EXHIBIT 4
DATE 3/23/05
SB 447

DEPARTMENT OF JUSTICE
SB 447: Improving the Ballot Issue Review Process

Background
The Montana Constitution guarantees the people's right to propose and vote on ballot issues. Timely judicial review of ballot issues, including any necessary pre-election review, is essential to the exercise of that right.

Since 1972, Montana citizens have proposed 266 ballot issues, including:
- 42 constitutional amendments
- 96 constitutional initiatives
- 79 initiatives
- 49 referenda

These ballot issues have been challenged in court 24 times. Of these challenges:
- 19 claimed that the ballot issue violated the laws governing whether the issue properly appeared on the ballot
- 15 occurred before the election in an effort to prevent an allegedly improper vote on an illegal ballot issue.

Existing Law Delays Effective Judicial Review of Ballot Issues
It now takes nearly two months from the time citizens propose a ballot issue until they get the approved petition form needed to gather signatures. The Attorney General may not review the issue for legality under the constitutional and statutory provisions that govern the submission of ballot issues to voters until the petition has been approved for circulation.
- If the Attorney General finds a legal problem, the proponent either has to start the whole process again, or go to district court and wait for a decision and a likely appeal.
- If the ballot issue is determined to be legal, gathering and counting signatures may take another two months or longer.

When the Secretary of State receives the signed petitions to determine whether a ballot issue has enough signatures to appear on the ballot, there is only one month before the official ballots must be certified and county election officials begin printing ballots. This critical month is the only time an opponent of a ballot measure may challenge its legality and the wording of the ballot statements prior to the election, and existing law is ambivalent about whether such a challenge should occur in the District or Supreme Court. By the time a court assumes jurisdiction and issues a final decision on such a challenge, local election administrators usually have sent the ballots to the printers, and often the election already has been held.

Since 1972, no pre-election challenge to an initiative proposed by petition has been resolved before the ballot certification and printing deadline. Because courts do not have the time to resolve pre-election challenges under existing law, successful but delayed pre-election challenges to initiatives result in either submission of an illegal ballot issue to the voters or costly reprinting of ballots. Confusing joint original jurisdiction in both the First Judicial District Court and the Supreme Court compounds the time pressure.

Meanwhile, both proponents and opponents have no alternative but to wage costly campaigns for or against a ballot issue without knowing whether the issue will be upheld on judicial review.

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The 2004 election provided two pre-election challenges that illustrate these timing problems:

- In a challenge by the Montana Environmental Information Center (MEIC) and others to I-147 (the cyanide mining initiative), MEIC sued in District Court and the Supreme Court at the same time. The Supreme Court dismissed the challenge because there was no time to consider the issues before the election, while the District Court delayed its proceedings until the Supreme Court announced its decision. In the end, no court heard the challenge before the election, and the case was dismissed after voters defeated I-147.
- In a challenge by the Montana VFW and others to I-149 (the tobacco tax initiative), even an expedited district court schedule did not beat the ballot certification deadline. Although the court issued a decision modifying the ballot statements shortly after the deadline had passed, at least one county had to reprint ballots. The Supreme Court did not have time to consider an appeal seeking to further modify the ballot issue or strike it from the ballot. Instead, the case was dismissed after voters approved I-149.

Simplifying the Ballot Issue Review Process

SB 447 would shorten the review process for ballot issues, giving proponents an opportunity **to fix problems earlier** in the process and **avoid unnecessary court invalidation** of issues after expensive campaigns and elections for the ballot issue already have run their course:

- The Attorney General would complete the review of a ballot issue's legality before petitions circulated for signature gathering.
- The Secretary of State would provide the petition form to proponents, eliminating the duplicative review of the form by both the Attorney General and the Secretary of State.
- Proponents and opponents would be able to challenge the Attorney General's legal review and ballot statements directly in the Supreme Court, avoiding the delay of appeals.
- The Attorney General would have the option of resolving potential litigation raised by proponents or opponents before going to court, if possible.

These revisions focus only on the initiative process. They do not affect legal challenges to the merits or application of ballot issues that are approved and become law.

In addition, SB 447 would remove two potentially confusing gaps in existing law by:

- prohibiting the use of argumentative language like preambles in ballot issues. This information would appear only in the Secretary of State's voter information pamphlet.
- providing a means of addressing conflicting ballot issues. If voters have a choice between two or more issues that would effectively cancel each other out, only the issue that received the greatest number of votes would be enacted.

Summary

Montana voters, as well as proponents and opponents of ballot issues, deserve a ballot issue review process that solves legal problems before an issue appears on the ballot. In light of 30 years' experience, SB 447 will streamline the ballot review process, making it fairer, more efficient and more accessible to all Montanans.