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

THERESA KENDRICK, CLAUDIA CLIFFORD, and MONTANANS DECIDE,

Petitioners,

v.

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

Respondent.

PETITION FOR DECLARATORY RELIEF ON ORIGINAL JURISDICTION

Oral Argument Requested

Raph Graybill
Rachel Parker
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
raph@graybilllawfirm.com
rachel@graybilllawfirm.com

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Articles

Other Authorities

INDEX OF EXHIBITS

INTRODUCTION

It is a first principle of Montana's constitutional order that the People retain the right to amend the terms by which they are governed, including proposing amendments to the Montana Constitution by initiative. This right is under attack in Montana.[1] In recent years, a dramatic rise in interference with the initiative and referendum processes has made qualifying ballot issues extremely difficult—even for well-organized, popular campaigns. The process is slow, litigious, expensive, and unpredictable, far from the ideal of co-equal lawmaking through direct democracy envisioned by the Framers.

Ballot Issue #8 ("BI-8") is a single, comprehensive proposal to return the ballot issue process to its roots by making it more timely and predictable, reducing political interference by the government and associated litigation, and preserving access to the ballot issue process for ordinary Montanans. There is no other means for proponents to secure this fundamental right; the Legislature will not pass such reform on its own, and a citizen-initiated statutory initiative could provide only

[1] *See* Adam Ginsburg, *States are Making it Harder for Ballot Initiatives to Pass*, Campaign Legal Ctr. (May 17, 2023), https://campaignlegal.org/update/states-are-making-it-harder-ballot-initiatives-pass; *New Report: Attacks on Direct Democracy Doubled in 2025*, The Fairness Project (Sept. 9, 2025), https://thefairnessproject.org/blog/2025/09/09/new-report-attacks-on-direct-democracy-doubled-in-2025/.

temporary protection. It is for exactly this situation that the Constitution recognizes the People's power to propose changes.

The Framers recognized the need for a Constitution responsive to the People, the popular sovereign, and they did not intend to withhold from the People the ability to enact comprehensive reform. BI-8 is not guilty of logrolling, and the A.G.'s attempt to cleverly subdivide BI-8 is no basis to withhold the ballot issue from voters. On the A.G.'s logic, any potentially-divisible constitutional amendment could be kept from the voters—a result directly at odds with self-government and the trust placed in everyday citizens by the Framers. Article XIV, Section 11's single amendment (or "separate-vote") rule exists to facilitate and protect the integrity of direct democracy, not to stifle it. It is especially important that the rule not be misused to prevent the People from protecting and reaffirming their powers of initiative and referendum.

Accordingly, the Court should reverse the A.G.'s legal sufficiency determination and remove the proposed fiscal statement, because OBPP did not determine a fiscal impact.

RELIEF REQUESTED

Theresa Kendrick, Claudia Clifford, and Montanans Decide ("Proponents") seek this Court's declaration that (1) BI-8 is a single amendment and (2) the A.G.

did not have authority to append a fiscal statement to BI-8 under § 13-27-226(4), MCA, because BI-8 has no determinable fiscal impact.

FACTS

1. Proponents certify there are no issues of fact.

LEGAL ISSUES

- Whether BI-8 is a single amendment;
- Whether the A.G. has the authority to include a fiscal statement.

JURISDICTION

This Court has original jurisdiction under § 13-27-605(1), MCA. The Court also has jurisdiction to review the A.G.'s decision to include a fiscal statement. *Stop Over Spending Mont. v. State*, 2006 MT 178, ¶ 29, 333 Mont. 42, 139 P.3d 788.

BACKGROUND AND PURPOSE OF BALLOT ISSUE #8

In recent years, the People's power to make law through the initiative process has come under sustained attack. New statutes require ballot issue proponents to go before legislative interim committees before circulating petitions, and require the legislative committee's mark of approval or disapproval to appear on the signature petition. Proponents are subject to an assessment about whether a proposed policy effects a "taking," with a "warning" statement placed on signature petitions. A new law requires the regular, rolling submission of signatures

collected for initiatives—a task that could prove virtually impossible with volunteer signature-gatherers, given quantity and geographic distribution requirements for signatures. The A.G. routinely reauthors ballot statements, requiring serial litigation before this Court. New requirements limit who may petition for signatures and obligate certain signature gatherers to register individually with the SOS and to wear badges, with government requirements specifying the acceptable fonts that may be used on name placards. Even a minor oversight could result in disqualification of a ballot issue.

