

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. OP 25-0858

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THERESA KENDRICK, CLAUDIA CLIFFORD, and MONTANANS DECIDE,

Petitioners,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY  
GENERAL,

Respondent.

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**BRIEF OF *AMICUS CURIAE*  
CAMPAIGN LEGAL CENTER**

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## **INTEREST OF *AMICUS CURIAE***

Campaign Legal Center (“CLC”) is a nonprofit, nonpartisan organization dedicated to advancing democracy through law. Founded in 2002, CLC works to ensure that the systems governing elections, political participation, and democratic accountability remain functional. CLC regularly engages in litigation, research, and public education regarding constitutional structure, ballot access, and the rights of voters to participate in democratic decision making.

CLC has a particular interest in legal standards that regulate citizen-initiated constitutional amendments. In Montana and across the country, state constitutions reserve citizens the power to amend their fundamental law directly. When state constitutions reserve legislative power to the people, it is vital to ensure that power is accessible and not merely illusory. And because the initiative process operates outside the legislative framework, its continued viability depends on legal standards that preserve voter clarity without imposing barriers that foreclose the exercise of the right itself.

CLC has participated as counsel and as *amicus curiae* in state and federal courts in cases addressing voter access and constitutional amendment procedures. Through that work, CLC has observed that doctrines governing the form and submission of ballot measures have significant consequences for whether the people’s reserved powers remain meaningful. When judicial standards governing

initiatives become indeterminate, they discourage participation, create uncertainty for all parties involved, and shift fundamental policy judgments towards the court and away from the electorate.

CLC submits this brief to assist the Court in evaluating the scope and function of Montana's separate vote requirement. CLC does not take a position on the substantive merits of the proposed amendment. Rather, its interest is in ensuring that the standards governing citizen-initiated amendments preserve the people's ability to propose constitutional change through the process the Constitution itself establishes.

## **INTRODUCTION**

In Montana, “[a]ll 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.” Mont. Const. art. II, § 1. Thus, the people “may alter or abolish the constitution . . . whenever they deem it necessary.” Mont. Const. art. II, § 2. “Alter[ation]” of the Constitution proceeds through Article XIV’s amendment processes, which give effect to the constitutional commitment to popular sovereignty.

Article XIV, Section 11 imposes one simple limitation on the constitutional amendment process: “[i]f more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted on

separately.” Far from placing substantive limits on constitutional change, this provision is intended to ensure voter competency by avoiding confusion and preventing logrolling. And at the time of the 1972 Constitution’s ratification, Article XIV, Section 11’s separate-vote requirement had a clear meaning that gave effect to its goals without interfering with the potential for meaningful constitutional change. A single amendment, requiring only one vote, was any amendment that related to a single plan.

But current doctrine strays far afield from the separate-vote requirement’s correct meaning. In *Montana Association of Counties v. State ex rel. Fox*, the Court adopted an “implied effects” test, barring amendments that interact with multiple existing provisions and effectively preventing voters from ever seeing some proposed amendments. 2017 MT 267, ¶ 15, 389 Mont. 183, 404 P.3d 733 (“*MACo*”). The implied effects test fails to meaningfully advance the goals served by the separate-vote requirement. Worse, it interferes with popular sovereignty by usurping the role of the people. The Court should give effect to the Framers’ intent and restore the primacy of the People in constitutional revision by overturning *MACo*’s implied effects test.

## **ARGUMENT**

Article XIV, Section 11 ensures that voters knowingly and independently consent to each constitutional amendment presented to them. It is unconcerned

with the ambition or breadth of constitutional change. Rather, it “has two well-recognized objectives”: “to avoid voter confusion and deceit of the public,” and “to avoid ‘logrolling’ or combining unrelated amendments into a single measure which might not otherwise command majority support.” *MACo*, ¶ 15. But the modern iteration of the separate-vote doctrine frustrates the ability of the People to amend the Constitution without meaningfully advancing the goals of the provision.

**I. The separate-vote provision had a known meaning in 1972, which was retained with the Constitution.**

The separate-vote requirement did not originate with the 1972 Constitution. The provision predates statehood and was well understood at the time of the 1972 Convention. The Framers carried existing language forward with only minor stylistic changes, aware of—and intending to incorporate—this Court’s settled interpretation. Given the opportunity to alter or strengthen the requirement, they deliberately chose not to. Instead, they made constitutional change easier by creating the constitutional initiative process and by eliminating a provision that allowed no more than three amendments to appear on the ballot at one time. Article XIV, Section 11’s meaning should be restored.

