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TO: Senate Select Committee on Judicial Oversight and Reform

FROM: Jaret Coles, Legislative Attorney

RE: Overview of Ballot Initiatives (Legislative and Citizen) — Relevant Constitutional Provisions, Statutes, and Court Opinions

I. Constitutional Provisions Regarding Initiatives and Referendums

A. The Role of the People in the Montana Constitution:

Article II, Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Article II, Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

B. Statutory Amendments:

Article III, Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

History: Amd. Const. Amend. No. 38, approved Nov. 5, 2002; amd. Const. Amend. No. 47, approved Nov. 3, 2020.

Article III , Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

C. Constitutional Amendments:

Article XIV, Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Article XIV, Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting

thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

History: Amd. Const. Amend. No. 37, approved Nov. 5, 2002; amd. Const. Amend. No. 46, approved Nov. 3, 2020.

II. Statutes Regarding Citizen Ballot Initiatives

Ballot initiatives go through multiple steps. These steps involve constitutionally distinct entities: the people, the Secretary of State, the Legislative Branch, the Governor's Office, the Attorney General, and sometimes the Montana Supreme Court.

A. Early Steps in the Ballot Initiative Process:

- Proponent submits material to the Secretary of State — section 13-27-214, MCA;
- Secretary of State forwards material to Legislative Services Division — section 13-27-216(1)(a), MCA;
- Legislative Services Division reviews for clarity, consistency, bill draft formatting, and other factors ordinarily considered in bill drafting, and may recommend changes to the proponent — sections 13-27-216(2) and 13-27-225, MCA;
- Proponent submits a final version to the Secretary of State — section 13-27-216(3), MCA; and
- Secretary of State sends the final version to the budget director for a fiscal note and the Attorney General for a legal sufficiency determination — section 13-27-216(4), MCA.

B. Determining Legal Sufficiency — Role of Attorney General Under Section 13-27-226, MCA:

- Attorney General examines the proposal for legal sufficiency, and determines whether the statement of purpose and implication complies with section 13-27-212, MCA, and the yes/no statement complies with section 13-27-213, MCA;
- Attorney General sends determination of legal sufficiency or deficiency to Secretary of State;
- Legal sufficiency continues the process; and
- Legal deficiency stops the process.

C. Review Legal Sufficiency — Role of Montana Supreme Court Under Section 13-27-605, MCA:

- Proponents can challenge a decision of the Attorney General with an original proceeding in the Montana Supreme Court; and
- The court can determine that the Attorney General was incorrect, resuming the initiatives process — section 13-27-605(3)(c)(iv), MCA.

D. Legislative Branch Steps in 14-Day Window:

- Secretary of State forwards legally sufficient ballot initiatives to the executive director of the –Legislative Services Division — this starts the 14-day window — section 13-27-228(1) and (3)(b), MCA;
- Executive director assigns the ballot initiative to the relevant interim committee — section 13-27-228(1), MCA;
- The interim committee "shall meet and hold a public hearing after receiving the information and vote to either support or not support the placement of the proposed statewide initiative text on the ballot" — section 13-27-228(2)(a), MCA;
- Executive director informs the Secretary of State of the vote result and vote count — section 13-27-228(3)(a), MCA; and
- "Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot." — section 13-27-238(1)(d).

E. Remainder of Process:

- Secretary of State sends a sample petition form to the proponent — section 13-27-233, MCA;
- Proponents try to gather signatures;
- Proponents must submit sufficient signatures "by 5 p.m. of the third Friday of the fourth month prior to the election at which they are to be voted upon by the people" — section 13-27-104, MCA;
- Secretary of State certifies the ballot initiative to the Governor — section 13-27-308, MCA;
- Proponent forms a committee advocating support in the voter pamphlet — section 13-27-402(4), MCA;
- The Governor, Attorney General, Senate President, and Speaker of the House of Representatives appoint members to the committee advocating rejection in the pamphlet — section 13-27-402(5), MCA;

- Secretary of State and Department of Administration distribute the voter information pamphlet — section 13-27-410, MCA;
- The people vote on election day — a majority vote is needed for a ballot initiative to succeed; and
- Unless the initiative has an effective date section, it becomes effective October 1 following approval — section 13-27-105(1), MCA.

III. Court Decisions Under 1972 Constitution

1974

Referendum — Ratification of Amendment of Federal Constitution: Submission of referendum to voters seeking their approval or rejection of the completed ratification by the Montana Legislative Assembly of the Equal Rights Amendment to the United States Constitution was enjoined as a useless act since the voters' approval or rejection would not affect the ratification. *State ex rel. Hatch v. Murray*, 165 M 90, 526 P2d 1369 (1974).

1977

Referendum — Validity of Voter Referendum — Paving of County Road: A proposed resolution for voter referendum to prevent the use of funds and acceptance of bids by the Board of County Commissioners to pave a county road was not subject to referendum since it concerned an administrative rather than legislative function. *Chouteau County v. Grossman*, 172 M 373, 563 P2d 1125 (1977).

1984

Legislative Resolution in Excess of Initiative Power: In this original proceeding for a Writ of Injunction, plaintiffs sought an order declaring a constitutional initiative void and unconstitutional. The initiative, if adopted by the voters, would have amended the Montana Constitution to direct the 1985 Legislature to adopt a resolution requesting Congress to call a constitutional convention for the sole purpose of adopting a balanced budget amendment. It also would have required that if the resolution was not adopted within 90 legislative days, the Legislature would remain in session without pay until the resolution was adopted. The Supreme Court, in granting injunctive relief, held that although the initiative was in form a constitutional amendment, it was in substance a legislative resolution. The initiative power conferred by the Montana Constitution does not include the power to enact a legislative resolution. The electorate

cannot circumvent the constitution by indirectly doing that which can be done directly. State ex rel. *Harper v. Waltermire*, 213 M 425, 691 P2d 826, 41 St. Rep. 2212 (1984).

1986

Reasonableness of Time Periods: Under 13-27-316(2), certification by the Secretary of State to the Governor of qualification for the ballot triggers the time in which opponents to the measure may act. The opponents have 10 days following certification to file a challenge in District Court. The opponent has the time from the petition's initiation until its certification to prepare the action but is not required to act until it qualifies for the ballot. The statutes then provide for immediate access to the courts. This is a reasonable procedure for challenging the sufficiency of the title of an initiative. *State ex rel. Boese v. Waltermire*, 224 M 230, 730 P2d 375, 43 St. Rep. 2156 (1986).

Constitutional Referendum by the People — Extent of Court Consideration of Constitutional Amendment Initiative: Unless it appears to be absolutely essential, the Supreme Court will not interfere with the right retained by the people to change the Montana Constitution by initiative, and an initiative will not be removed from the ballot prior to vote unless it is clearly unconstitutional on its face or has been improperly submitted. The court will not accept jurisdiction to decide if the statement of purpose and statement of implication are untrue unless the challenge procedure in 13-27-316 is followed. *State ex rel. Mont. Citizens for the Preservation of Citizens' Rights v. Waltermire*, 224 M 273, 729 P2d 1283, 43 St. Rep. 2192 (1986).

1987

Constitutional Referendum by the People — Initiative Amendment Void — Material Language Difference — Improper Publication Procedures: The language of an amendment to Art. II, sec. 16, Mont. Const., as filed and certified by the Secretary of State, was not the same language submitted to the voters at the election. Because the difference in language was material and because publication of the proposed initiative prior to election did not follow constitutional mandates, the purported amendment was held to be void. *State ex rel. Mont. Citizens for the Preservation of Citizens' Rights v. Waltermire,* 227 M 85, 738 P2d 1255, 44 St. Rep. 913 (1987). Petitions for rehearing, reconsideration, and clarification denied, 44 St. Rep. 929A (1987).