These restrictions and others combine to form a thick, growing web of requirements that proponents must navigate on a shrinking timeline. The process is needlessly litigious, and taxes judicial resources simply to ensure the exercise of a basic function of popular sovereignty. CI-128, for example, took *five* lawsuits to qualify for the ballot. The process is also more expensive than ever, as proponents must navigate these requirements, litigate ballot access, and rapidly collect, verify, and submit signatures. While resources alone are no guarantee of success, the legal, procedural, and time requirements effectively freeze out initiative efforts that cannot fundraise or organize on mammoth scale. In sum, the process has shifted away from the People's power to initiate statutes and constitutional amendments—timely, manageable, democratic, and consistent with the Framers' intent—to a

process that even the most well-resourced and popular ballot issue efforts struggle to complete. The initiative process in Montana stands at a perilous juncture.

BI-8 returns the ballot issue process to its constitutional roots in Montana by protecting the role of the People as sovereign. It defines the People's exercise of initiative and referendum powers as a fundamental right. It ensures the right to an impartial, predictable, open, and timely process, including approval of petitions and ballot statements, resolution of legal challenges, and verification of signatures. This right further requires the state to allow ample time for signature gathering, prohibits disqualification of petitions because of minor or technical issues, and allows voters to voluntarily withdraw their signatures.

BI-8 is specifically intended to reduce the litigation spurred by recent government conduct—needlessly rewriting ballot statements, tinkering with procedural requirements, and so forth. And it is designed to bring stability and predictability to the process by ensuring initiatives meet all lawful requirements for submission before going to voters, reducing the risk (and associated costs and delays) of post-passage legal challenges. The constituent elements of the right established in BI-8 are included precisely because they represent the integral stages of the ballot issue process: proposing the issue, qualifying it for the ballot, and submitting it to the People for their approval or rejection.

ARGUMENT

I. Consistent with the Plain Terms of Article XIV, Section 11, BI-8 is a Single Amendment.

A. BI-8 establishes a single fundamental right then defines the components of that right.

Article XIV, Section 11 contains a procedural requirement that only one amendment at a time may be submitted to the voters. Its purpose is to avoid "logrolling"—to prevent "combining unrelated amendments into a single measure that might not otherwise obtain majority support." *Montanans for Election Reform Action Fund v. Knudsen* ("*MER*"), 2023 MT 226, ¶ 12, 414 Mont. 135, 545 P.3d 618 (citing *Mont. Ass'n of Cntys. v. State* ("*MACo*"), 2017 MT 267, ¶ 15, 389 Mont. 183, 404 P.3d 733). Under *MACo*, the 2017 decision addressing the single amendment provision in the context of a citizen-initiated constitutional amendment, a proposed initiative is a single amendment unless, "if adopted, the proposal would make two or more changes to the Constitution that are substantive and not closely related." *MACo*, ¶ 28. The Court considers all relevant factors to determine whether the provisions are closely related, including:

(1) "whether various provisions are facially related,"
(2) "whether all the matters addressed by the proposition concern a single section of the [C]onstitution,"
(3) "whether the voters or the legislature historically has treated the matters addressed as one subject," and
(4) "whether the various provisions are qualitatively similar in their effect on either procedural or substantive law."

Monforton v. Knudsen, 2023 MT 179, ¶ 12, 413 Mont. 367, 539 P.3d 1078 (quoting *MACo*, ¶ 28). The Court has repeatedly held that it "must apply the separate-vote requirement in a manner that does not encumber the right of the people to amend the Constitution." *Montanans Securing Reprod. Rts. v. Knudsen* ("*MSRR*"), 2024 MT 54, ¶ 23, 415 Mont. 416, 545 P.3d 45 (citing *MACo*, ¶ 25).

BI-8 readily satisfies each of the factors considered in *MACo* because it is a single amendment, of exactly the sort the Framers anticipated citizen proponents could present to voters. The elements of that right are closely related and satisfy the *MACo* criteria, similar to the initiatives this Court allowed to proceed to voters in *MER* and *MSRR*.

First, under *MACo*, the provisions of BI-8 are "facially related." Every aspect of BI-8 is closely related to the People's fundamental right to exercise their powers of initiative and referendum. There are no extraneous provisions; each subpart defines the nature of the right established and is integral to the function of the right. This factor is arguably the most important, because it goes to the heart of the single amendment requirement. Where, as here, the provisions of an initiative are clearly and obviously related to one another, it is far less likely the proposal does the only thing the single amendment rule prohibits: "combining unrelated amendments into a single measure that might not otherwise obtain majority support." *MER*, ¶ 12 (citing *MACo*, ¶ 15).

Second, the provisions of BI-8 are contained in a single, new section of the Montana Constitution: Article II, Section 37. Logically so: the basic action of the amendment is to establish a single fundamental right related to a single power—the power of the People to make law—and then necessarily define it.

