May 13, 2022

TO: State Administration and Veterans' Affairs Interim Committee

FROM: Ginger Aldrich, Staff Attorney
RE: Litigation Updates Concerning Recent Legislation

This memorandum was prepared as background information at the request of the State Administration and Veterans' Affairs Interim Committee, and it does not represent any opinion or action on the part of the Legislative Council.

I. Montana Democratic Party v. Jacobsen

Plaintiffs: Montana Democratic Party and Mitch Bohn, Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe, Montana Youth Action, Forward Montana Foundation, Montana Public Interest Research Group

Defendant: Montana Secretary of State

Venue: Montana 13th Judicial District Court, Yellowstone County, Judge Michael G. Moses

Docket No.: 13-DV-21-0451; DA-22-0172

Legislation Challenged:

HB 176: AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HB 506: AN ACT GENERALLY REVISING ELECTION LAWS; ESTABLISHING PRIORITIES FOR DEVELOPMENT OF CONGRESSIONAL DISTRICTS; REVISING PROCEDURES FOR PROSPECTIVE ELECTORS TO REGISTER AND VOTE; CLARIFYING REQUIREMENTS FOR A BOARD OF COUNTY CANVASSERS; ELIMINATING THE EXPERIMENTAL USE OF VOTE SYSTEMS; AMENDING SECTIONS 5-1-115, 13-2-205, AND 13-15-401, MCA; REPEALING SECTION 13-17-105, MCA; AND PROVIDING EFFECTIVE DATES.

HB 530: AN ACT REQUIRING THE SECRETARY OF STATE TO ADOPT RULES DEFINING AND GOVERNING ELECTION SECURITY; REQUIRING ELECTION SECURITY ASSESSMENTS BY THE SECRETARY OF STATE AND COUNTY ELECTION ADMINISTRATIONS; ESTABLISHING THAT SECURITY ASSESSMENTS ARE CONFIDENTIAL INFORMATION; ESTABLISHING REPORTING REQUIREMENTS; DIRECTING THE SECRETARY OF STATE TO ADOPT A RULE PROHIBITING CERTAIN PERSONS FROM RECEIVING PECUNIARY BENEFITS WITH RESPECT TO CERTAIN BALLOT ACTIVITIES; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

SB 169: AN ACT GENERALLY REVISING VOTER IDENTIFICATION LAWS; REVISING CERTAIN IDENTIFICATION REQUIREMENTS FOR VOTER REGISTRATION, VOTING, AND PROVISIONAL VOTING;

AMENDING SECTIONS 13-2-110, 13-13-114, 13-13-602, AND 13-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview: The plaintiffs allege that provisions in HB 176, HB 530, and SB 169, including the revision of which IDs are accepted for certain voter identification purposes, the revision of late voter registration to close the day before the election, and prohibitions on providing, offering to provide, or accepting a pecuniary benefit for collecting or delivering ballots violate the following provisions of the Montana Constitution: Article II, section 4, which provides for the equal protection of the laws, Article II, sections 6 and 7, which provide freedom of assembly and freedom of speech, Article II, section 13, which provides the right of suffrage, Article II, section 17, which provides due process requirements, and Article V, section 1, which provides for legislative power. The plaintiffs have requested that the bills in question be declared in violation of the Montana Constitution and be permanently enjoined.

The plaintiffs have challenged HB 176, which revises late voter registration to close at noon the day before the election for most voters. The plaintiffs assert that HB 176 violates the right to vote and the right to equal protection of the law under the Montana Constitution by eliminating election day registration, making voting in Montana more difficult, reducing young voter turnout, and making registering to vote impossible for someone who turns 18 on election day.

The plaintiffs allege that HB 506 violates Article II, section 4 (Individual Dignity), section 13 (Right of Suffrage), and section 15 (Age Discrimination), by making it more difficult for individuals who do not yet meet age and residency voting requirements—but who will by election day—from receiving a ballot, including young voters and individuals who have recently moved.