1988

Constitutional Referendum by the Legislature — Sufficiency of Title of 1988 Welfare Referendum — Applicable Standard: The title of a referendum "allowing the

legislature greater discretion to determine the eligibility, duration, and level of economic assistance and social services to those in need" was found by the Supreme Court to be legally sufficient after applying the constitutional requirement of clarity of title set out in Art. V, sec. 11, Mont. Const., and employing the rules of construction developed under State ex rel. *Wenzel v. Murray*, 178 M 441, 585 P2d 633 (1978), and St. v. McKinney, 29 M 375, 74 P 1095 (1904). The court refused to intervene to remove the referendum from the ballot prior to a vote of the people so as not to violate the constitutional rights of popular sovereignty and self-government. Recognizing important distinctions between the processes of referendum and initiative, the standard applied to the referendum was the same applied to examination of the title of other products of the Legislature. The court affirmed the District Court finding of no statutory authority for preelection nullification of a legislative referendum and noted a strong presumption in favor of the constitutionality of legislative enactments. The ballot language was not purposely misleading and sufficiently identified the measure to provide for an informed vote. *Harper v. Greely*, 234 M 259, 763 P2d 650, 45 St. Rep. 1889 (1988), distinguishing *State ex rel. Steen v. Murray*, 144 M 61, 394 P2d 761 (1964), and *State ex rel. Harper v. Waltermire*, 213 M 425, 691 P2d 826, 41 St. Rep. 2212 (1984). See also *State ex rel. Boese v. Waltermire*, 224 M 230, 730 P2d 375, 43 St. Rep. 2156 (1986), and *T&W Chevrolet v. Darvial*, 196 M 287, 641 P2d 1368 (1982).

1992

Referendum — Measure Redirecting Coal Trust Fund Not Appropriation: A legislative referendum that redirected coal severance taxes from the permanent trust to a treasure state endowment trust was not on its face an appropriation of money subject to the provisions of this section, which prohibits the submission of an appropriation measure to electors as a ballot issue. *State ex rel. Gould v. Cooney*, 253 M 90, 831 P2d 593, 49 St. Rep. 410 (1992).

1994

Referendum –ISSUE 1: Suspension of Income Tax Law Pending Vote of the People Not Violation of Equal Protection: An increase in the state income tax passed by the Legislature was referred to the people, and its effect was suspended by petition pending that vote. Nicholson filed suit, arguing that the suspension of the law caused by the petition of a minority of voters vetoed the will of the majority, acting through their Legislature, in passing the income tax increase. The Supreme Court held that in adopting the constitutional provision providing for petition, referendum, and suspension, the majority had granted the minority the powers complained of and that in any event, the majority would have its opportunity to vote upon the tax increase at the referendum election. There was therefore no violation of the equal protection provisions of the constitution.

ISSUE 2: Tax Increase Not Appropriation of Money — Tax Increase Subject to Referendum: Natelson collected enough petition signatures on an income tax increase passed by

the Legislature to suspend the increase and refer it to the people for a vote. Nicholson filed suit, claiming that the income tax increase was so inextricably tied to appropriation of the money raised by the tax as to constitute an appropriation itself, which is excepted from the referendum power of the people. Citing St. v. Dixon, 59 M 58, 195 P 841 (1921), the Supreme Court held that the income tax increase did not fit the definition of an appropriation. The Supreme Court also noted that the increase was purely revenue raising in nature, contained no provisions for expenditures, and was offered, debated, and voted upon separate from appropriation bills. *Nicholson v. Cooney*, 265 M 406, 877 P2d 486, 51 St. Rep. 579 (1994).

1996

Failure to Remove Reference in Referendum — Substantive Defect: A legislative referendum purported to eliminate the Office of Secretary of State but failed to address a provision in the constitution assigning a duty to the Secretary of State or to designate who would assume that duty. Although judicial intervention in referenda or initiatives prior to an election is not encouraged, the Supreme Court exercised its statutory prerogative of judicial review and held that the omission was a substantive defect, not a defect of form. If passed, the referendum would have left a defect in the constitution that could not be remedied except by another election. The Secretary of State was thus properly enjoined from presenting the referendum to electors. *Cobb v. St.*, 278 M 307, 924 P2d 268, 53 St. Rep. 920 (1996). See *also Reichert v. St.*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455.

1999

Constitutional Referendum by the People — Submission of Constitutional Initiative Amending Three Parts of Constitution Violative of Separate Vote Requirement: Plaintiffs filed an original application for declaration of judgment and injunctive relief, challenging the validity of Constitutional Initiative No. 75 (CI-75), which was passed by the voters and stated that no new tax or tax increase could be enacted unless approved by a majority of the electorate. The initiative amended Art. VIII, Mont. Const., revising state revenue and finance provisions; amended Art. II, sec. 18, Mont. Const., providing that sovereign immunity did not shield public officials or employees from appropriate civil liability for violating CI-75; and provided that notwithstanding the referendum provisions of Art. VI, sec. 10, Mont. Const., before a bill imposing new or increased taxes is referred to the people, the Governor had veto power. The dispositive issue was that CI-75 had two or more constitutional amendments, in violation of Art. XIV, sec. 11, Mont. Const., which is a cogent constitutional recognition of the circumstances under which Montana voters receive constitutional initiatives, namely that a separate vote is required for each proposed constitutional amendment. Citing *Armatta v. Kitzhaber*, 959 P2d 49 (Oreg. 1998), the Supreme Court held that the separate vote requirement is distinguishable as different and narrower than the single subject requirement in Art. V, sec. 11, Mont. Const., and that to the extent that a constitutional amendment may be valid under the single subject rule but

fail under the separate vote rule, holdings to the contrary in *State ex rel. Teague v. Bd. of Comm'rs*, 34 M 426, 87 P 450 (1906), *State ex rel. Hay v. Alderson*, 49 M 387, 142 P 210 (1914), and *State ex rel. Corry v. Cooney*, 70 M 355, 225 P 1007 (1924), were overruled. Because CI-75 expressly amended three parts of the Montana Constitution without allowing a separate vote on each amendment, CI-75 was unconstitutional under Art. XIV, sec. 11, Mont. Const. *Marshall v. St.*, 1999 MT 33, 293 M 274, 975 P2d 325, 56 St. Rep. 142 (1999), following *State ex rel. Hinz v. Moody*, 71 M 473, 230 P 575 (1924), and *Sawyer Stores, Inc. v. Mitchell*, 103 M 148, 62 P2d 342 (1936). However, see *Mont. Ass'n of Counties v. St.*, 2017 MT 267, 389 Mont. 183, 404 P.3d 733, clarifying that the single-subject requirement does not apply to constitutional initiatives.

2005

Signature Distribution Invalid: The 2002 amendment to this section requiring that signatures be gathered on a county basis rather than on a legislative district basis was unconstitutional on its face under the 14th amendment's equal protection clause and therefore invalid. *Mont. PIRG v. Johnson*, CV 03-183-M-DWM (D.C. Mont. 2005).

