believe that our clarifying modification to your suggested revision constitutes a substantive change to the text of the initiative for purposes of section 7(4), Chapter 647, Laws of 2023.

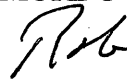
III. Other Considerations

We have accepted your recommended effective date and applicability clause language.

Enclosed is the revised version of the initiative incorporating your recommendations. If you have any questions, please do not hesitate to contact me.

Best regards,

JACKSON, MURDO & GRANT, P.C.



Rob Cameron

Enclosure: Revised proposed ballot issue #12

cc:

The Honorable Christi Jacobsen
Montana Secretary of State
Montana Capitol Building, Room 260
P.O. Box 202801
Helena, MT 59620-2801
Rob Cook (rcook@mtbus.net)

BALLOT LANGUAGE FOR CONSTITUTIONAL INITIATIVE NO. * (CI-***)**

CONSTITUTIONAL INITIATIVE NO. ***

A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

CI-*** amends the Montana Constitution to provide a top-four primary election open to all voters and candidates followed by a general election. All candidates appear on a single primary election ballot, and the four candidates receiving the most votes advance to the general election. The ballot may list a candidate's political party preference, but a candidate is not required to be nominated by a political party to qualify for the ballot. If candidates are required to gather signatures, the number required may not exceed five percent of the votes received by the winning candidate in the last election. CI-*** applies to elections for governor and lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, United States Senator, and other offices as provided by law.

☐ YES on Constitutional Initiative CI-***

☐ NO on Constitutional Initiative CI-***

THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. * (CI-***)**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Article IV of The Constitution of the State of Montana is amended by adding a new section 9 that reads:

Section 9. Top-four primary election for certain offices. (1) As used in this section, the term “covered office” means the office of governor, lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, United States senator, and other offices as provided by law.

(2) The election for a covered office must consist of a primary election followed by a general election in which each of the four candidates for a covered office who receive the most votes in the primary election, and only those candidates, shall appear on the general election ballot.

(3) In an election for a covered office, the following conditions apply:

(a) All candidates, regardless of political party preference, affiliation, nomination or lack of political party preference, affiliation, or nomination shall appear on the same primary election ballot separated by office.

(b) Qualified electors, regardless of political party preference or affiliation or a lack thereof, may participate in the primary election for each covered office for which they are eligible to vote.

(c) Each qualified elector may vote for no more than one candidate for each office in the primary election.

(d) If it cannot be determined which four candidates received the most votes in the primary election because two or more candidates are tied, the tie shall be broken as provided by law.

(e) If four or fewer candidates for a covered office qualify for the primary election ballot, a primary election is not required and all candidates shall appear on the general election ballot.

(f) A space for write-in candidates may appear on the primary election ballot as provided by law.

(g) A candidate may not be required to obtain the endorsement or nomination of any political party or organization in order to qualify for the primary election ballot.

(h) If the legislature requires candidates to obtain signatures to qualify for the primary election ballot, the number of signatures required may not exceed 5% of the total votes cast for the candidate elected for the same office in the last general election for that office.

(i) A candidate may choose to have displayed next to the candidate's name on the ballot the candidate's preference for a political party or that the candidate prefers no political party. The format options must be as follows: "Party Preference _____" or "No Party Preference."

(j) The ballot may not indicate that a candidate has been endorsed by or nominated by any political party.

(k) Each ballot must include a clear and conspicuous statement informing voters that a candidate's indicated political party preference does not imply that the candidate is nominated or endorsed by the political party or that the political party approves of or associates with the candidate.

(4) This section may not be construed to amend, repeal, or modify Article VI, section 2 of the Montana constitution.

(5) This section does not apply to special elections for covered offices.

NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 3. Effective date. [This act] is effective January 1, 2025.

NEW SECTION. Section 4. Applicability. [This act] applies to elections for covered offices as defined in [section 1] held on or after January 1, 2025.

From: **Dagnall, Ray** <RDagnall@mt.gov>
Date: Tue, Sep 5, 2023, 15:52
Subject: RE: Final Submission of Ballot Issue #12
To: Anna R. Snedeker <ASnedeker@jmgattorneys.com>, SOS Elections <SOSElections@mt.gov>
Cc: rcook@mtbus.net <rcook@mtbus.net>

Thanks Ms. Snedeker,

Received by the Secretary of State's Office.

We will review and forward on to the Office of Budget and Planning and the Attorney General's Office tomorrow.