The plaintiffs have challenged section 2 of HB 530, which directs the Secretary of State to adopt an administrative rule that prohibits a person from providing or offering to provide or accepting a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots and subjecting violators to a civil penalty. The plaintiffs assert that section 2 of HB 530 violates the right to vote, the right to freedom of speech, and due process under the Montana Constitution.

The plaintiffs allege that SB 169 violates Article II, sections 4 (Equal Protection) and 13 (Right of Suffrage), of the Montana Constitution by reducing the number of standalone forms of identification that can be used for voting purposes.

The plaintiffs have requested the District Court to declare that HB 176, HB 506, section 2 of HB 530, and SB 169 are unconstitutional and that they be permanently enjoined from enforcement. The plaintiffs have requested attorney fees and costs.

This case was consolidated with *Western Native Voice v. Jacobsen* (13-DV-21-0560) and *Montana Youth Action v. Jacobsen* (13-DV-21-1097) concerning similar claims. All three actions now appear under this docket.

The plaintiffs applied for preliminary injunctions to prevent the enforcement of HB 176, HB 506, HB 530, and SB 169 pending the resolution of their claims. The District Court held that the plaintiffs made a *prima facie* showing that HB 176, HB 506, HB 530, and SB 169 were unconstitutional and issued a preliminarily injunction to preserve the status quo until a trial can be held on the merits. Initially, the Court ordered that the injunction prohibit "any aspect" of the bills, but in a later order, the Court

clarified that the injunction was limited to section 2 of HB 506, section 2 of HB 530, section 2 of SB 169, and the entirety of HB 176.

The decision has been appealed to the Montana Supreme Court under docket number DA-22-0172. The Secretary of State appealed the District Court's preliminary injunction as it applies to HB 176 and SB 169 concerning the late registration deadline and voter ID.

II. Montana Federation of Public Employees v. State

Plaintiffs: Montana Federation of Public Employees, Montana Farmers Union, Dennis McDonald, Ron Ostberg, Jeff Barber, Barber Realty, LLC, Montana Cattlemen's Association

Defendant: State of Montana, Montana Secretary of State, Montana Attorney General, Troy Downing, Matthew Monforton

Venue: Montana First Judicial District Court, Lewis and Clark County

Docket No.: DDV-2022-29

Legislation Challenged:

HB 651: AN ACT GENERALLY REVISING BALLOT INITIATIVES; DEFINING APPROPRIATION FOR THE PURPOSES OF A BALLOT INITIATIVE; REQUIRING EMPLOYERS OF PAID SIGNATURE GATHERERS TO REGISTER WITH THE SECRETARY OF STATE AND PAY A FEE; ALLOWING FOR A WAIVER; REQUIRING INTERIM COMMITTEES OR THE LEGISLATIVE COUNCIL TO REVIEW PROPOSED BALLOT INITIATIVE LANGUAGE AND VOTE WHETHER TO SUPPORT THE PLACEMENT OF A MEASURE ON THE BALLOT; REQUIRING LANGUAGE REGARDING THE REVIEW BY AN INTERIM COMMITTEE OR THE LEGISLATIVE COUNCIL BE PLACED ON THE PETITION PRIOR TO SIGNATURE GATHERING; REQUIRING THE ATTORNEY GENERAL TO REVIEW BALLOT INITIATIVES FOR REGULATORY TAKINGS AND DETERMINATIONS TO BE PLACED ON THE PETITION PRIOR TO SIGNATURE GATHERING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 5-5-215, 5-11-105, 13-27-202, 13-27-204, AND 13-27-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Status: DECIDED

Overview: The plaintiffs sought to enjoin the state and the proponents of Constitutional Initiative (CI) No. 121 from gathering signatures to place the initiative on the ballot. At issue is the meaning and scope of the changes enacted in HB 651, which modified the process for qualifying proposed ballot measures for the ballot. Among other things, the bill provided that the Attorney General must review whether a proposed ballot issue will "likely cause significant material harm to one or more business interests" in Montana. In addition, the bill provided that the Attorney General must review the substantive legality of the proposed issue and whether the proposed issue constitutes an appropriation. The bill also provided for a process for interim committees and the Legislative Council to hold a public hearing and vote to support or not support placement of the proposed initiative text on the ballot. In the case of the significant material harm determination and the vote by a legislative committee to support or not support the placement of a ballot issue, appropriate statements notifying electors are placed on certain ballot measure petitions. While these provisions use general references to ballot measures, the bill modified only the statutory initiative petition to incorporate the warning language concerning the significant material harm finding and the result of the interim committee vote.