2006

Constitutional Referendum by the People — District Court's Rewriting of Attorney General's Statements Explaining Initiative Proposal Reversed When Statements Accurate: Plaintiff group sought an initiative petition to include an additional constitutional limit on legislative appropriations to an amount to be determined by applying a formula based on population growth and inflation unless an increase was approved by the electorate. As required, the Attorney General prepared statements explaining the purpose of the measure, the implications of a vote for and against the measure, and a fiscal statement. Plaintiffs were dissatisfied with the statements and filed a complaint. The District Court determined that all the statements were inaccurate, rewrote the statements, and ordered that the court's statements rather than the Attorney General's be placed on the ballot should the measure qualify. The Attorney General appealed, and the Supreme Court reversed. Employing the rules of construction developed under *State ex rel. Wenzel v. Murray*, 178 M 441, 585 P2d 633 (1978), the Supreme Court held that the District Court was incorrect in determining that the statement of purpose was inaccurate and omitted salient provisions of the measure. It is not the job of a court to add to the requirements of 13-27-312 that to be accurate, a statement of the purpose of an initiative must include a description of how it can be enforced or a statement of when it will become effective. Without engaging in a comparison of the statements, the Supreme Court held that the Attorney General's statement of purpose was adequate to meet the statutory requirements to provide a true and impartial explanation of the proposed ballot issue in plain, easily understood language. Likewise, the statement of implication and the fiscal statement were adequate, if not perfect, satisfied statutory requirements, and were not confusing or misleading, and the Supreme Court

ordered that the issue be placed on the ballot containing the statements prepared by the Attorney General. *Stop Over Spending Mont. v. St.,* 2006 MT 178, 333 M 42, 139 P3d 788 (2006).

Constitutional Referendum by the People — Attorney General Statements on Initiative Considered True and Impartial — Judicial Deference to Statements That Meet Statutory Requirements: Plaintiffs challenged the Attorney General's statements of purpose and implication on a ballot initiative that concerned the recall of elected justices and judges when voters determined that appropriate cause existed. The District Court held that the Attorney General's statements satisfied statutory requirements, and plaintiffs appealed, requesting the Supreme Court to rewrite the ballot statements. The Supreme Court applied the standard in *Stop Over Spending Mont. v. St.,* 2006 MT 178, 333 M 42, 139 P3d 788 (2006), that courts will defer to Attorney General statements on ballot initiatives provided the statements meet statutory requirements, noting that 13-27-312 does not grant proponents or opponents the right to a ballot statement of their choosing. Rather, a statement that explains the ballot measure in ordinary plain language and that is true and impartial and not argumentative or likely to create prejudice for or against the measure is in compliance with the statute. In this case, the statement of purpose was true, and the Attorney General's decision to omit what plaintiffs characterized as salient provisions from the statement of purpose did not prevent voters from casting an intelligent and informed ballot. The Attorney General's statement of implication was true, impartial, and a plainly written explanation of a vote for and against the initiative. Thus, the Supreme Court declined to rewrite the Attorney General's statements and affirmed the District Court. *Citizens Right to Recall v. St.*, 2006 MT 192, 333 M 153, 142 P3d 764 (2006), followed in *Mont. Consumer Fin. Ass'n v. St.*, 2010 MT 185, 357 Mont. 237, 238 P.3d 765. See also *State ex rel. Wenzel v. Murray*, 178 M 441, 585 P2d 633 (1978), and *Montanans Against Tax Hikes v. St.*, 2018 MT 201, 392 Mont. 344, 423 P.3d 1078.

Expedited Hearing on Validity of Ballot Measure Not Violative of Procedural Due Process: Opponents to a ballot measure timely filed a challenge, and the District Court expedited the hearing and denied the proponents additional time for discovery. On appeal, the proponents asserted that their due process rights were violated by the District Court's actions. The Supreme Court disagreed. The requirements for a procedural due process claim are notice and opportunity for a hearing appropriate to the nature of the case. The proponents could not claim lack of notice because: (1) the opponents' complaint was sufficiently specific to put the proponents on notice that the opponents contested the validity of addresses listed by paid signature gatherers; (2) the proponents acknowledged that the Secretary of State notified them during the signature gathering process that complaints had been received related to address falsification; and (3) denial of additional time for discovery regarding address falsification did not prejudice the proponents because the signature gatherers were contacted, hired, and paid by the proponents, so any information regarding the true addresses was within the exclusive knowledge of the proponents. The due process claim of lack of a meaningful hearing was also denied by the Supreme Court. The record showed that the proponents failed to use the time allocated for discovery or to avail themselves of available procedural remedies. The proponents did not answer the opponents' complaint, request any discovery, move for a continuance, take any depositions, file a pretrial

brief, attend depositions conducted by the opponents, file proposed findings of fact or conclusions of law, or object to the District Court's proposed expedited schedule. Thus, any deprivation of a meaningful hearing was more a construct of the proponents' own failure to act than it was a function of the District Court's denial of more time for trial preparation. The proponents' due process claim failed. Montanans for Justice: *Vote No on CI-98 v. St.*, 2006 MT 277, 334 M 237, 146 P3d 759 (2006), distinguishing *Wilson v. Dept. of Public Service Regulation,* 260 M 167, 858 P2d 368 (1993).

2007

Challenge to Invalidate Signatures for Minimum Wage Initiative Rendered Moot by Election: Montanans for Equal Application of Initiative Laws (Montanans for Equal Application) filed an action to invalidate signatures gathered by supporters of Initiative Measure No. 151 (I-151), a proposal to raise the state minimum wage, and to enjoin the Secretary of State from including I-151 on the general election ballot. Supporters of I-151 filed a motion for summary judgment, contending that Montanans for Equal Application's challenge was barred by the 30-day limitation period then provided in 3-5-302 (see 13-27-317 for similar limitation). The District Court granted summary judgment for Raise Montana, ruling that Montanans for Equal Application's claim was untimely under 3-5-302 because it was not filed within the then-required 30 days after the date on which the Secretary of State notified the Governor that a sufficient number of signatures had been obtained to qualify for the ballot. Montanans for Equal Application appealed, arguing that the District Court ignored the plain meaning of 3-5-302, which allowed a challenge of a ballot issue "at any time" after discovery of illegal signatures. Raise Montana countered that not only did the District Court correctly interpret the former version of 3-5-302 to bar a claim filed 83 days after certification, but more importantly, this section, which prohibits a challenge of the sufficiency of an initiative after an election, rendered the challenge moot. Agreeing with Raise Montana, the Supreme Court ruled that Montanans for Equal Application did not begin their litigation in sufficient time to appeal the trial court's decision before the election and the unambiguous language of subsection (3) of this section became operative. *Montanans for Equal Application of Initiative Laws v. St.,* 2007 MT 75, 336 M 450, 154 P3d 1202 (2007).

2010

Supreme Court Without Authority to Modify Text of Initiative Measure — Authority of Court to Modify Ballot Statements — Attorney General's Fiscal Statement Held Sufficient — No Prejudice Shown: Harrington brought an original proceeding in the Montana Supreme Court challenging the Attorney General's statements of purpose and implication because those statements did not contain references to "consumer loan licensees", as did the text of the initiated measure. The Supreme Court held that under 13-27-316 the court had no authority to modify the text of the initiative but that under 13-27-316(3)(c)(ii) the court could

reform the ballot statements to include the phrase "consumer loan licensees" and certify those statements to the Secretary of State. Harrington also objected to the content of the fiscal statement prepared by the Attorney General and objected to the fact that the Attorney General had apparently not consulted with the Department of Revenue in preparing the statement. The Supreme Court found the fiscal note sufficient because the statute did not specify the content of the note and because the Attorney General had consulted with the Division of Banking and Finance of the Department of Administration in preparing the note. The court also pointed out that Harrington failed to point out any language in the statement of implication or the fiscal statement that prejudiced him. *Mont. Consumer Fin. Ass'n v. St.*, 2010 MT 185, 357 Mont. 237, 238 P.3d 765.

