

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. OP 23-0331

MATTHEW G. MONFORTON,

Petitioner

v.

AUSTIN KNUDSEN, IN HIS OFFICIAL CAPACITY AS MONTANA
ATTORNEY GENERAL; CHRISTI JACOBSEN, IN HER OFFICIAL
CAPACITY AS SECRETARY OF STATE

Respondents.

**AMICUS CURIAE BRIEF OF THE
MONTANA FEDERATION OF PUBLIC EMPLOYEES**

ORIGINAL PROCEEDING

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INTRODUCTION

The Montana Federation of Public Employees (MFPE), on behalf of its member Montana teachers, school employees, law enforcement officers, and city, county, university, and state employees in nearly every community in the state, submits this *amicus curiae* brief in support of the position of the Montana Attorney General that the Attorney General acted within his statutory and constitutional authority to determine that Ballot Issue No. 2 is legally insufficient because it failed to meet the constitutional requirements to appear on the ballot. MFPE further agrees that the fiscal note and accompanying statement of fiscal impact accurately convey the financial implications of Ballot Issue No. 2. MFPE therefore incorporates by reference the arguments set forth in the Attorney General's brief.

MFPE also incorporates the arguments set forth in the brief that is being filed on behalf of The Montana League of Cities & Towns, the Montana Association of Counties, and the Montana Quality Education Coalition. As established in that brief: (1) the Supreme Court does not have original jurisdiction over Petitioner's arguments IV and V; and (2) the fiscal statements must include impacts to local governments.

As discussed in greater detail below, MFPE takes the position that if Ballot Issue No. 2 is presented to the voters in 2024 there would be drastic implications for

the revenues of the State of Montana, counties, cities, and schools.

ARGUMENT

I. BALLOT INITIATIVE NO. 2 WOULD RESULT IN DRASTIC REDUCTIONS IN REVENUES AVAILABLE TO ALL LEVELS OF GOVERNMENT AND SCHOOL DISTRICTS.

As the Attorney General establishes in its brief, Ballot Initiative No. 2 is legally insufficient and should not be presented to voters. The Attorney General has statutory and constitutional authority to interpret the Montana Constitution and Ballot Issue No. 2 is constitutionally infirm. *See Meyer v. Knudsen*, 2022 MT 109 ¶ 9, 409 Mont. 19, 510 P.3d 1246 (Attorney General may review for legal sufficiency by determining “whether . . . ballot issue complies with statutory and constitutional requirements ‘governing submission of proposed issue to the electors.’”).

As established in the Attorney General’s brief, Ballot Issue No. 2 violates Art. XIV, § 11 of the Montana Constitution. (“If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.”). The separate-vote requirement avoids voter confusion and deceit as well as prevents combing multiple amendments, which might not command majority support, into a single measure. *Mont. Ass’n of Ctys. (“MACo”) v. State*, 2017 MT 267, ¶ 15, 389 Mont. 183, 404 P.3d 733. The separate-vote requirement is narrower than the single subject rule found in Article V. *Id.*, ¶ 19. At its core, Article XIV, § 11 always allows Montana voters the ability to accept or reject each

amendment, “guaranteeing the people have complete control over Montana's fundamental law.” *Id.*, ¶ 18.

Montana’s separate-vote test asks whether “the proposal would make two or more changes to the constitution that are substantive and that are not closely related.” *Id.*, ¶ 27. Changes may be explicit or implicit. *Id.*, ¶ 28. The closely-related prong involves a multi-factor test that looks to, among other things, whether the proposal amends a single section, concerns matters that are qualitatively similar, and addresses matter historically treated as a single subject. *Id.*, ¶ 29.

Ballot Issue No. 2 also implicitly amends at least Article VIII, § 17 (prohibition on real estate transfer taxes); Article X, § 1 (equal education opportunity guarantee); Article XI, § 4 (general local government powers); and Article XI, § 8 of the Montana Constitution (local powers of initiative and referendum).

Ballot Issue No. 2 would result in significant adverse impacts on the revenues of all levels of government and school districts. Attached as Exhibit 4 to the Petition filed by Matthew G. Montforton is the Fiscal Note prepared by the Governor’s Office of Budget and Program Planning. As set forth in that document, it is projected that if passed, it is estimated that Ballot Issue No. 2 would cause a decrease in state revenues in 2027 of \$432,150,000, in 2028 of \$479,330,000, and in 2009 of \$488,860,000. In addition, State Special Revenue would decrease by \$27,265,000 in 2027, \$30,237,000 in 2028, and \$30,842,000 in 2029.

