

**MEMORANDUM**

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: September 8, 2023
Re: Legal sufficiency review of Proposed Ballot Initiative No. 8

Ballot Initiative No. 8, as modified at the suggestion of the Montana Legislative Services Division, is legally sufficient.

Attorney General's Authority

The Attorney General's office and authority are created and bounded by the Montana Constitution. Mont. Const. art. VI, § 4(4) ("The attorney general is the legal officer of the state and shall have the duties and powers provided by law."). The Constitutional phrase 'provided by law' delegates the matter to the Legislature. *See Brown v. Gianforte*, 2021 MT 149, ¶ 41. The Montana Legislature, by law, granted the Attorney General authority to conduct legal sufficiency reviews for proposed ballot measures. Chapter 647, Laws of 2023, Section 11.

Legal sufficiency "means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors, the substantive legality of the proposed issue if approved by the voters." Chapter 647, Laws of 2023, Section 1. (7). The sufficiency review can be thought of as two buckets: (1) a procedural review if the issue complies with the statutory and constitutional provisions governing submission of the issue to the electorate; and (2) a substantive review of the measure for lawfulness if passed. The Montana Supreme Court recognized the Attorney General's historic authority regarding procedural legal sufficiency issues. *See Montanans Opposed to I-166 v. Bullock*, 2012 MT 168, ¶ 6 ("[T]he Attorney General's review for legal sufficiency is limited by law to determining whether the petition for a ballot issue complies with the statutory and constitutional requirements governing submission of the proposed issue to the electors."). The Attorney General's legal sufficiency review remains subject to judicial review pursuant to MCA, § 13-27-316.

DEPARTMENT OF JUSTICE

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Ballot Initiative No. 8

Ballot Initiative No. 8 amends Article II, Section 20, of the Montana Constitution as follows:

Section 20. Initiation of Proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A Grand Jury Shall consist of 11 persons, of whom eight must concur to find an indictment. A Grand Jury shall be drawn and summoned either at the discretion and order of a district judge or upon a complaint and a petition signed by 100 plus $\frac{1}{2}$ of 1% of a county's electors.

The effect of Ballot Initiative No. 8 is to allow the requisite number of county electors to initiate commence a criminal prosecution by summoning a grand jury.

Analysis

Ballot Initiative No. 8, as modified by the Legislative Services Division, and accepted by the proponent, complies with all substantive and procedural requirements for placement on the ballot. The proposed measure confines itself to a single amendment within a single section of the Montana Constitution. The provision does not expressly or impliedly amend any other constitutional provisions within the meaning of Article XIV, Section 11 of the Montana Constitution. *See Mont. Ass'n of Counties ("MaCO") v. State*, 2017 MT 267.

The Montana County Attorneys Association (MCAA) submitted comments opposing the Initiative. Generally, MCAA believes the possibility of a voter driven grand jury proceeding will unnecessarily inject public opinion and sentiment into an otherwise legal proceeding governed by rules of procedure and legal standards. Further, the number of electors needed to summon a grand jury is so low that small groups could easily commence proceedings involving circumstances that are largely driven by special interests or unbridled passion.

Regulatory Taking and Significant Material Harm Statement

The Attorney General has determined that the Initiative does not amount to a regulatory taking. Further, the Attorney General has considered the comments received, and determines that the Initiative will not likely cause significant material harm to any business interest in Montana.

Appropriation

The Initiative does not constitute an appropriation as set forth in MCA, § 3-27-211.

Conclusion

Ballot Initiative No. 8 is legally sufficient.

Ballot Statement

The Attorney General shall ensure the ballot statements “express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.” The statement of purpose and implication must be 135 words or less. Chapter 647, Laws of Montana, Section 2. (2).

Ballot Initiative No. 8's proponent submitted a draft of a complete Initiative Petition, but did not submit a separate ballot statement. The Legislative Services Division recommended a proposed statement of purpose and implication. The Attorney General agrees. The proponent agreed to the following 50-word statement:

Statement of Purpose and Implication

Currently, under the Montana Constitution, only a district court judge may convene a grand jury. Initiative No. 8 amends Article II, Section 20 of the Montana Constitution to also allow 100 plus one-half of one percent of a county's electors to convene a grand jury by complaint and petition.

YES on Constitutional Initiative CI-[***]

NO on Constitutional Initiative CI-[***]

The Attorney General has no cause to rewrite the agreed upon proponent's ballot statement as it meets the requirements of the law.

In accordance with Section 11(3)(c), Chapter 647, Laws of 2023, the Attorney General returns Ballot Measure No. 8 with the enclosed ballot statements that comply with Sections 2, 3, and 11 of Chapter 647, Laws of 2023.