Third, the Legislature has historically treated the matter addressed by BI-8 as one subject. For example, in 2023 the Legislature enacted S.B. 93, a 46-page bill generally revising ballot issue laws and comprehensively regulating all forms of ballot issues and related procedures. 2023 Mont. Laws ch. 647. Similarly, comprehensive ballot issue legislation was enacted in 2007 when the Legislature enacted S.B. 96, a 29-page bill that revised review procedures for ballot issues, vested the Supreme Court with original jurisdiction to review challenges over ballot statements and legal sufficiency, gave new duties to the A.G. and Secretary of State, and created new requirements for signature gatherers. 2007 Mont. Laws ch. 481.

The Montana Constitution itself contains a provision—Article IV, Section 7 (Ballot issues – challenges – elections)—approved by voters in 1990 that addresses both initiatives under Article III and referenda under Article XIV within a single section. It also addresses the submission of ballot issues to the voters by the SOS and requires courts to prioritize both preelection and postelection challenges to

ballot issues by the courts. Thus, there is also robust constitutional and electoral history for treating the matter addressed by BI-8 as a single topic.[2]

Fourth, the provisions of BI-8 all have qualitatively similar effects on the law, because they all operate to define and enforce the single right established. Further, the provisions defining the right all concern an area of law traditionally treated as a single topic by the Legislature, the Constitution, and the voters, as described above.

Most important, BI-8 does not commit the single offense that Article XIV, Section 11 plainly proscribes: fastening distinct, unrelated proposals together to manufacture support. Unlike the multiple amendments at issue in *Monforton* and *Montanans for Nonpartisan Courts*, 2025 MT 268, __ Mont. __, __ P.3d __ ("*MNC*"), BI-8 does not contain separate issues on which voters must reasonably be allowed to exercise separate votes. BI-8 is much more similar to *MER* and *MSRR* than *MNC* and *Monforton*.

MSRR is directly on point. It addressed an initiative that proposed a fundamental right—the right to make and carry out decisions about one's own pregnancy—and set forth a fulsome legal standard, defined when and under what

[2] Nor is it unwieldy or unusual among states. For example, BI-8 is less than 25% the length of the Colorado Constitution's initiative process protections, which were themselves amended by initiative. Colo. Const. art. V, §§ 1(1) through -(10). Like Montana, Colorado has a separate-vote requirement. Colo. Const. art. XIX, § 2.

conditions the government may limit the provision of abortion care, proscribed governmental penalties against pregnant individuals or those who assisted them in making and carrying out decisions about pregnancy, and provided a definition for fetal viability. Mont. Const. art. II, § 36. The Court held that the initiative "specifies the right it creates and the limitations thereto, which constitutes a single change to the Constitution." *MSRR*, ¶ 19. Similarly, each aspect of BI-8 is integral to the establishment of a fundamental right and is similar in effect.

Unlike in *MNC* and *Monforton*, no aspect of BI-8 is so different in its effect on procedural or substantive law or in its function that it can justify "encumbering the people's right to amend the Constitution" by requiring multiple ballot initiatives, duplicative signature-gathering efforts, and separate votes. *MNC*, ¶ 17. For example, it is hard to conceive of voters desiring to establish the initiative and referendum powers as a fundamental right that may not be unjustifiably denied or burdened by the government, but also desiring to permit the government to use taxpayer-funded resources to influence the outcome of ballot issue elections.

In sum, BI-8 presents only "one amendment," consistent with Article XIV, Section 11—exactly the kind of constitutional change the Framers expected voters to act upon, in an area they have already acted upon utilizing a single initiative amendment, *see* art. IV, § 7. BI-8 establishes a single fundamental right and defines the components of that right. It does not combine "unrelated amendments

into a single measure that might not otherwise obtain majority support," *MER*, ¶ 12 (citing *MACo*, ¶ 15), and should not be withheld from voters.

B. The A.G. has failed to establish a violation of the single amendment rule.

In his legal sufficiency memo, the A.G. argues for an expansive application of the single amendment rule that would invest inordinate power in an Executive Branch officer to halt (and, equally troubling, to selectively greenlight) constitutional initiatives. But the constitutional protection against logrolling, as explained in *MACo*, is not violated by BI-8. The A.G.'s analysis does not alter the outcome.