2012

Referendum — Preelection Challenge to Legislative Referendum — Constitutional Amendments by Statutory Referendum — Justiciable Where Proposed Law Facially Defective: Legislative Referendum 123 (LR-123) was enacted by the Legislature in 2011 and was set to appear on the November 2012 general election ballot. The referendum changed elections for Supreme Court justices from statewide to regional. Prior to the election, citizens from each of the seven proposed regions filed an action against the Secretary of State, seeking a declaratory judgment that the proposed referendum was unconstitutional as well as an injunction to bar the Secretary of State from putting the measure on the ballot. The District Court granted the plaintiffs summary judgment and the state appealed. The Supreme Court agreed with the District Court that the matter was justiciable even though the voters had not yet passed the referendum. In determining that the case could go forward, the Supreme Court reasoned that ripeness has both a constitutional dimension based on the case or controversy requirement and a prudential dimension that weighs the fitness of the issues for judicial decision and the hardship to the parties of withholding a decision. The issues were definite and concrete, and given the time and money involved, there was no prudential reason for allowing the election on LR-123 to proceed prior to addressing the constitutional issues. The measure sought to amend the Montana Constitution by means of a statutory referendum, in clear violation of constitutional provisions. Therefore, the Supreme Court agreed the matter was justiciable and affirmed the District Court's granting of summary judgment. *Reichert v. St.*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455.

2014

Referendum Title Unnecessarily Redundant but Legally Sufficient — Clarification in Ballot Statement Required: MEA-MFT challenged the title of a legislative referendum that ended same-day voter registration, claiming it was inaccurate and misleading. The title of the referendum "ensur[ed] compliance with the National Voter Registration Act", and a provision was placed in the bill referencing the federal law, although Montana was already compliant with the federal Act. MEA-MFT argued that the title's reference to the National Voter Registration Act (NVRA) misled voters by suggesting that ending same-day voter registration was required

by the Act. The Supreme Court found that although the reference to NVRA compliance was unnecessary, the superfluous language did not make it void. Nevertheless, the court found that the stand-alone title could lead to voter confusion and ordered the Attorney General to revise the ballot statement to make it clear that the NVRA did not require elimination of same-day voter registration. *MEA-MFT v. St.*, 2014 MT 33, 374 Mont. 1, 318 P.3d 702.

Each Statutory Citation in Title of LR-127 Constitutes Single Word: The title of Legislative Referendum 127 (LR-127) does not comply with 5-4-102 because when each statutory citation is counted as a single word, the title exceeds the 100-word limit. As a result, LR-127 is not legally sufficient. (However, see Ch. 182, L. 2021, wherein the Legislature amended the statute to prevent section numbers from being counted as words.) *MEA-MFT v. St.*, 2014 MT 76, 374 Mont. 296, 323 P.3d 198.

Attorney General Review of Ballot Initiative — No Power to Review Substantive Legality: The Attorney General's review of a ballot initiative for legal sufficiency is limited to determining whether the initiative complies with requirements governing the submission of the proposed issue to voters and does not include consideration of the substantive legality of the initiative if it were approved by voters. *Montanans Opposed to I-166 v. St.*, 2012 MT 168, 365 Mont. 520, 285 P.3d 435, followed in *Hoffman v. St.*, 2014 MT 90, 374 Mont. 405, 328 P.3d 604. See also *Mont. Min. Assoc. v. St.*, 2018 MT 151, 391 Mont. 529, 420 P.3d 523.

Summary Ballot Statements Legally Sufficient: In an original proceeding challenging the legal sufficiency of a proposed ballot measure that sought to prohibit enforcement of the federal Patient Protection and Affordable Care Act (ACA) in Montana, petitioners argued that the ballot statements approved by the Attorney General were insufficient because the statements failed to explain to voters the substantive provisions of the ACA that would be void if the measure passed and failed to explain the far-reaching consequences that the measure would have on existing Montana programs. The Supreme Court denied the petitioners' challenge, concluding that the Attorney General's statement mentioned the topics that the petitioners claimed would be affected by the measure, thereby capturing the purpose, implication, and fiscal impacts in a summary fashion and sufficiently informing voters of the implications of a vote for or against the measure. *Hoffman v. St.*, 2014 MT 90, 374 Mont. 405, 328 P.3d 604. See also *Montanans Against Tax Hikes v. St.*, 2018 MT 201, 392 Mont. 344, 423 P.3d 1078.

2016

Denial of Request for Supreme Court to Exercise Original Jurisdiction to Enjoin Initiative — Examination of Constitutionality When and If Initiative Passes: The plaintiffs challenged the constitutionality of an initiative by filing a petition for declaratory relief and seeking an injunction to prevent the Secretary of State from certifying the initiative. The Supreme Court denied the petition without prejudice, concluding that the court lacked authority

to determine the constitutionality of the initiative's provisions until, and if, the initiative passed. *Mont. AFL-CIO v. McCulloch*, 2016 MT 200, 384 Mont. 331, 380 P.3d 728.

2017

Constitutional Referendum by the People — Constitutional Referendum Void — Separate Vote Requirement — Substantive Changes Not Closely Related: 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. Although the text of CI-116, also known as "Marsy's Law", was contained in a new section, the constitutional initiative implicitly modified Art. II, secs. 2(3), 9, 10, 17, 20, 21, and 24. Because these changes were substantive and not closely related, CI-116 violated the separate-vote requirement, and it was void in its entirety. **Mont. Ass'n of Counties v. St.,** 2017 MT 267, 389 Mont. 183, 404 P.3d 733.

2018

Initiative Effective Date — Question of Delegation of Rulemaking Authority Outside Scope of Attorney General's Legal-Sufficiency Review: Proponents of a ballot initiative regarding the permit process for hard-rock mines submitted the initiative to the Attorney General for a legal sufficiency review as required by 13-27-312. The Attorney General approved the included statement of purpose that noted certain terms in the initiative were not fully defined and would require additional definition by legislation or agency rulemaking. The petitioners filed an original action asking the Supreme Court to determine the initiative was legally insufficient for violating 13-27-105, regarding the effective date of initiative issues. While the initiative stated its effective date was the date of approval by the electorate, the petitioners argued the initiative delegated rulemaking authority and therefore needed the statutorily required effective date of October 1 following approval. The Supreme Court disagreed, holding that the text of the initiative did not explicitly mention rulemaking, and therefore the issue of whether rulemaking authority was delegated was a substantive legal question that surpassed the Attorney General's duty to review and identify nonsubstantive statutory and constitutional deficiencies in a proposed initiative. The Supreme Court also held that because the question of delegation of rulemaking authority was outside the scope of the Attorney General's legal-sufficiency review, it was also outside the scope of the court's preelection initiative review pursuant to 3-2-202. *Mont. Min. Assoc. v. St.*, 2018 MT 151, 391 Mont. 529, 420 P.3d 523.

2022

Restricting Signature Gatherers to State Residents — Severe Burden on Free Speech, Triggering Strict Scrutiny — Not Narrowly Tailored to Further Montana's Compelling Interest in Preventing Fraud — Pay-Per-Signature Prohibition Imposes Lesser Burden and Furthers Important Regulatory Interest in Preventing Fraud — Affirmed in Part, Reversed in Part, and Remanded. *Pierce v. Jacobsen*, 44 F.4th 853 (9th Cir. 2022).

Ballot Initiative to Designate Certain Rivers as "Outstanding Resource Waters" — Determination of Legal Insufficiency — Supreme Court Review of Determination, Holding That Attorney General Erred in Finding of Categorical Taking — Determination Overruled. *Cottonwood Envtl. Law Center v. Knudsen*, 2022 MT 49, 408 Mont. 57, 505 P.3d 837.

Limits on Statutory Initiative Appropriations in Article III, Section 4, Do Not Extend to Constitutional Initiatives in Article XIV, Section 9 — Attorney General Wrongly Rejected Proposed Constitutional Ballot Initiative — Statutory Legal Sufficiency Review. *Meyer v. Knudsen*, 2022 MT 109, 409 Mont. 19, 510 P.3d 1246.