Additionally, Ballot Issue No. 2 would cause a reduction of \$516,908,000 in county revenues, \$593,770,000 in local school revenues, \$109,390,000 in county-wide school revenues, \$206,649,000 in cities and towns revenues and \$81,431,000 in fire and miscellaneous revenues.

The financial implications of Ballot Issue No. 2 would result in significant challenges for all levels of government and school districts if it appears on the ballot in 2024. It is hard to fathom how there could be an alternative approach that would generate revenues to replace the deficits that will inevitably occur if Ballot Issue No. 2 would be approved by the voters in 2024.

II. THE FISCAL NOTE MUST INCLUDE THE FINANCIAL IMPLICATIONS FOR ALL LEVELS OF GOVERNMENT AND SCHOOL DISTRICTS.

The Attorney General's brief establishes that he acted within his constitutional authority to determine that Ballot Issue No. 2 is unconstitutional. In addition, the Attorney General clearly has the right to include a fiscal statement that will clearly set forth the adverse financial implications of Ballot Issue No. 2. As established in the Attorney General's response brief:

“If the proposed ballot issue has an effect on the revenue, expenditures, or fiscal liability of the state, the attorney general shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205 . . . If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words, and the statement must be used on the petition and ballot if the issue is placed on the ballot.” MCA § 13-27-312(3). . . . A preparing agency

includes both state and local agencies. MCA § 5-4-203 (“The budget director, in cooperation with the state or local agencies or officials or organizations representing local agencies or officials affected by the bill, is responsible for the preparation of the fiscal note”). This is because the statutory structure governing fiscal notes requires local government input. MCA § 5-4-210.

* * *

This complies with the legislative purpose of fiscal notes to prepare an “objective analysis” as to the legislation’s fiscal impact. MCA § 5-4-205(2). Excluding local governments from this analysis results in a knowledge void that deprives the legislative body—either the Legislature itself or citizens—of information necessary to intelligently exercise political judgment. *Harper v. Greely*, 234 Mont. 259, 269, 763 P.2d 650, 657 (1988).

* * *

The Attorney General drafted a 50-word fiscal statement that accurately and impartially reflects the impact on revenues and expenditures, as the law requires. *See Mont. Consumer Fin. Ass’n v. State*, 2010 MT 185, ¶ 10, 357 Mont. 237, 238 P.3d 765 (the Court will not disturb a ballot statement that complies with the law even if a better one could be written).

*Attorney General’s Brief in Opposition to Montforton’s Petition.*¹ By including the information relating to the fiscal impacts that Ballot Issue No. 2 would result in, the voters in Montana will be fully informed of the significant and devastating financial implications of Ballot Issue No. 2 for the State of Montana and all levels of local governments and school districts.

¹ This is an excerpt from the draft of the Attorney General’s Brief. It is not yet in final form, but the arguments set forth in the Attorney General’s brief are appropriate and convincing.

CONCLUSION

MFPE incorporates by reference the arguments set forth in the briefs of the Attorney General and the Montana League of Cities & Towns, the Montana Association of Counties, and the Montana Quality Education Coalition. As established above, Ballot Issue No. 2 would cause devastating consequences for all levels of government and school districts. In addition, the Attorney General clearly has the authority to prepare a fiscal statement that will set forth the consequences of Ballot Issue No. 2.

For the foregoing reasons, MFPE, as *amicus*, respectfully requests that the Court determine that Ballot Issue No. 2 is unconstitutional and legally insufficient to be placed on the 2024 ballot.

RESPECTFULLY SUBMITTED this 14th day of July, 2023.



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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE MONTANA FEDERATION OF PUBLIC EMPLOYEES AS *AMICUS CURIAE* complies with Montana Rule of Appellate Procedure 11(4) because the amicus brief is proportionately spaced using Microsoft Word for Office 365 in 14-point Times New Roman font and contains, 1,897 words excluding the parts of the brief excluded by the Rule.

s/ James P. Molloy
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Dated: July 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, the foregoing BRIEF FOR MONTANA FEDERATION OF PUBLIC EMPLOYEES, AS *AMICUS CURIAE* was electronically filed with the Montana Supreme Court. I also certify that true and accurate copies of the foregoing brief were served on the following:

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