At issue in this case was a constitutional initiative. HB 651 did not amend the constitutional initiative petition form to include the warning language, nor did it amend the referenda or constitution convention petitions. In this case, the Attorney General concluded the legal sufficiency review but declined to make a determination concerning significant material harm, concluding that HB 651's requirement applied solely to statutory initiatives. Likewise, the Secretary of State did not immediately refer the issue to the Legislative Services Division Director. Instead, the Secretary approved the sample petition form for signature gathering.

The plaintiffs filed suit, claiming that because the Attorney General did not render an opinion on significant material harm and because the appropriate interim committee did not vote on the measure until after the Secretary of State approved the petition for signature gathering, the signature gathering that had taken place was void. The state responded, claiming that the significant material harm review and interim committee review provisions were intended to apply only to initiatives enacting or amending statutes.

The District Court concluded that despite the general use of the term "ballot issue," a term elsewhere defined in code to include all forms of ballot issues, the significant material harm review and the interim committee review only applied to statutory initiatives ("and no other form of ballot issue"). The Court reasoned that there was "little reason for the legislature to include the interim committee vote outcome and the attorney general's significant material harm finding on the petition for statutory initiatives—but not other forms of ballot issues—unless the legislature never intended those provisions to apply to other forms of ballot issues." Therefore, the Court found that there were no defects in the CI-121 petition form and there was no need to invalidate signatures already gathered for CI-121 based on the facts of this case.

III. Cottonwood Environmental Law Center v. Knudsen

Plaintiffs: Cottonwood Environmental Law Center, Gallatin Wildlife Association, John Phillip Meyer, and Montana Rivers

Defendant: Austin Knudsen, in his capacity as Montana Attorney General

Venue: Montana Supreme Court

Docket No.: OP 22-0076

Legislation Challenged: None, *but see* section 13-27-312(8), MCA (HB 651)

Status: DECIDED

Overview: The plaintiffs are proponents of a statutory ballot initiative, I-24, that would designate sections of the Gallatin and Madison rivers "Outstanding Resource Waters," a designation allowing these waters to receive special statutory protection from water degradation. I-24 would also modify language in the Outstanding Resource Waters statute to prohibit the Department of Environmental Quality from issuing new or increased point source discharge permits that would result in a temporary or permanent water quality change.

In 2021, the Legislature passed HB 651, which modified the ballot issue process. Previously, the Attorney General reviewed a ballot issue for legal sufficiency, but the law defined legal sufficiency only in terms of

compliance with procedural matters concerning how an issue is submitted to the elections and explicitly excluded substantive legality. The changes in HB 651 modified this standard to define "legal sufficiency" as including the "substantive legality of the proposed issue is approved by the voters." Section 13-27-312, MCA.

During the Attorney General's legal sufficiency review, the Attorney General rejected I-24, finding that it was legally deficient, constituting an unconstitutional taking of private property in violation of the takings clauses in the U.S. Constitution and the Montana Constitution. Because the measure would likely result in a categorical taking of private property that must be compensated and since it did not provide a mechanism to provide compensation to comply with the takings clauses of the U.S. Constitution and the Montana Constitution, it was deficient. The Attorney General further found that the measure would impact Montana business interests and that the warning statement permitted by 13-27-312, MCA, should be included if the measure proceeded to the ballot.