Preelection Challenge — Legislative Referendum Requiring Supreme Court Justices to Be Elected District by District Instead of Statewide — Constitutionality of Referendum Ripe for Judicial Resolution — Controlling Precedent Considered — Measure Facially Unconstitutional — Sufficiently Definite and Concrete Issues Justiciable. *McDonald v. Jacobsen*, 2022 MT 160, 409 Mont. 405, 515 P.3d 777, following *Reichert v. St.*, 2012 MT 111, 365 Mont. 92, 278 P.3d 455.

2023

Constitutional Referendum by the People — Attorney General Legal Insufficiency Upheld — Separate Vote Requirement: Ballot Issue No. 2 (2023) was proposed to amend Article VIII, section 3, of the Montana Constitution to limit annual increases in and valuations of residential property to 2% when assessing property taxes if the property was not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. Additionally, the proposed amendment established 2019 state valuations as the base year for the valuations of residential property and permitted annual reassessment while requiring valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner.

On review, the Attorney General determined that the ballot issue was legally insufficient. There was extensive argument about whether the proposal implicitly violated or amended other sections of the Montana Constitution, particularly Article VIII, section 17, which prohibits taxation of the sale of property, and the argument of whether the ballot issue was ambiguous. The Court determined that the ambiguity issues would be more appropriately raised in a post-election challenge. However, the Court held that the proposal violated the separate-vote

requirement and upheld the Attorney General's legal insufficiency determination. The Secretary of State was enjoined from approving petitions for circulation to the electorate for signatures or otherwise submitting the measure for approval by the voters. *Monforton v. Knudsen*, 2023 MT 179.

Constitutional Referendum by the People — Attorney General Legal Insufficiency Not Upheld: Ballot Issue No. 12 (now CI-126) is a proposal to amend Article IV of the Montana Constitution to add a new Section 9. This section would change Montana's current party primary election system to a primary election for specified offices open to all candidates and voters, and the top four candidates for each of the specified offices would then advance to the general election. On October 13, 2023, the Attorney General determined that BI-12 was legally insufficient. Proponents of the measure argued that the Attorney General's determination was incorrect. The Montana Supreme Court held that the Attorney General erred in concluding that the proposed ballot issue was legal insufficient. *Montanans for Election Reform Action Fund v. Knudsen*, 2023 MT 226.

2024

Constitutional Referendum by the People — Attorney General Legal Insufficiency Not Upheld:

- Ballot Issue No. 14 (2023) (now CI-128) is a proposed constitutional initiative that would amend the Montana Constitution to expressly provide a right to make and carry out decisions about one's own pregnancy, including the right to abortion.
- On November 22, 2023, sponsor of the proposal submitted the text of the proposal and proposed ballot statements to the Secretary of State. The proposal was forwarded to the Legislative Services Division on the same day.
- On December 5, 2023, the Legislative Services Division submitted a four-page written response to the sponsor of the proposal as required by section 13-27-225, MCA.
- The sponsor submitted finalized initiative text and ballot statements to the Legislative Services Division and the Secretary of State on December 6, 2023. The Secretary of State then referred the matter to the Attorney General and to the Governor's Office of Budget and Program Planning (OBPP).
- On January 16, 2024, the Attorney General determined that the proposal was legally insufficient pursuant to section 13-27-226(1) and (2), MCA.
- On January 26, 2024, the sponsor of the proposal petitioned the Montana Supreme Court for declaratory relief. *Montanans Securing Reproductive Rights v. Knudsen*, (Docket OP 24-0052).

- On March 18, 2024, the Montana Supreme Court issued an opinion ordering the Attorney General to prepare a ballot statement consistent with the applicable statutory requirements and forward the statement to the Montana Secretary of State within five days. *Montanans Securing Reproductive Rights v. Knudsen*, 2024 MT 54.
- On March 26, 2024, the sponsor of the proposal challenged the Attorney General's ballot statement. See *Montanans Securing Reproductive Rights v. Knudsen* (Docket OP 24-0182).
- On April 1, 2024, the Montana Supreme Court issued an opinion that certified a ballot statement for the proposal to the Secretary of State. *Montanans Securing Reproductive Rights v. Knudsen,* 2024 MT 67 (Docket OP 24-0182).
- On April 2, 2024, the Secretary of State sent a letter to Speaker Regier and President Ellsworth. The letter mentioned that a footnote in the Montana Supreme Court opinion provided that legislative committee review under section 13-27-228, MCA, was not required. The letter also expressed uncertainty about the legislative committee review process.
- On April 2, 2024, President Ellsworth sent a subpoena to the Secretary of State requesting a copy of records regarding the proposal.
- On April 3, 2024, the Montana Supreme Court ordered the Secretary of State to respond to the petitioner's requests for relief by April 8, 2024.
- On April 4, 2024, the sponsor of the proposal petitioned the Montana Supreme Court for a writ of mandate to compel the Secretary of State to provide a finalized petition. See *Montanans Securing Reproductive Rights v. Knudsen* (Docket OP 24-0214).
- On April 5, 2024, the Secretary of State provided the sponsor of the proposal with a finalized petition.
- On April 8, 2024, the Montana Supreme Court recognized that the Secretary of State provided the proposal, and an order was issued denying further relief. See *Montanans Securing Reproductive Rights v. Knudsen* (Docket OP 24-0182).
- On April 18, 2024, the Law and Justice Interim Committee met and conducted a public hearing regarding the proposal. The outcome of the committee's vote was sent to the Secretary of State by the Legislative Services Division the next day. The letter advised: "On April 18, 2024, LJIC held a public hearing regarding CI-128 and conducted a vote regarding the initiative after receiving public comment and committee deliberation. LJIC did not support placement of the proposed text of this initiative on the ballot. There are 8 members of the Montana Legislature on the LJIC, and the outcome of the vote was 0 in favor of placing the measure on the ballot, with 6 members voting no on the motion, and 2 members being absent that did not cast a vote."

IV. Miscellaneous[1]

In 2004, Montana voters passed Initiative 148 (I-148) for medical marijuana. Based on the initiative, people could use marijuana only if a doctor provided written certification that the person had a debilitating medical condition. I-148 essentially created an exemption from state drug laws, since marijuana is a Schedule I controlled substance under federal law, making its cultivation, sale, and distribution illegal.

In October 2009, the United States Attorney's Office, under President Obama's administration, issued a memo indicating the federal government wouldn't focus its resources on people who were following state medical marijuana laws. By the end of 2010, there were over 27,000 people registered with medical marijuana cards in Montana. The program's fast growth led to the introduction of 15 bills in the 2011 Legislature, generally trying to further restrict the program. The only bill that passed, Senate Bill 423, established a limit of three patients per caregiver, prohibited the acceptance of renumeration for marijuana, and placed other limits on the program. It was challenged immediately and tied up in court for five years before nearly all the elements were found constitutional and went into effect in August 2016.

In November 2016, voters passed Initiative 182 (I-182) that lifted the majority of the most stringent requirements of SB 423, required licensing for individuals or businesses that grew marijuana, allowed for the sale of marijuana through dispensaries, and added post-traumatic stress disorder (PTSD) as a debilitating condition. The 2017 Legislature subsequently enacted Senate Bill 333 to tax the gross sale of marijuana, require the use of a seed-to-sale tracking system, and establish different limits on the number of plants and usable marijuana. The 2019 Legislature further changed the law through Senate Bill 265 to allow cardholders to buy marijuana from any licensed provider, revise licensing fees and the way cultivation space is calculated, establish limits on cardholder purchases, and revise procedures for testing marijuana and marijuana-infused products.