**A. Pre-1972 Interpretation**

The separate vote requirement’s roots lie with the pre-statehood 1884 Constitution, which allowed for constitutional change only through legislative referendum, not citizen-initiated proposals. The relevant portion of the provision

stated: “Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately.” Mont. Const. of 1884 art. XVI, § 12. The 1889 Constitution likewise allowed only for legislature-initiated amendment, although the procedures changed—a 2/3 legislative majority was required in each house, and there was a new three-amendment limit on the number of amendments submitted at one election. The separate-vote requirement, however, was unchanged. Mont. Const. of 1889 art. XIX, § 9.

The Montana Supreme Court interpreted the 1889 Constitution’s provision several times, developing a consistent and stable body of law. Under these cases, the question was not whether a proposed amendment *could* be broken into separate amendments. *State ex rel. Teague v. Bd. of Comm’rs of Silver Bow Cnty.*, 34 Mont. 426, 87 P. 450, 451 (1906). Nor is it enough that voters reasonably might have different views of different components of the amendment. *State ex rel. Hay v. Alderson*, 49 Mont. 387, 142 P. 210 (1914). Rather, a single amendment is one that “carr[ies] out one general object or purpose, and all connected with one subject”; even if it “impinges upon or affects various provisions of the Constitution,” separate votes are not required if the amendment “relates to a single plan or purpose.” *State ex rel. Corry v. Cooney*, 70 Mont. 355, 225 P. 1007, 1010-11 (1924). This construction “is the inevitable result of provisions amendatory of a

pre-existing law”: it is “a necessary corollary” to amendment “that parts of the original Constitution . . . would be modified, impinged upon, or superseded.” *Id.*, 225 P. at 1011.

First, in *Teague* in 1906, opponents challenged an amendment revising the terms and vacancies of county commissioners. They “urged that these are three separate and distinct matters submitted in one amendment,” because the amendment provided a procedure for filling vacancies, changed commissioners’ terms from four to six years, and extended incumbent commissioners’ terms. *Teague*, 34 Mont. at 426, 87 P. at 451. Although it would have been possible to submit each choice separately to voters, the Court disagreed that it was necessary to do so. The amendment had “only one matter and one subject,” constituting a “single scheme, with the single purpose” of securing continuity in a county’s board of commissioners. *Id.*, 87 P. at 451.

Second, *Hay*, decided in 1914, is particularly relevant: its amendment gave the people the right of statutory initiative and referendum, in great detail. *See Hay*, 49 Mont. at 387, 142 P. at 211 (amending the definition of legislative power to include provision of the initiative and referendum powers, percentages needed for petitions, timing and procedures for filing with the Secretary of State, timing of elections, and a limitation on the Governor’s veto power). The Court recognized the “plausibility” of the argument that the creation of both the initiative and

referendum powers required separate votes, particularly given that the two powers are different “in character” and historically well-distinguished, raising the risk of logrolling:

the elector was obliged to accept or reject both, although one of them—the initiative—is wholly legislative in character, and commends itself to minds who might oppose the referendum as calculated to disturb rights vested under enactments of the Legislature, while the referendum is a veto, pertains to the executive power, and commends itself to many who might view the initiative as wholly vicious because dispensing with the kind of deliberation supposed to give to enactments of the Legislature their principal title to respect.

*Id.*, 142 P. at 212.

Despite viable separate-vote concerns, the Court resoundingly rejected the challenge: “but one change was made, viz.: To express a reservation of legislative authority in the people.” *Id.*, 142 P. at 213. As in *Teague*, that the ability to divide an amendment is not dispositive, provided that voters are able to make informed decisions:

[T]he fact that an amendment can be separated into two or more propositions concerning the value of which diversity of opinion may exist is not alone decisive. If, in the light of common sense, the propositions have to do with different subjects, if they are so essentially unrelated that their association is artificial, they are not one; but if they may logically be viewed as parts or aspects of a single plan, then the constitutional requirement is met in their submission as one amendment.

*Id.*, 142 P. at 212-13. This amendment, which passed 36,374 to 6,616, marked Montana’s transition from purely representative government to mixed

representative-direct democracy, laying the foundation for the people's powers of constitutional initiative and referendum created by the 1972 Constitution.

