



MEMORANDUM

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: November 27, 2023
Re: Legal sufficiency review of Proposed Ballot Measure No. 10

Ballot Measure #10, a statutory initiative, prohibits hunting regulations that limit a landowner hunting deer, elk, or black bear on the landowner's property during general hunting season.

The proposed measure is legally sufficient pursuant to MCA § 13-27-226(1)–(2).¹

¹ The Attorney General received significant comments and feedback from the Confederated Salish and Kootenai Tribes (“CSKT”). The CSKT notes that, if passed, Ballot Measure #10 may conflict with existing agreements between the State and CSKT. MCA § 87-1-228. Because of these agreements, Ballot Measure #10, if passed, could result in a reduction in Tribal revenue from license sales, fines, and restitution that benefit wildlife management programs on the Flathead Reservation. Further, Ballot Measure #10, if passed, may also conflict with existing judicial decisions and agreements between the State and CSKT that resulted from prior litigation. *See State v. Shook*, 2002 MT 347, ¶ 28, 313 Mont. 347, 67 P.3d 863 (citing federal litigation leading to a settlement between the State and CSKT regarding hunting regulations within the exterior boundaries of the Flathead Indian reservation); *see also Confederated Salish and Kootenai Tribes v. Montana and K.L. Cool*, 750 F.Supp 446 (D. Mont. 1990). As the Court said in *Shook*, the “issue of jurisdiction to regulate hunting on reservations [is] extremely complex.” *Shook*, ¶ 28. The CSKT also raised concerns that Ballot Measure #10 might implicate the harvest heritage rights under Mont. Const. art. IX, Section 7. The Attorney General notes these comments for the benefit of the reviewing interim committee. MCA § 13-27-228. Ultimately, the Attorney General’s legal sufficiency authority is limited and does not extend to these issues raised by the CSKT. MCA §§ 13-27-110(7); 13-27-226(2).

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Further, pursuant to MCA § 13-27-226(3), the Attorney General determines that the sponsor's proposed ballot statements comply with MCA §§ 13-27-212, 213.

The budget director determined that Ballot Measure #10 will have an indeterminate impact on State revenue or expenditures, therefore, the Attorney General includes a statement of fiscal impact pursuant to MCA § 13-27-226(4).

Finally, pursuant to MCA § 13-27-226(5), the Attorney General determines Ballot Measure #10 does not conflict with any other proposed Ballot Measures.

Sincerely,



BRENT MEAD
Deputy Solicitor General

Fiscal Statement

Ballot Issue #10 may result in a decrease in non-resident license revenue; however, that reduction cannot be determined at this time. Ballot Issue #10 will also likely require additional game wardens to administer; however, that cost cannot be determined.

The CSKT raised three additional issues. First, whether Ballot Issue #10 conflicts with the prohibition on appropriating via ballot measure. Mont. Const. art. III, § 4(1). A ballot measure may result in additional State expenditures without constituting an appropriation. *See Meyer v. Knudsen*, 2022 MT 109, ¶ 12. Second, the CSKT raises concerns that Ballot Issue #10 is unconstitutionally vague. The Montana Supreme Court recently stated that challenges to a ballot measure's ambiguity are ill-suited to pre-election decisions. *See Monforton v. Knudsen*, 2023 MT 179, ¶ 18. The Attorney General, therefore, in this case, declines to issue a pre-election determination as to Ballot Measure #10's ambiguity. Finally, the CSKT commented that Ballot Measure #10 improperly impacts local or special laws. But the Attorney General's review is confined to whether the proposed measure is a general rather than special or local law. Mont. Const. art. III, § 4(1). On its face, Ballot Measure #10 appears to be a generally applicable statute.