In reviewing whether the Attorney General's determination of I-24's legal deficiency was correct, the Montana Supreme Court held that it was incorrect because it "misapprehend[ed] the law that applies to unconstitutional takings, and second, the approach contradicts the statutory scheme creating the Attorney General's review process." The Montana Supreme Court explained that a person who claims their property has been taken or damaged by the government can commence litigation to recover compensation based on a fact-intensive inquiry, and nothing in the initiative's language impaired a person's ability to seek full compensation. Because a mechanism already existed, I-24 did not need to contain a mechanism for compensation.

In addition, the Montana Supreme Court noted that it was inappropriate to use an opinion about regulatory takings to determine if a ballot issue is insufficient, because if the Attorney General finds that a proposed ballot issue causes a regulatory taking or harms business interests, an advisory statement is placed on the petition's final form. The Court explained that "[i]t would not make sense for the law to call for an advisory statement (which would be appended to a valid petition) to be warranted for a reason that would also render the petition invalid."

Having concluded that the I-24 petition was legally sufficient, the Court instructed the Secretary of State to forward the petition to the proponents with the relevant advisory statement language to allow the proponents to proceed with the signature-gathering process.

In a special concurrence, Chief Justice McGrath addressed the effect of the Legislature's revision of the Attorney General's ability to review ballot initiatives for substantive legality. Although not binding on the Court as precedent, the special concurrence is presented below, in full, because it specifically addresses the constitutionality and scope of the revised substantive legality provision in the opinion of two justices, if the issue is brought before the Court in the future:

> Chief Justice Mike McGrath, concurring.
>
> I write separately to address a crucial constitutional issue implicated in this case that the parties failed to acknowledge or discuss in their briefing. Although we have determined on the record here that the Attorney General's conclusions were incorrect as a matter of law—resolving this specific case—it is important to clarify that even if the Attorney General's grasp of the constitutional doctrine were correct, he lacks the power to reject

a proposed ballot initiative based on an opinion about its constitutionality. Under our constitutional structure and separation of powers, only the courts may make determinations about a law's constitutionality.

In previous pre-election litigation regarding ballot initiatives, we have held that it is only appropriate to forestall a valid initiative prior to an election when it is "unquestionably and palpably unconstitutional on its face." *Reichert*, ¶ 59 (quoting *State ex rel. Steen v. Murray*, 144 Mont. 61, 69, 394 P.2d 761, 765 (1964)). Furthermore, we have expressed emphatically that although this Court may take such action, we should hesitate to "interfere with the constitutional right of the people of Montana to make and amend our laws through the initiative process." *State ex rel. Mont. Citizens for Pres. of Citizens' Rights v. Waltermire*, 224 Mont. 273, 278, 729 P.2d 1283, 1286 (1986). We generally refrain from impeding an initiative's ballot access on constitutional grounds because no potential constitutional conflict would exist "until and unless the Initiative was enacted into law by popular vote." *State ex rel. Mont. Sch. Bd. v. Waltermire*, 224 Mont. 296, 301, 729 P.2d 1297, 1300 (1986); *Montanans Opposed to I-166 v. Bullock*, 2012 Mont. 168, ¶ 14, 365 Mont. 520, 285 P.3d 435.

Although the Attorney General rooted his determination in our facial unconstitutionality standard, what the Attorney General failed to recognize is that *Reichert* and other cases establishing this standard addressed the propriety of action by *the courts* to affect proposed initiatives. *See Reichert*, ¶ 59 (citing *Cobb v. State*, 278 Mont. 307, 310, 924 P.2d 268, 269 (1996) ("*judicial intervention* . . . is not encouraged") (emphasis added). The reason we have always addressed such issues in that frame is because "the office of interpreting legislative and constitutional provisions lies exclusively in the courts." *State v. Toomey*, 135 Mont. 35, 44, 335 P.2d 1051, 1056 (1958).

Recognition of that long-standing constitutional structure is likely why the Legislature, in its enactment of the Attorney General's screening process, limited the concept of "legal sufficiency" to validity regarding format and procedure, rather than an initiative's substantive legality. Because Article III, Section 4, of the Montana Constitution ensures the public's right to "*enact laws* by initiative" (emphasis added), it is unclear what the Legislature contemplated when it reversed the provision to review the "substantive legality" of a *new enactment of law*. What is clear, however, is that the Attorney General took this directive to mean that he could determine a proposed ballot issue's validity based on his view of its constitutionality.