Third, a decade after *Hay, Cooney* answered the question of how to define a single amendment. The case involved a challenge to an amendment granting the Legislature the power to submit a municipal form of government to local voters for approval. *Cooney*, 70 Mont. at 355, 225 P. at 1008-09. Pursuant to the amendment, the Legislature created the City and County of Butte and submitted it to Silver Bow County voters for approval, who moved to stop the election on the basis that the amendment was invalid. *Id.*, 225 P. at 1009. Opponents claimed that the amendment should have been severed because in addition to adding a new provision to the Constitution, it impacted the operation of several preexisting constitutional provisions, altering the Legislature's power to pass local or special laws and conflicting with multiple provisions outlining the structure of local and county government.

The Court acknowledged that the term "amendment" could be construed in two ways, one "which would make it cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject," and the other "that every proposition which effects a change in the Constitution, or adds to or takes from it, is an amendment." *Id.*, 225 P. at 1010. It sided with the first interpretation:

Constitutional provisions necessarily are couched in broad language for they are designed to have a comprehensive scope and operation. When we examine the section under consideration critically, we see that it has but one purpose, one design: To permit the Legislature by general or special law to provide a legal method, within the limitations mentioned in the amendment, whereby counties, or counties and cities and towns, or cities and towns, may adopt what may be termed a municipal form of government. It easily stands the test stated by this [C]ourt in [*Hay*].

*Id.*, 225 P. at 1010-11.

### **B. Framing and Ratification of the 1972 Provision**

The 1889 Constitution’s amendment process resulted primarily in small-scale, highly-specific amendments—technical revisions—but transformative constitutional revision was needed by the mid-20th Century. *See* Legislative Council Report on the Mont. Const. 90 (1968) (noting history of “piecemeal amendment” and the need for “simultaneous and coordinated revision”). The 1972 Constitution’s Framers did not intend to repeat the errors of the past and therefore improved upon the People’s ability to amend the Constitution, which would determine “whether this Constitution, and through it the state, will be flexible or frozen, responsive or rigid, basic or erratic.” Montana Constitutional Convention, Committee Proposals, Vol. I, pp. 363-64.

One way in which the Framers accomplished this goal was by removing the existing limit on proposing more than three amendments at a time. Despite being regarded as a “serious limitation on change,” scholars noted that the limitation was not necessarily “as serious as it appear[ed] on cursory examination,” because of the

prevailing Supreme Court interpretation that would allow “the subjects contained in proposed amendments [to be] very broad.” Legislative Council Report at 90 (quoting *Hay* and *Cooney*). Even if the three-amendment provision was a paper tiger, the Framers took no chances. In convention debates, the concern endured that voters might be presented with an inordinate number of amendments at one election, such that they might not be able to give due consideration to each. Montana Constitutional Convention, Verbatim Transcript, February 18, 1972, Vol. III, pp. 515-21. Ultimately, though, they sided with trusting the people to self-govern and voted against imposing a numerical limitation like that of the 1889 Constitution. *Id.*, p. 521.

The removal of the three-amendment limitation is consistent with the Framers’ intent to make the constitutional revision process among the most flexible in the nation. Most importantly, this intent meant recognizing the citizens’ power of constitutional initiative, providing that the People could, for the first time in state history, initiate constitutional challenge. This, the Framers explained, was “an inherent right in a body politic whose Constitution is to be the embodiment of the will of the people.” Conv. Comm. Proposals, Vol. I, at 363. The commitment to popular sovereignty is further echoed in the automatic submission of the question of whether to call a constitutional convention every 20 years. Mont. Const. art. XIV, § 3.

Even as the Framers made substantial changes to the constitutional revision process, the separate-vote requirement was proposed in the exact same form as in the 1889 Constitution: “Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by number or otherwise such that each can be voted upon separately.” Conv. Comm. Proposals, Vol. I, p. 363. In its explanatory notes, the Committee noted it was “designed to aid voters in casting their votes on [c]onstitutional issues, and as a check on the possible action of grouping several issues under one innocuous title.” *Id.* Like the language, its intent was unchanged; the Court had long acknowledged the risk of logrolling and the corresponding safeguard provided by the rule. *See Hay*, 49 Mont. at 387, 142 P. at 212. The Framers chose to carry the language forward without revision, even as they created a new citizen-initiated amendment process.

The limited discussion of the separate-vote requirement during the Convention reinforces the Framers’ intent to incorporate the Court’s interpretation of the corresponding 1889 provision. In a single exchange, Delegate Loendorf questioned, “Could an amendment include an amendment to an entire article?” Montana Constitutional Convention, Verbatim Transcript, February 18, 1972, Vol. III, p. 519. Delegate Felt did not answer directly, referring instead to the Court’s precedents, “All I can say is that, under our present Constitution, you can only deal with one subject and exactly what that means has been the subject of several court

interpretations.” *Id.* The question was settled—*Teague, Hay, and Cooney* would govern the application of the separate vote requirement.