In November 2020, voters passed Initiative 190 (I-190) to allow adult-use, or recreational, marijuana in Montana. The initiative required the Department of Revenue to license and regulate the cultivation, transportation, and sale of marijuana and marijuana-infused products and to inspect premises where marijuana is cultivated and sold. It also established a 20% tax on nonmedical marijuana. Out of the tax revenue, 10.5% was directed to the state general fund, with the rest dedicated to accounts for conservation programs, substance abuse treatment, veterans' services, health care costs, and localities where marijuana is sold.

The implementation of I-190 was a highly debated topic during the 2021 Legislature, with 17 bills regarding marijuana introduced during the session. Four bills were ultimately enacted, with House Bill 701 acting as the primary implementation bill for the adult-use program. The other

[1] The majority of the text from this section is from an Economic Affairs Interim Committee document entitled Marijuana Program Implementation, Mont. Leg. Serv. Div. (Sept. 2021).

enacted bills revised laws related to marijuana advertising (House Bill 249), revised penalties related to underage marijuana possession and use (House Bill 517), and revised labor laws relating to marijuana (House Bill 655).

While I-190 did not affect medical marijuana laws, HB 701 provides for several revisions to the medical marijuana program, including licensing, advertising, and moving administration of the program from the Department of Public Health and Human Services to the Department of Revenue. HB 701 also includes provisions for expungement and decriminalization, local-option marijuana excise tax, local government approval for operation in a jurisdiction, and directions for disbursement of revenue.

Relevant Statutes:

13-27-110. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Ballot statements" means a statement of purpose and implication and a yes and no statement.

(2) "Constitutional convention initiative" means a statewide initiative to submit to the qualified electors the question of whether there must be an unlimited convention to amend the Montana constitution as authorized in Article XIV, section 2, of the Montana constitution.

(3) "Constitutional convention referendum" means a legislative act submitting the question of whether there must be an unlimited convention to revise, alter, or amend the Montana constitution to the qualified electors that is referred by the legislature as authorized in Article XIV, section 1, of the Montana constitution.

(4) "Constitutional initiative" means a statewide initiative to enact constitutional law as authorized in Article XIV, section 9, of the Montana constitution.

(5) "Constitutional referendum" means a legislative act to enact constitutional law that is referred by the legislature to the qualified electors for approval or rejection as authorized in Article XIV, section 8, of the Montana constitution.

(6) "Enact" means to enact, amend, or repeal.

(7) "Legal sufficiency" or "legally sufficient" means that a petition complies with statutory and constitutional requirements governing submission of the proposed issue to the qualified electors and the substantive legality of the proposed issue if approved by the voters.

(8) "Legislative referendum" means a legislative act to enact statutory law that is referred by the legislature to the qualified electors for approval or rejection as authorized in Article III, section 5, of the Montana constitution.

(9) "Petition" means a petition for a statewide initiative or a statutory referendum prepared pursuant to the requirements of this chapter.

(10) "Statewide ballot issue" means a statewide initiative or a statewide referendum.

(11) "Statewide initiative" means a constitutional initiative, a constitutional convention initiative, or a statutory initiative.

(12) “Statewide referendum” means a constitutional referendum, a constitutional convention referendum, a legislative referendum, or a statutory referendum.

(13) “Statewide referendum referred to a vote of the people by the legislature” means a constitutional referendum, a constitutional convention referendum, or a legislative referendum.

(14) “Statutory initiative” means an initiative to enact statutory law as authorized in Article III, section 4, of the Montana constitution.

(15) “Statutory referendum” means a legislative act to enact statutory law that is referred by petition to the qualified electors for approval or rejection as authorized in Article III, section 5, of the Montana constitution.

History: En. Sec. 1, Ch. 647, L. 2023.

13-27-212. Statement of purpose and implication. (1) A statement of purpose and implication expresses the true and impartial explanation of the proposal in plain, easily understood language. The statement of purpose and implication may not be argumentative or written so as to create prejudice for or against the issue.

(2) A statement of purpose and implication may not exceed 135 words.

(3) Unless altered by the court under 13-27-605, a statement of purpose and implication is the petition title for an issue circulated by petition and the ballot title if the issue circulated by petition is placed on the ballot.

History: En. Sec. 2, Ch. 647, L. 2023.

13-27-213. Yes and no statement. (1) A yes and no statement specifies that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue.

(2) The yes and no statement must be placed beside the diagram provided for marking of the ballot in a manner similar to the following:

[ ] YES on (insert the type of ballot issue and its number)

[ ] NO on (insert the type of ballot issue and its number)

(3) The type of ballot issue and its number required by subsection (2) must be designated by the secretary of state as provided in 13-27-237 after the secretary of state receives notice from the attorney general that the petition has been found legally sufficient as provided in this part.

(4) The yes and no statement may not include additional material beyond the requirements of subsection (2).

History: En. Sec. 3, Ch. 647, L. 2023.

13-27-214. Submission and processing of statewide ballot issues. (1) A proponent of a statutory initiative shall submit the text of the proposed initiative to the secretary of state in accordance with 13-27-216.

(2) A proponent of a statutory referendum shall submit the text of the proposed referendum to the secretary of state in accordance with 13-27-217.

(3) A proponent of a constitutional initiative shall submit the text of the proposed initiative to the secretary of state in accordance with 13-27-218.

(4) A proponent of a constitutional convention initiative shall submit the text of the proposed initiative to the secretary of state in accordance with 13-27-219.

(5) A constitutional referendum, a constitutional convention referendum, or a legislative referendum passed by the legislature must be processed in accordance with 13-27-220.

History: En. Sec. 4(1)-(5), Ch. 647, L. 2023.

13-27-216. Statutory initiative process and procedure. (1) (a) A proponent of a statutory initiative shall submit the text of the proposed statutory initiative to the secretary of state together with draft ballot statements and the filing fee required by 13-27-215. The secretary of state shall, without undue delay, forward a copy of the text of the proposed statutory initiative and ballot statements to the legislative services division for review in accordance with 13-27-225.

(b) A proposed statutory initiative may not be accepted by the secretary of state until 10 days after the adjournment sine die of the regular legislative session preceding the general election during which the proposal is intended to be voted on. The prohibitions on acceptance of a proposed statutory initiative provided in this subsection (1)(b) do not apply to a submission received on or after the date that falls 130 days after the date that the legislature convened in regular session pursuant to 5-2-103, even if the legislature has not adjourned sine die. If the secretary of state rejects a proposed statutory initiative pursuant to this subsection (1)(b), the secretary of state shall promptly notify the person who submitted the proposal of the reason for the rejection.

(2) Within 14 days after receiving the proposed statutory initiative from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with 13-27-225.

(3) After the proponent responds to the legislative services division as provided in 13-27-225, the proponent shall submit the final text of the proposed statutory initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to 13-27-225, the proponent shall instead submit the final text of the proposed statutory initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed statutory initiative and the ballot statements, the secretary of state shall reject the proposed statutory initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed statutory initiative and ballot statements concurrently to the budget director and to the attorney general for the attorney general's review in accordance with 13-27-226.

(5) The budget director shall determine whether a fiscal note is necessary. If the budget director determines a fiscal note is necessary, the budget director shall prepare a fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to 13-27-227 within 10 days. Receipt of the notice from the budget director begins the time frame in subsection (7).

(6) In addition to the requirements of 13-27-226, the attorney general shall:

(a) include in the attorney general's legal sufficiency review whether the proposed statutory initiative constitutes an appropriation as set forth in 13-27-239; and

(b) review the proposed statutory initiative as to whether the proposal could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in the state if approved by the voters. If the attorney general determines the proposed statutory initiative will likely cause significant material harm to one or more business interests in the state, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-238(2) on the final form of the petition.