But the Attorney General lacks such power, and the Legislature equally lacks the power to confer it upon him. The Montana Constitution "vests in the courts the exclusive power to construe and interpret legislative Acts, as well as provisions of the Constitution." *State ex rel. Du Fresne v. Leslie*, 100 Mont. 449, 454-55, 50 P.2d 959, 962 (1935). "[I]nherent in that power is the responsibility to determine whether a law conforms to the Constitution." *State v. Walker*, 2001 MT 170, ¶ 7, 306 Mont. 159, 30 P.3d 1099. "Within constitutional limits, this Court and its subordinate courts have the exclusive authority and duty to adjudicate the nature, meaning, and extent of applicable constitutional, statutory, and common law[.]" *Larson v. State*, 2019 MT 28, ¶ 42, 394 Mont. 167, 434 P.3d 241.

This exclusive duty is inherent in the separation of powers enshrined in Article III, Section 1, of the Montana Constitution, and it is deep-rooted in the American constitutional tradition. *See, e.g., Mills v. Porter*, 69 Mont. 325, 328, 222 P. 428, 429-30 (1924) (noting that the three branches of government are assigned different "powers which they may not transgress" and citing the foundational federal case of *Marbury v. Madison*, 5 U.S. 137, (1 Cranch) 137 (1803)). Nearly a century ago, for example, we recognized this constitutional division and the courts' exclusive interpretive power as among a number of "well established rules," and we stressed that "the soundness of these provisions of law . . . will not, we think, be questioned." *See Leslie*, 100 Mont. at 454-55.

Indeed, we have even previously covered this separation-of-powers issue in the very same context as here. In 2014, opponents of a proposed ballot initiative argued that the Attorney General should have rejected it based on its alleged unconstitutionality. *See Hoffman v. State*, 2014 MT 90, ¶ 4, 374 Mont. 405, 328 P.3d 604. We noted that "[a]s an executive officer of the State of Montana, the Attorney General does not have the authority to make a declaration regarding the constitutionality of [the initiative]. 'Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers.'" *Hoffman*, ¶ 9 (quoting *Mitchell v. Town of W. Yellowstone*, 235 Mont. 104, 109, 765 P.2d 745, 748 (1988)).

Now, although the Legislature reversed the provision in § 13-27-312(8), MCA, to include "substantive legality," the new law cannot be construed to have granted the Attorney General extraconstitutional authority. "The Legislature is presumed to be aware of all of its enactments, as well as all related constitutional duties and limitations." *Clark Fork Coalition v. Mont. Dep't of Natural Res. & Conservation*, 2021 MT 44, ¶ 60, 403 Mont. 225, 481 P.3d 198 (citations omitted). Note, for example, that § 13-27-316(6), MCA, protects the public's right to judicially challenge "a constitutional defect in the substance of an issue approved by a vote of the people." This provision within the same statutory framework as the Attorney General's review demonstrates the Legislature's awareness that the Attorney General's screening step is not the proper forum for constitutional challenge.

Because only the judicial branch is vested with the constitutional authority to determine whether a legal enactment and the constitution conflict, it is beyond the power of the Attorney General to foreclose the public's right to pursue the Article III, Section 4 initiative process on such grounds. Any future determination by the Attorney General that bases legal deficiency on a matter of constitutional interpretation cannot stand.

/S/ MIKE McGRATH

Justice Dirk M. Sandefur joins the Concurrence of Chief Justice Mike McGrath.
/S/ DIRK M. SANDEFUR

IV. Brown v. Jacobsen

Plaintiffs: Bob Brown, Hailey Sinoff, Donald Seifert

Defendant: Christi Jacobsen, in her official capacity as Montana Secretary of State

Venue: United States District Court for the District of Montana Helena Division

Docket No.: 6:2021cv00092

Legislation Challenged: Section 69-1-104, MCA (last amended 2003)

Overview: The plaintiffs allege that the Montana Public Service Commission districts were malapportioned in violation of the 14th Amendment of the United States, violating the one person, one vote principle.