Article XIV, Section 11 was adopted unanimously, incorporating only stylistic changes. Montana Constitutional Convention, Verbatim Transcript, March 1, 1972, Vol. IV, pp. 1195-96.<sup>1</sup> When it was ratified, so too was the Court’s longstanding, consistent interpretation of the separate-vote requirement.

## **II. The modern separate-vote doctrine is both unworkable and inconsistent with the Framers’ intent.**

Before *MACo* and the onslaught of separate-vote challenges in its wake, a single case dealt with the separate-vote rule under the 1972 Constitution. Although previous cases involved Legislature-initiated amendments—the only form of amendment authorized prior to 1972—*Marshall v. State ex rel. Cooney*, 1999 MT 33, 293 Mont. 274, 975 P.2d 325, arose from a constitutional initiative. *Marshall* involved a post-passage challenge to a sweeping constitutional amendment—CI-75—that prohibited any new tax or tax increase unless approved by voters. *Id.* ¶ 5.

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<sup>1</sup> Contemporaneous materials presented to voters reflect the same. The Voter Information Pamphlet erroneously called the section a “new provision,” perhaps due to the restructuring of the Article compared to the 1889 Constitution, but otherwise stated it was “self-explanatory.” Proposed 1972 Constitution of the State of Montana: Official Text with Explanation, p. 18 (1972); see Anthony Johnstone, *The Constitutional Initiative in Montana*, 71 Mont. L. Rev. 325, 349 (2010) (“[T]he pamphlet incorrectly described the retention of the Separate Amendment Rule as a ‘new provision,’ despite only stylistic changes from the original 1884 text.”). Other sources noted only the removal of the three-amendment limitation. See Gerald J. Neely, *The New Montana Constitution: A Critical Look*, p. 28 (1972).

Opponents alleged that it violated both Article V, Section 11(3)—the legislative single-subject rule—and Article XIV, Section 11, the single amendment rule. *Id.*

¶ 12. Thus, the Court was tasked for the first time with determining what Article XIV, Section 11 meant when it was divorced from the Article V standards that also govern amendments initiated by the Legislature.

The Court recognized, based on the plain-text distinction between the separate-vote rule and Article V’s single-subject rule, “that a separate-vote requirement for constitutional amendments is a different and narrower requirement than is a single-subject requirement.” *Id.* ¶ 22. *Hay, Teague, and Cooney* had conflated the requirements of the two rules, applying Article V’s more permissive standards to the more stringent requirements of Article XIV, Section 11. In doing so, it rejected the reasoning of the pre-1972 cases that applied both the separate-vote and single subject rules to constitutional referenda, finding the “unity of subject rule” “so elastic that it could swallow Montana’s entire Constitution.” *Id.* ¶ 21. The Court did not consider the Framers’ intent in its decision.

Ultimately, the Court did not need to overrule its prior cases in *Marshall*, which turned on the fact that CI-75 *facially* amended at least three parts of the Constitution (Article VIII with changes to revenue, Article II, Section 18 with changes to sovereign immunity, and Article VI, Section 10 with pre-referral gubernatorial veto power). *Id.* ¶ 24. And it declined to adopt an implied effects

test, outside the scope of the Framers’ intent. The Court declared, “With our holding today we do no more and no less than affirm the clear intent of the people of Montana, as set forth in Montana’s Constitution, that constitutional amendments be voted upon separately.” *Id.* ¶ 26. Like the pre-1972 cases it overruled in part (whether necessarily or not), *Marshall* maintained stability in the law, as relatively few challenges to amendments arose in its wake.

The game-changer came nearly 20 years later with *MACo*, which involved a post-passage challenge to “Marsy’s Law,” a wide-reaching crime victim’s bill of rights. *MACo*, ¶¶ 5-8. While *Marshall* disentangled the separate-vote and single subject rules, *MACo* went much further. The Court determined that “the 1972 Constitution’s amendment by initiative interjected a new element into the separate-vote requirement”—a proposition unexamined in *Marshall* and unsupported by Convention history. *MACo*, ¶ 19. Through this framing, the Court fully cut away the pre-1972 case law and addressed the novel issue of “what *is* a ‘separate amendment’ for purposes of the separate vote requirement.” *Id.* ¶ 23 (emphasis in original).