(7) Within 30 days of receipt of the proposed statutory initiative from the secretary of state, the attorney general shall complete the requirements set forth in 13-27-226 and subsection (6) of this section.

(8) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226.

(a) If the attorney general finds that the proposed statutory initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed statutory initiative has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) If the attorney general finds that the proposed statutory initiative is legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative services division a copy of the final text of the proposed statutory initiative and ballot statements in accordance with 13-27-228. After the executive director of the legislative services division provides the secretary of state the outcome of the vote as required by 13-27-228, the secretary of state shall immediately send a sample petition form as provided in 13-27-233 to the person submitting the proposed statutory initiative.

History: En. Sec. 5, Ch. 647, L. 2023.

13-27-218. Constitutional initiative process and procedure. (1) A proponent of a constitutional initiative shall submit the text of the proposed constitutional initiative to the secretary of state together with draft ballot statements and the filing fee required by 13-27-215. The secretary of state shall, without undue delay, forward a copy of the text of the proposed constitutional initiative and ballot statements to the legislative services division for review in accordance with 13-27-225.

(2) Within 14 days after receiving the proposed constitutional initiative from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with 13-27-225.

(3) After the proponent responds to the legislative services division as provided in 13-27-225, the proponent shall submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to 13-27-225, the proponent shall instead submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed constitutional initiative and the ballot statements, the secretary of state shall reject the proposed constitutional initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed constitutional initiative and ballot statements concurrently to the budget director and to the attorney general.

(5) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to 13-27-227 within 10 days. Receipt of the notice from the budget director begins the timeframe in subsection (7) for the attorney general's review in accordance with 13-27-226.

(6) In addition to the requirements in 13-27-226, the attorney general shall review the proposed constitutional initiative as to whether the proposal could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in the state if approved by the voters. If the attorney general determines the proposed constitutional initiative will likely cause significant material harm to one or more business interests in the state, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-241 on the final form of the petition.

(7) Within 30 days of receipt of the fiscal note determination from the budget director, the attorney general shall complete the requirements set forth in 13-27-226 and subsection (6) of this section.

(8) The secretary of state shall review the legal sufficiency opinion received pursuant to 13-27-226. If the attorney general:

(a) finds that the proposed constitutional initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed constitutional initiative has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) finds that the proposed constitutional initiative is legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative services division a copy of the final text of the proposed constitutional initiative and ballot statements in accordance with 13-27-228. After the executive director of the legislative services division provides the secretary of state the outcome of the vote as required by 13-27-228, the secretary of state shall immediately send a sample petition form as provided in 13-27-233 to the person submitting the proposed constitutional initiative.

History: En. Sec. 7, Ch. 647, L. 2023.

13-27-225. Review by legislative services division. (1) On receipt of a proposed statutory initiative, statutory referendum, constitutional initiative, or constitutional convention initiative and the proposal's ballot statements from the office of the secretary of state as provided in 13-27-216(1), 13-27-217(1), 13-27-218(1), or 13-27-219(1), the legislative services division staff shall review the text and ballot statements for clarity, consistency, and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the

requirements of this part, and any other factors that the staff considers when drafting proposed legislation.

(2) (a) The legislative services division staff shall recommend in writing to the proponent revisions to the text and revisions to the ballot statements to make them consistent with any recommendations for change to the text and the requirements of this part or state that no revisions are recommended.

(b) The proponent shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended revisions. If revisions are not recommended, a response is not required.

(3) The legislative services division shall furnish a copy of the correspondence provided for in subsection (2) to the secretary of state, who shall make a copy of the correspondence available to any person on request.

History: En. Sec. 10, Ch. 647, L. 2023.

13-27-226. Review by attorney general. (1) On receipt of a proposed statutory initiative, statutory referendum, constitutional initiative, or constitutional convention initiative and the proposal's ballot statements from the office of the secretary of state and the fiscal note determination from the budget director as provided in this part, the attorney general shall examine the proposal, review the proposal for legal sufficiency as provided in subsection (2), review the ballot statements if required by subsection (3), prepare a fiscal statement if required by subsection (4), and determine if the proposal conflicts with other issues that may appear on the ballot at the same election as provided in subsection (5).

(2) The attorney general shall examine the proposal received pursuant to subsection (1), prepare an opinion as to the proposal's legal sufficiency, and forward the opinion to the secretary of state.

(3) (a) If the attorney general determines that the proposal is legally sufficient, the attorney general shall review the ballot statements to determine whether they contain the following matters:

(i) a statement of purpose and implication that complies with 13-27-212; and

(ii) a yes and no statement that complies with 13-27-213.

(b) The attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice.

(c) If the attorney general determines the ballot statements comply with the requirements provided in subsection (3)(a), the attorney general shall approve the ballot statements and forward them to the secretary of state. However, if the attorney general determines in writing that a ballot statement clearly does not comply with the relevant requirements of subsection (3)(a), the attorney general shall prepare a ballot statement that complies with the relevant requirements of subsection (3)(a). The attorney general shall forward the revised ballot statement to the secretary of state as the approved ballot statement and shall provide a copy to the petitioner.

(4) If the proposal affects the revenue, expenditures, or fiscal liability of the state, the budget director shall prepare the fiscal note as provided in 13-27-227. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words

and forward it to the secretary of state. The statement must be used on the proposal's petition and on the ballot if the proposal is placed on the ballot.

(5) The attorney general shall determine if the proposal conflicts with one or more issues that may appear on the ballot at the same election for the purposes of 13-27-501(2)(h) and shall forward the attorney general's written determination to the secretary of state.

(6) If the attorney general determines that the proposal is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-605 and the attorney general has approved or prepared ballot statements under this section.

History: En. Sec. 11, Ch. 647, L. 2023.

13-27-228. Review by legislative committee. (1) If the attorney general finds that a proposed statewide initiative is legally sufficient as provided in this part, the secretary of state shall provide the executive director of the legislative services division with a copy of the final text of the proposed statewide initiative and ballot statements. The executive director shall forward the information to the appropriate interim committee for review in accordance with 5-5-215. If questions arise regarding which interim committee has jurisdiction over the matter, the executive director shall direct the review to the legislative council in accordance with 5-11-105.

(2) (a) The appropriate interim committee or the legislative council shall meet and hold a public hearing after receiving the information and vote to either support or not support the placement of the proposed statewide initiative text on the ballot.

(b) The interim committee or the legislative council may request a fiscal note if one was previously not determined necessary and may request a revised fiscal note from the budget director if new information is provided which would impact the fiscal note determination or accuracy of the initial fiscal note.

(c) For the purposes of this section, proxies must be allowed for legislators unable to participate if a quorum of the interim committee or legislative council meets.

(d) Nothing in this section prevents the interim committee or legislative council from meeting remotely or via conference call or other electronic means.

(3) (a) The executive director shall provide written correspondence to the secretary of state stating the name of the council or interim committee that voted on the proposal pursuant to subsection (2)(a), the date of the vote, and the outcome of the vote conducted in accordance with this section.

(b) The outcome of the vote must be submitted to the secretary of state no later than 14 days after receipt of the final text of the proposed statewide initiative and ballot statements.

(4) The outcome of the vote by an interim committee or the legislative council may not be reflected in the statewide initiative's statement of purpose and implication, the statewide initiative's petition title, or the ballot title if the statewide initiative is placed on the ballot.

History: En. Sec. 13, Ch. 647, L. 2023.