The plaintiffs moved for a temporary restraining order or preliminary injunction to prevent the Secretary of State from certifying candidates for Public Service Commission (PSC) commissioner in Districts 1 and 5 (due for a 2022 election) pending a determination on the constitutionality of the Commission's districting plan. The District Court first granted a temporary restraining order and then, later, granted a preliminary injunction enjoining the Secretary of State from certifying candidates for commissioner in Districts 1 and 5 pending a final disposition on the merits. A bench trial was held on March 4, 2022, before Judge Molloy, Circuit Judge Watford, and Chief Judge Morris.

Under the 14th Amendment, every voter is guaranteed a constitutional right to have the voter's vote "counted with substantially the same weight as that of any other voter." While the "one person, one vote" standard is strictly applied to congressional districts, when drawing state and local legislative districts, jurisdictions are allowed to deviate from perfect population equality to accommodate traditional districting objectives. Where the maximum population deviation between the largest and smallest district is less than 10%, a state or local legislative map is presumed to comply with the "one person, one vote" requirement. In this case, the three-judge panel noted that the maximum population deviation of the PSC districts was roughly 24%, which exceeded the presumptively reasonable 10% deviation.

The three-judge panel held that the current PSC districts impermissibly violated the one person, one vote principle of the 14th Amendment and declared that statute setting the PSC districts unconstitutional (69-1-104, MCA). The three-judge panel permanently enjoined the Secretary of State from certifying candidates under the PSC map and imposed a narrow federal court order "to reapportion state electoral districts [of the Public Service Commission] until the Montana legislature acts." It adopted a map submitted by the Secretary of State, but it moved Pondera County from District 5 to District 1 to maintain the Blackfeet Reservation as a community of interest, resulting in a maximum population deviation of 6.72%. The three-judge panel noted that the remedy "is not permanent, however, and remains subject to the Montana legislature's power to draw and implement its own constitutional map."

V. McDonald v. Jacobsen

Plaintiffs: Sister Mary Jo McDonald, Lori Maloney, Fritz Daily, Bob Brown, Dorothy Bradley, Vernon Finley, Mae Nan Ellingson, League of Women Voters

Defendant: Secretary of State

Venue: Montana Second Judicial District Court, Butte-Silver Bow County, Judge Kurt Krueger

Docket No.: 2-DV-21-0120; DA-22-0229

Legislation Challenged:

HB 325: AN ACT ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING FOR THE SELECTION OF THE CHIEF JUSTICE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORATE AT THE 2022 GENERAL ELECTION; AMENDING SECTION 3-2-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Status: DECIDED; APPEALED

Overview: The plaintiffs allege that HB 325, a legislative referendum establishing election districts for Supreme Court justices, would, if approved by voters, violate the language and intent of the Montana Constitution that Supreme Court justices be selected on a statewide basis rather than a districtwide basis. It further alleges that because the change conflicts with the Montana Constitution, it violates the constitutional procedures for amendments to the Montana Constitution by enacting a statutory referendum. The plaintiffs further allege that HB 325 infringes on the right to vote under Article II, section 13, of the Montana Constitution.

The plaintiffs requested that the District Court declare HB 325 unconstitutional and enjoin the Secretary of State from certifying the referendum, as well as preventing it from appearing on the ballot.

Because the subject of the challenged initiative had already been found to be unconstitutional in *Reichert v. St. ex rel. McCulloch*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455, and because the challenged legislation attempted to use an inappropriate procedure to amend the Montana Constitution by legislative action, the Court found that it was appropriate for the Court to accept jurisdiction. Citing *Reichert*, the Court found that Montana Supreme Court precedent had found that the Montana Constitution intended that Supreme Court justices be elected and serve on a statewide basis. Therefore, the Court held that HB 325 was unconstitutional, and the Secretary of State was enjoined from placing HB 325 on the state's 2022 general election ballot.

The state has appealed the order to the Supreme Court.