To answer this question, the *MACo* Court looked to other states with similar single subject and separate vote provisions, ultimately landing on Oregon’s test—one of the most restrictive in the nation. The test asks “whether, if adopted, the proposal would make two or more changes to the Constitution that are substantive

and not closely related.” *Id.* ¶ 27 (quoting *Armatta v. Kitzhaber*, 959 P.2d 49, 64 (1998)). Under that test, “if a proposed constitutional amendment adds new matter to the Constitution, that proposition is at least one change in and of itself.” *Id.* ¶ 28. The Court also set forth a number of factors to be used in determining whether any additional change is “closely related.” *Id.* ¶ 29. Useful in theory, in fact these factors rarely guide the analysis in separate-vote challenges. Under the new implied effects test, a change may be deemed substantive and unrelated even if it is only implied by the amendment. *Id.* ¶ 28.

Justice Rice, joined by Justice Baker, dissented, calling the test “deeply flawed” and “not rooted in the text of the Constitution.” *Id.* ¶ 55 (Rice, J., dissenting). In place of the dissonant and unworkably restrictive *Armatta* test, the dissent suggested returning to the Court’s decision in *Marshall*: an analysis not premised on “propositions” and “effects,” but on whether the initiative substantively constitutes more than one amendment; “Such an approach would not invalidate an initiative merely because it contained text that changed or revised more than one article of the Constitution, as long as those revisions were part of one complete, substantive amendment.” *Id.* ¶ 75. “The effect of this decision,” the dissent warned, “may be to significantly undermine, if not eliminate, the right of Montanans to amend the Constitution.” *Id.* ¶ 55. That warning has proven prescient.

As separate-vote challenges are now made to nearly every proposed constitutional amendment, the consequences of the implied effects test are impossible to ignore. The Framers intended citizens to hold the initiative power and to self-regulate the number and scope of amendments, authorizing limited intervention to prevent procedural confusion and give effect to the people's right of amendment.

The implied effects test delegates the power of the People as popular sovereign to the Executive and the Judiciary. First, as a result of the pre-ballot review process, the Attorney General holds tremendous power, deciding if, when, and in what form a separate-vote challenge is made. Under the implied effects test, the Attorney General's review process need not focus on voter confusion and coercion. Nearly every constitutional amendment has *some* effect on existing constitutional provisions, so the implied effects test allows any Attorney General to challenge any amendment whose policy he or she disagrees with. Similarly, the Attorney General could decline to find a separate-vote issue as a result of political sympathy, substantially reducing the likelihood of a pre-election challenge.

And then, because the implied effects test fails to constrain, the power shifts to the judicial branch. This Court, caught in the position of deciding how broad a scope of amendment should be allowed to reach the voters, must decide in nearly

every case whether to allow an amendment to reach the ballot. *MACo*'s implied effects test has become a substantive constraint on constitutional change.

Further, *MACo*'s enumerated factors have been of little utility to the Court itself. It did not actually apply the factors in detail in the case; there, the initiative so clearly directly altered so many parts of the Constitution that further analysis was unnecessary. *MACo*, ¶¶ 32-50. In subsequent challenges, the Court has generally resolved cases based on a general impression that an amendment is “too disparate” or is “sufficiently unified.” In practice, *MACo*'s factors have functioned to the Court as merely descriptive guideposts; to the Attorney General, they are gamified elements for rejecting an amendment and creating a legal challenge. *See, e.g., Montanans Securing Reprod. Rts. v. Knudsen*, 2024 MT 54, ¶¶ 18-25 (analyzing separate-vote challenge without stating or applying factors); *Montanans for Election Reform Action Fund v. Knudsen*, 2023 MT 226, ¶ 12, 414 Mont. 135, 545 P.3d 618 (stating factors, but analyzing separate-vote challenge for compliance with the dual voter clarity and anti-logrolling purposes of Article XIV, Section 11). Far from procedural safeguard, the separate-vote rule has become a substantial barrier between the people and their right to enact comprehensive constitutional change.