Many of the quibbles presented in the memo have no relationship to the single amendment rule whatsoever. After the clutter is cleared, all that remains are arguments premised on possible creative subdivisions of BI-8, leading to assertions that voters might have different views on any conceivable subdivision. This kind of analysis finds no support in the text of the Constitution. Nor does it find support in this Court's precedent. *See, e.g.*, *MER*, ¶¶ 11-13 (rejecting attempt to carve up initiative to identify separate decision points when all are "integral part[s]" of the proposal).

Indeed, in *MACo*, this Court explicitly rejected an overly restrictive construction of the single amendment rule, which would have required "a single subject to the proposed amendment and parts so interdependent that they constitute

a whole and *cannot* be separated." *MACo*, ¶ 26 (emphasis added). Yet it is precisely that rejected construction that the A.G. endorses through his legal sufficiency analysis: BI-8 can be somehow subdivided, so it violates the single amendment requirement. That, emphatically, is not Montana's standard.

In fact, it is hard to reconcile the A.G.'s view of Article XIV, Section 11 with provisions in the current Constitution. For example, Article II, Section 11 addresses searches and seizures by the government. On the A.G.'s logic, that section could never be added to the Constitution by initiative because voters might conceivably have views on being "secure in their persons" that differ in their views on the security of their "homes and effects." The expansive and open-textured effect of that portion of the Constitution—and constitutional provisions generally are, by design, expansive and open-textured—would serve as a basis to withhold it from voters, on the A.G.'s view. That is contrary to the Constitution's plain text.

The A.G. presents a grab-bag of arguments for why BI-8 purportedly violates the single amendment rule and should be withheld from voters, none of which are availing. Proponents address each of them in turn.

1. BI-8 does not infringe on the legislative or judicial power.

BI-8 does not create a new governmental structure. It does not remove certain powers from one branch and pass them to another. It does not predetermine the outcome of legal challenges. In recognizing a fundamental right, it sets

standards for enforcement that affect government actors. But it is not a usurpation of power, and it does not amend any other part of the Constitution such that the single amendment rule is implicated.

BI-8 does not *alter* the powers of the branches of government, and it amends neither the legislative nor the judicial power. Because the Montana Constitution provides the framework for our government and establishes the relationship between individual and government, each of its provisions in some way tells the government how it must or must not act. The fact that BI-8 elicits action from the legislative and judicial branches is consistent with this feature of constitutional provisions—BI-8 operates on the government, so the government must respond. *See MSRR*, ¶ 24 ("If [the initiative] is adopted, questions may arise as to its interpretation, but this is true of the entire text of the Montana Constitution and its subsequent amendments, and processes exist to resolve those questions accordingly.").

The A.G. nonetheless argues that BI-8 impermissibly infringes on the Legislature's power to administer elections. But BI-8 functions no differently in this respect than the proposal in *MER*: the Legislature might change certain election-related laws to comply with BI-8 if it passes, but the provision would have no effect on the Legislature's inherent power to do so. In *MER*, where the proposed initiative worked much more directly on election administration by

proposing an entirely new primary system, the Court held that the change "would not affect the Legislature's authority to 'provide by law'" for the administration of the same. *MER*, ¶ 19; *see also Mont. Dem. Party v. Jacobsen*, 2024 MT 66, 416 Mont. 44, 545 P.3d 1074 (legislative authority to regulate election procedure must be exercised in compliance with fundamental rights). BI-8 does not impermissibly amend or infringe on the Legislature's power under Article IV, Section 3.

Likewise, BI-8 interacts with the judicial branch but does not interfere with the judicial power. Just as constitutional provisions may compel or prohibit legislative action to give effect to individual rights, so too may they impact judicial review. For example, the right to privacy in Article II, Section 10 prescribes a standard of judicial review ("shall not be infringed without the showing of a compelling state interest"). Article II, Section 36 provides that its "right shall not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means," and specifically defines when a governmental interest is "compelling." Article IV, Section 7 requires courts to "give[] priority" to challenges to ballot initiatives. In a similar vein, BI-8 provides a 90-day timeline for the resolution of challenges to a ballot statement and legal sufficiency because the early stages of qualification have proven particularly vulnerable to dilatory tactics aimed at hindering proponents.

BI-8's review provision is necessary to effectuate its aim of decreasing litigation in the ballot initiative process by ensuring that there is an end certain to the ever-thickening tangle of legislative hurdles and bureaucratic review. It is in no way intended as a constraint on the courts, but rather as a means of securing an expeditious and predictable process to give effect to a fundamental right. BI-8 is wholly unlike the statutory restrictions struck down in *Coate v. Omholt*, 203 Mont. 488, 662 P.2d 591 (1983). There, statutes threatened justices and judges with sanctions if they did not issue opinions within a certain timeline. *Id.* at 490-92, 662 P.2d at 593. The Court held that the Legislature could not exercise such power over the judicial branch. *Id.* at 492, 662 P.2d at 593. But it did not hold that the Constitution could not impose a non-punitive deadline.