13-27-238. Petition for statutory initiative. (1) The following, including the language provided for in subsection (2)(b), is substantially the form for a petition calling for a vote to enact a statutory initiative:

PETITION TO PLACE INITIATIVE NO.____ ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-third of the legislative representative districts (totaling 34 legislative representative districts) sign this petition and the total number of voters signing this petition is _____, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the _____, 20__, general election ballot:

(Title of initiative written in conformity with 13-27-212)

(Yes and no statement written in conformity with 13-27-213)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

(e)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(f) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) (a) If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana pursuant to 13-27-216(6) the statement in subsection (2)(b) must appear on the front page of the petition form before the information set forth in subsection (1).

(b)

WARNING

The Attorney General of Montana has determined the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

(3) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-118 by Sec. 4, Ch. 342, L. 1977; R.C.M. 1947, 37-118; amd. Sec. 2, Ch. 488, L. 1981; amd. Sec. 18, Ch. 51, L. 1999; amd. Sec. 7, Ch. 537, L. 2001; amd. Sec. 4, Ch. 323, L. 2003; amd. Sec. 8, Ch. 481, L. 2007; amd. Sec. 2, Ch. 372, L. 2011; amd. Sec. 23, Ch. 368, L. 2017; amd. Sec. 5, Ch. 554, L. 2021; Sec. 13-27-204, MCA 2021; redes. 13-27-238 by Code Commissioner, 2023; amd. Sec. 1, Ch. 229, L. 2023; amd. Sec. 27, Ch. 647, L. 2023.

13-27-239. Petitions for statutory initiative — requirements and limitations. (1) In accordance with Article III, section 4, of the Montana constitution, the text of a statutory initiative may not provide for the appropriation of revenue.

(2) For the purposes of this section, "appropriation" means the authority for a governmental entity to expend money from the state treasury for a specific use or purpose.

History: En. Sec. 1, Ch. 554, L. 2021; Sec. 13-27-211, MCA 2021; redes. 13-27-239 by Code Commissioner, 2023; amd. Sec. 33, Ch. 647, L. 2023.

13-27-241. Petition for constitutional initiative. (1) The following is substantially the form for a petition for a constitutional initiative:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of two-fifths of the legislative representative districts (totaling 40 legislative representative districts) sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 20__, general election ballot:

(Title of the proposed constitutional initiative written in conformity with 13-27-212)

(Yes and no statement written in conformity with 13-27-213)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this constitutional initiative and [did] or [did not] support the placement of the proposed text of this constitutional initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

(e)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(f) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) (a) If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana pursuant to 13-27-216(6), the statement in subsection (2)(b) must appear on the front page of the petition form before the information set forth in subsection (1).

(b)

WARNING

The attorney general of Montana has determined the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

(3) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-121 by Sec. 7, Ch. 342, L. 1977; R.C.M. 1947, 37-121; amd. Sec. 5, Ch. 488, L. 1981; amd. Sec. 20, Ch. 51, L. 1999; amd. Sec. 10, Ch. 537, L. 2001; amd. Sec. 7, Ch. 323, L. 2003; amd. Sec. 10, Ch. 481, L. 2007; amd. Sec. 5, Ch. 372, L. 2011; amd. Sec. 26, Ch. 368, L. 2017; Sec. 13-27-207, MCA 2021; redes. 13-27-241 by Code Commissioner, 2023; amd. Sec. 2, Ch. 229, L. 2023; amd. Sec. 30, Ch. 647, L. 2023.

13-27-402. Committees to prepare arguments for and against statewide ballot issues. (1) The arguments advocating approval or rejection of the statewide ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) (a) The committee advocating approval of a legislative act referred to the people in a legislative referendum, a statutory referendum, a constitutional referendum, or a constitutional convention referendum must be composed of:

(i) one senator known to favor the referred statewide ballot issue, appointed by the president of the senate;

(ii) one representative known to favor the referred statewide ballot issue, appointed by the speaker of the house of representatives; and

(iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) The president of the senate or the speaker of the house shall appoint the primary bill sponsor to the committee advocating approval of a legislative act referred to the people in a legislative referendum, a constitutional referendum, or a constitutional convention referendum under subsection (2)(a)(i) or (2)(a)(ii), depending on the legislative body in which the bill originated. However, if the primary bill sponsor is unable to perform the duties required by this part due to death, illness, absence, or incapacity or if the primary bill sponsor otherwise declines to participate as a committee member, the president of the senate or the speaker of the house,

whichever would have otherwise appointed the primary bill sponsor, shall immediately appoint a replacement pursuant to subsection (2)(a)(i) or (2)(a)(ii) of this section by the deadline established in 13-27-403(1).

(3) (a) The committee advocating rejection of an act referred to the people in a legislative referendum, a constitutional referendum, or a constitutional convention referendum must be composed of:

(i) one senator appointed by the president of the senate;

(ii) one representative appointed by the speaker of the house of representatives; and

(iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) Whenever possible, the members must be known to have opposed the issue.

(4) The following must be three-member committees and must be appointed by the person submitting the statewide ballot issue to the secretary of state under the provisions of 13-27-216, 13-27-217, 13-27-218, or 13-27-219:

(a) the committee advocating approval of a ballot issue proposed by statutory initiative, constitutional initiative, or constitutional convention initiative; and

(b) the committee advocating rejection of a legislative act referred to the people in a statutory referendum.

(5) A committee advocating rejection of a statewide ballot issue proposed by statutory initiative, constitutional initiative, or constitutional convention initiative must be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member must be appointed by the first four members. If possible, members must be known to favor rejection of the issue.

(6) A person may not be required to serve on any committee under this section, and except for legislative appointments made by the president of the senate or by the speaker of the house of representatives, the person making an appointment must have written acceptance of appointment from the appointee. If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977; R.C.M. 1947, 37-128(2); amd. Sec. 214, Ch. 571, L. 1979; amd. Sec. 1, Ch. 549, L. 1983; amd. Sec. 18, Ch. 298, L. 1987; amd. Sec. 1, Ch. 47, L. 1997; amd. Sec. 1, Ch. 374, L. 1999; amd. Sec. 19, Ch. 481, L. 2007; amd. Sec. 1, Ch. 237, L. 2019; amd. Sec. 42, Ch. 647, L. 2023.

13-27-605. Court review of attorney general opinion or approved petitioner statements. (1) If the proponents of a statewide ballot issue believe that the ballot statements approved by the attorney general do not satisfy the requirements of 13-27-212 or 13-27-213 or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the attorney general's determination regarding legal sufficiency provided for in 13-27-226, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a statewide ballot issue believe that the petitioner ballot statements approved by the attorney general do not satisfy the requirements of 13-27-212 or 13-27-213 or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of 13-27-212 or 13-27-213 and must propose alternate ballot statements that satisfy the requirements of 13-27-212 and 13-27-213.

(c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant to this section takes precedence over other cases and matters in the supreme court. The court shall examine the proposed issue and the challenged statement or determination of the attorney general and shall as soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of 13-27-212 or 13-27-213, it may order the attorney general to revise the ballot statements within 5 days or certify to the secretary of state ballot statements that the court determines will meet the requirements of 13-27-212 and 13-27-213. A ballot statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not appear on the ballot. A proponent of the statewide ballot issue may resubmit a revised issue, pursuant to 13-27-214, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed statewide ballot issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements that comply with 13-27-212 and 13-27-213 and forward the statements to the secretary of state within 5 days of the court's decision.

(4) A petition may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A statewide ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people.

History: En. Sec. 10, Ch. 400, L. 1979; amd. Sec. 3, Ch. 336, L. 1981; amd. Sec. 4, Ch. 191, L. 1999; amd. Sec. 14, Ch. 537, L. 2001; amd. Sec. 17, Ch. 481, L. 2007; amd. Sec. 18, Ch. 2, L. 2009; Sec. 13-27-316, MCA 2021; redes. 13-27-605 by Sec. 57, Ch. 647, L. 2023; amd. Sec. 39, Ch. 647, L. 2023.