**III. The Court should give effect the Framers’ intent and, at minimum, reject the implied effects test.**

“The intent of the Framers controls the Court’s interpretation of a constitutional provision.” *Nelson v. City of Billings*, 2018 MT 36, ¶ 14, 390 Mont. 290, 412 P.3d 1058. Intent is determined based on “historical and surrounding circumstances . . . the nature of the subject matter [the Framers] faced, and the objective they sought to achieve,” in addition to the plain language used. *Id.* When the Framers carried forward a provision, they carried forward its legal meaning and historical context. *Espinoza v. Mont. Dep’t of Rev.*, 2018 MT 306, ¶ 85, 393 Mont. 446, 435 P.3d 603 (Baker, J., dissenting) (“[O]ther than stylistic changes, the Delegates maintained the language, and thus the meaning, of the 1889 Constitution” in carrying forward a provision.); *see also O’Neill v. Gianforte*, 2025 MT 2, ¶¶ 19-22, 420 Mont. 125, 561 P.3d 1018 (recognizing gubernatorial privilege carried forward in provision similar to the 1889 Constitution); *Buhman v. State*, 2008 MT 465, ¶ 65, 348 Mont. 205, 201 P.3d 70 (applying “well-established” meaning of provision “adopted verbatim” from 1889 Constitution); *Mont. Dem. Party v. Jacobsen*, 2024 MT 66, ¶¶ 23-27, 416 Mont. 44, 545 P.3d 1074 (looking to the Court’s “own long history construing the right before 1972” for a carried-forward voting rights provision).

The separate-vote requirement of Article XIV, Section 11, is a straightforward carryover provision. *See supra* § I. The Framers explicitly

deferred to the existing interpretation of *Teague*, *Hay*, and *Cooney*— “[U]nder our present Constitution, you can only deal with one subject and exactly what that means has been the subject of several court interpretations.” Conv. Tr., Vol. III, p. 519. Considering the impact of the new citizen-initiated amendment process, they decided against imposing any additional constraints. The Court should give effect to the Framers’ intent by recognizing the Framers’ incorporation of pre-1972 standards, standards intended to safeguard the role of the popular sovereign by making comprehensive constitutional amendment possible and limiting voter confusion and logrolling.

To do so is neither to forever freeze constitutional interpretation nor to greenlight all constitutional proposals, no matter how vast. To the degree that new questions arise, the law can, of course, address those questions—so long as the answers give effect to the Framers’ intent. Consistent with that proposition, the Court should return to the purpose of the separate-vote rule: that voters separately address each proposed amendment—something “that relates to a single plan or purpose.” *Cooney*, 70 Mont. at 355, 225 P. at 1011. *Marshall* fits within this scheme and cabins the rule: if a proposed amendment patently amends multiple sections of the Constitution, then it is far less likely that it truly constitutes a single amendment. Practically, something as broad as CI-75—foundationally altering the entire financial system of the state and imposing a cap on one of the Legislature’s

most meaningful powers—relates to a single plan in name only. Marsy’s Law presents a closer case, but it arguably violates the same principle; the crime victim’s bill of rights certainly relates to one purpose—constitutionalizing protections for victims—and it at least potentially relates to another—interfering with the process due to criminal defendants. *See State v. Fisher*, 2021 MT 255, ¶ 27, 405 Mont. 498, 496 P.3d 561 (“Both the United States Constitution and the Montana Constitution assure criminal defendants due process of law.”).

In *MACo*, the Court expressed concern that a clever drafter could hide disparate effects under one change, related to one plan, and thus create a logrolling effect and skirt the separate vote rule. *Id.* ¶ 24. This concern is valid—as is the Court’s effort to create law guarding against that problem—but should not be elevated above the plain text and history of the provision, to a result that stands directly opposite the Framers’ intent. The Framers debated and decided to trust the people. Anything more stringent, they warned, and constitutional amendment might “proliferate and degenerate into entrapping trivia that obscures and thwarts the desired end,” *Conv. Comm. Proposals*, Vol. I, p. 364—exactly what the separate-vote rule has become under the implied effects test.

## CONCLUSION

In 1972, the Framers adopted Article XIV, Section 11, against the backdrop of this Court’s longstanding “single plan or purpose” jurisprudence and with an

express commitment to making constitutional revision more accessible. *MACo's* implied effects test reverses that constitutional design. It empowers pre-election gatekeeping, invites inconsistent application, and prevents the people from exercising the sovereign authority the Constitution reserves to them.

The Court should give effect to the Framers' intent, avoid substantial interference with the People's prerogative to amend the Constitution, and promote stability in the law by overturning *MACo's* implied effects test.

DATED this 9<sup>th</sup> day of January, 2026.

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the requirements of Rule 11, M. R. App. P., is double-spaced, except for footnotes, quoted, and indented material, and is proportionally spaced utilizing a 14-point Times New Roman typeface. The total word count for this document is 4,778 words, as calculated by the undersigned's word processing program.

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