Ray Dagnall | Program Specialist
Montana Secretary of State, Christi Jacobsen
State Capitol Building

Helena, MT 59601
PHONE 406.444.9009

[website](#) | [email](#) | [map](#)

From: Anna R. Snedeker <ASnedeker@jmgattorneys.com>
Sent: Tuesday, September 5, 2023 3:47 PM
To: SOS Elections <SOSElections@mt.gov>; Dagnall, Ray <RDagnall@mt.gov>
Cc: rcook@mtbus.net
Subject: [EXTERNAL] Final Submission of Ballot Issue #12

Good afternoon,

Please see the attached submission from Rob Cameron regarding Ballot Issue #12. The original copy is also being mailed today.

If you have any questions, please let me know.

Thank you,

ANNA SNEDEKER

(SHE/HER)

LEGAL SECRETARY

JACKSON, MURDO & GRANT, P.C.

203 NORTH EWING | HELENA, MT 59601

DIRECT: 406-204-2921 | MAIN: 406-442-1300 | FAX: 406-443-7033

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CIRCULAR 230 NOTICE: Any tax advice contained in this email is not intended and may not be used to avoid penalties under U.S. federal tax laws, or to promote, market, or recommend to another party any transaction or matter addressed herein.

From: Dagnall, Ray <RDagnall@mt.gov>
Sent: Monday, October 16, 2023 10:46 AM
To: Rob Cook <rcook@mtbus.net>
Cc: Rob Cameron <rcameron@jmgattorneys.com>; SOS Elections <SOSElections@mt.gov>
Subject: Legal Sufficiency Determination for Ballot Issue #12

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Morning Mr. Cook,

The Attorney General's Office has informed our office that they have made a determination of legal insufficiency with Ballot Issue submission #12. The determination is attached. Any questions concerning this determination should be directed to the Attorney General's Office. Our office will reflect this determination on our website here 2024 Ballot Issues [sosmt.gov] .



Ray Dagnall | Program Specialist
Montana Secretary of State, Christi Jacobsen
State Capitol Building

Helena, MT 59601
PHONE 406.444.9009

[website](#) | [email](#) | [map](#)

2023.10.13 Ballot Measure 12 Legal Sufficiency FINAL.pdf
226K

MER Petition

EXHIBIT 6

10/25/2023, 11:24 AM



MEMORANDUM

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: October 13, 2023
Re: Legal sufficiency review of Proposed Ballot Measure No. 11

Ballot Measure #11, a constitutional initiative, amends Article IV, Section 5 of the Montana Constitution to provide elections must be decided by a majority vote rather than a plurality.

The proposed measure is legally sufficient pursuant to Section 11(1)–(2), Chapter 647, Laws of 2023 (SB 93).

Further, pursuant to Section 11(3), the Attorney General determines that the sponsor's proposed ballot statements comply with Section 2 and Section 3. The budget director determined that Ballot Measure 11 will not have an impact on State revenue or expenditures, therefore, a fiscal statement under Section 11(4) is unnecessary.

Finally, pursuant to Section 11(5), the Attorney General determines Ballot Measure 11 does not conflict with any other proposed Ballot Measures.

Sincerely,

BRENT MEAD
Deputy Solicitor General

DEPARTMENT OF JUSTICE

215 North Sanders
PO Box 201401
Helena, MT 59620-1401

(406) 444-2026
Contactdoj@mt.gov
mtdoj.gov

CERTIFICATE OF SERVICE

I, Robert Cameron, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 10-26-2023:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Austin Knudsen
Service Method: eService

Martha Sheehy (Attorney)
P.O. Box 584
Billings MT 59103
Representing: Montanans for Election Reform Action Fund, Rob Cook, Frank Garner, Bruce Tutvedt, Doug Campbell, Ted Kronebusch, Bruce Grubbs
Service Method: eService

Sean Thomas Morrison (Attorney)
425 Monroe Ave
Helena MT 59601
Representing: Montanans for Election Reform Action Fund, Rob Cook, Frank Garner, Bruce Tutvedt, Doug Campbell, Ted Kronebusch, Bruce Grubbs
Service Method: eService

Christi Jacobsen (Respondent)
Montana Secretary of State
P.O. Box 202801
Helena MT 59620
Representing: Self-Represented
Service Method: Conventional

Electronically signed by Jacqueline Kessler on behalf of Robert Cameron
Dated: 10-26-2023