



December 5, 2023

Samuel Dickman, M.D.  
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Re: Review of Constitutional Initiative Affirming the Right to Make and Carry Out Decisions About One's Own Pregnancy, Including the Right to Abortion

Dear Mr. Dickman,

On November 22, 2023, the Legislative Services Division received the submitted text of your proposed initiative to amend the Montana Constitution to affirm the right to make and carry out decisions about one's own pregnancy, including the right to abortion.

The text of the initiative and the ballot issue statements were reviewed pursuant to section 13-27-225, MCA, for clarity, consistency, and other factors normally considered when drafting proposed legislation. This letter constitutes the Legislative Services Division's review of your proposed constitutional initiative.

## **I. Style Issues**

Section 13-27-236(2), MCA, requires the text of an initiative to be in the bill form provided in the most recent issue of the Bill Drafting Manual published by the Legislative Services Division. Section 13-27-225(1), MCA, requires both the text of the initiative and the ballot statements to conform to the Bill Drafting Manual, which is available on the Legislative Branch website at <https://leg.mt.gov/content/Publications/2022-bill-drafting-manual.pdf>.

### **A. Statement of Purpose and Implication and Yes and No Statements**

The text of the proposed constitutional initiative and the draft ballot issue statements must comply with sections 13-27-212, 13-27-213, 13-27-218, and 13-27-236(2), MCA. Ballot statements include the following: (1) the statement of purpose and implication, which may not exceed 135 words, and (2) the yes and no statements. Pursuant to section 13-27-212(1), MCA, the statement of purpose "expresses the true and impartial explanation of the proposal in plain, easily understood language." In addition, the statement of purpose may not be argumentative or written in a manner that creates prejudice for or against the issue. While it is not always feasible to include a complete explanation of each part of a ballot issue in the statement of purpose, the statement must at least explain both the purpose and the implication of the ballot issue in easily understood, nonargumentative language. *See Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 12.

Unless altered by a court pursuant to section 13-27-605, MCA, the statement of purpose becomes the title for the ballot issue that is circulated to the electorate and the ballot title if the ballot issue is placed on the ballot. However, proponents of a ballot issue are not entitled to the ballot statements of their choosing, and the Attorney General and, if necessary, the Supreme Court may alter proposed statements of purpose and implication to comply with sections 13-27-212, 13-27-213, and 13-27-218, MCA. *See Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 11.

As submitted, the proposed statement of purpose and implication and the yes and no statements are in compliance with the requirements noted above.

## **B. Constitutional Amendment Text**

The text of the proposed initiative is not in compliance with the 2022 Montana Bill Drafting Manual. Please see Appendix H-3 of the Bill Drafting Manual for an example of inserting a new section in the Montana Constitution. In appendices A and B below, I have included minor revisions to the proposed initiative text to align with the requirements of the Bill Drafting Manual more closely.

In addition, section 13-27-105(2), MCA, provides that a constitutional initiative approved by the people is effective on July 1 following approval unless the text of initiative provides otherwise. If you desire an effective date other than July 1, the desired effective date should be included in the text of the initiative. Please see Appendix H-1 of the Bill Drafting Manual for an example of effective date language.

## **II. Conclusion and Additional Actions**

I recommend that you review and accept the revised language or that you revise the text of the initiative and the ballot issue statement to comply with the Bill Drafting Manual and resubmit the proposal.

Please note that pursuant to section 13-27-225(2), MCA, you are required to respond in writing to this office accepting, rejecting, or modifying the recommended changes before submitting the final text of the proposed initiative and ballot issue statements to the Secretary of State. Your response will terminate the role of this office in this process. After responding to this office, further correspondence should be submitted to the Secretary of State.

Sincerely,

/s/ Alexis Sandru

Alexis Sandru  
Staff Attorney

cc: Christi Jacobsen, Secretary of State

**APPENDIX A (TRACK CHANGES OF LSD EDITS TO PROPOSED CI TEXT)**

Article II of ~~the Montana Constitution~~ The Constitution of The State of Montana is amended to ~~read~~ by adding a new section 36 that reads:

**Section 36. Right to make decisions about pregnancy.** (1) There is a right to make and carry out decisions about one's own pregnancy, including the right to abortion. This right shall not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means.

(2) ~~Notwithstanding the above, the~~The government may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the government deny or burden access to an abortion that, in the good faith judgment of a treating health care professional, is medically indicated to protect the life or health of the pregnant patient.

(3) The government shall not penalize, prosecute, or otherwise take adverse action against ~~someone~~ a person based on ~~their~~ the person's actual, potential, perceived, or alleged pregnancy outcomes. ~~Nor shall the government~~ The government shall not penalize, prosecute, or otherwise take adverse action against ~~someone~~ a person for aiding or assisting another person in exercising their right to make and carry out decisions about their pregnancy with their voluntary consent.

(4) For the purposes of this section:

(a) "Compelling government interest" means a government interest that ~~A government interest is "compelling" only if it~~ clearly and convincingly addresses a medically acknowledged, bona fide health risk to ~~the~~ a pregnant patient and does not infringe on ~~that~~ the patient's autonomous decision making.

(b) "Fetal viability" means the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

**APPENDIX B** (CLEAN VERSION OF CI TEXT WITH LSD CHANGES ACCEPTED)

Article II of The Constitution of The State of Montana is amended by adding a new section 36 that reads:

**Section 36. Right to make decisions about pregnancy.** (1) There is a right to make and carry out decisions about one's own pregnancy, including the right to abortion. This right shall not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means.

(2) The government may regulate the provision of abortion care after fetal viability provided that in no circumstance shall the government deny or burden access to an abortion that, in the good faith judgment of a treating health care professional, is medically indicated to protect the life or health of the pregnant patient.

(3) The government shall not penalize, prosecute, or otherwise take adverse action against a person based on the person's actual, potential, perceived, or alleged pregnancy outcomes. The government shall not penalize, prosecute, or otherwise take adverse action against a person for aiding or assisting another person in exercising their right to make and carry out decisions about their pregnancy with their voluntary consent.

(4) For the purposes of this section:

(a) "Compelling government interest" means a government interest that clearly and convincingly addresses a medically acknowledged, bona fide health risk to a pregnant patient and does not infringe on the patient's autonomous decision making.

(b) "Fetal viability" means the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.