Moreover, as this Court well knows, it is forced to resolve an inordinate amount of litigation on tight timelines resulting from statutory burdens on the initiative process. Yet the A.G. does not suggest that legislatively imposed burdens are unconstitutional because they necessarily create litigation that this Court must resolve on a short fuse; in fact, he currently is asking the Court to give the Legislature a wide berth to impose restrictions on the ballot initiative process. *See Ellingson v. State*, No. DA 25-0142. In sum, BI-8's interaction with the judicial power is no different than current statutes and existing constitutional

provisions. Neither those statutes and provisions—nor BI-8—violate the separation of powers.

2. BI-8 has no effect on a public official's right to free speech.

BI-8 articulates an affirmative right to propose and qualify a ballot issue without "the use of government resources to support or oppose the ballot issue." The A.G. suggests that this somehow amends public officials' substantive rights. But public officials do not have a constitutional right to use government resources to support or oppose ballot issues, and BI-8 has nothing to do with their ability to express their personal views on ballot issues using personal or non-governmental resources. This provision has no effect on a public official's speech rights; indeed, it is no more prohibitive than the code of ethics at issue in *Sheehy v. Commissioner of Political Practices for Montana*, 2020 MT 37, ¶¶ 28-29, 399 Mont. 26, 458 P.3d 309. This argument is no reason to withhold BI-8 from voters.

3. Purported similarity to a statute, in form or effect, is not a basis for disqualification under the single amendment requirement.

The A.G. condemns BI-8 for its "statute-like criteria dictating the procedural submission of ballot issues." But the format of a proposed amendment is not among the single amendment requirement's criteria and has no bearing on the analysis. And "speculation as to how" an initiative "might affect statutes and regulations" is no basis for finding legal insufficiency. *MSRR*, ¶ 22.

Like many constitutional provisions—including those in *MER* and *MSRR*—BI-8 establishes a right and provides its general parameters in broad terms, similar in detail to other sections of the Montana Constitution addressing initiative and referendum. It identifies the core features of the right, then elucidates essential elements of the process. BI-8 is contained in a single section that fits on a single page. In contrast, the companion statutory provisions governing ballot issues occupy a 6-part, 60-section, nearly 100-page chapter of the Montana Code. If this complaint, which has no direct relationship to Article XIV, Section 11, could halt constitutional change, then that section is without any serious standard.

II. There Should Be No Fiscal Statement.

Where a fiscal note does not include a determinable fiscal impact, the A.G. lacks authority to include a fiscal statement. *MSRR*, ¶ 32 ("Because the fiscal note prepared by OBPP did not indicate a fiscal impact, the [A.G.] lacked the statutory authority to append a fiscal statement"). The same facts exist in this case, with the same result. As in *MSRR*, OBPP's fiscal note did not indicate a determinable fiscal impact and contained a $0 fiscal note, and the A.G. nonetheless mined agency comments submitted to the OBPP to append a fiscal statement to the

initiative.[3] For the same reasons the A.G. lacked authority in *MSRR*, the Court should exclude the fiscal statement here. *See* § 13-27-226(4), MCA ("*If the fiscal note indicates a fiscal impact*, the [A.G.] shall prepare a fiscal statement of no more than 50 words and forward it to the [SOS]." (emphasis added)).

CONCLUSION

The Court should reverse the A.G.'s legal sufficiency determination and remove the fiscal statement.

DATED this 16th day of December, 2025.

/s/ Raph Graybill
Raph Graybill
Rachel Parker
Attorneys for Petitioners

[3] The A.G.'s fiscal impact statement is based solely on the SOS's shoot-from-the-hip assumption that it would hire up to $500,000 more in lawyer FTEs—an assumption the Secretary does not explain or support, and that is the opposite of BI-8's intent. It makes sense OBPP did not quantity such a baseless assumption in its fiscal note; for the same reasons, these assumptions should not appear on the ballot, where it will prejudice BI-8 without providing voters any reliable information.

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 4,000 words, as calculated by the undersigned's word processing program.

/s/ Raph Graybill
Raph Graybill
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 16th day of December, 2025, a copy of the foregoing document was served on the following persons by the following means:

1 Montana Courts E-Filing
____ Hand Delivery
____ Mail
____ Fax
1 E-Mail

1. Austin Knudsen
   Office of the Attorney General
   215 N Sanders St.
   Helena, MT 59620-1401

/s/ Raph Graybill
Raph Graybill
Attorney for Petitioners