

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.

REPLY BRIEF

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INTRODUCTION

This case concerns a single, threshold question: whether Ballot Issue 8 (“BI-8”) proposes more than one constitutional amendment within the meaning of Article XIV, Section 11. The A.G. contends the Court should evaluate BI-8 by examining how it might substantively interact with judicial authority, legislative power, or the conduct of public officials if adopted. That approach departs from the limited structural inquiry governing single amendment review. It substitutes speculative merits analysis about how a future court might interpret BI-8 for this Court’s well-defined test: whether a proposal makes two or more substantive constitutional changes that are not closely related. *Mont. Ass’n of Cnty. v. State (“MACo”)*, 2017 MT 267, ¶ 28, 389 Mont. 183, 404 P.3d 733. Under that test, BI-8 is a single amendment.

The A.G.’s reliance on *Transparent Election Initiative v. Knudsen (“TEI”)*, 2026 MT 2, ___ Mont. ___, ___ P.3d ___, does not alter that conclusion. It cannot be that *TEI* announced a new, freestanding test that a proposed amendment violates Article XIV, Section 11 whenever it is conceptually “capable of division.” Read as the A.G. suggests, *TEI* would write *MACo* out of existence, collapsing the inquiry into a search for hypothetical subdivision—and erecting a strictest-in-the-nation barrier that would effectively strike the constitutional initiative power from the Constitution and strip the people of a key aspect of their right of self-government.

BI-8 establishes one constitutional right and defines the components necessary for that right to function in each essential phase of the ballot issue qualification process. Arguing about downstream effects of that right does not convert its operation into multiple amendments, nor does it authorize pre-election review of hypothetical constitutional consequences. Properly confined to the inquiry Article XIV, Section 11 demands, the A.G.’s legal sufficiency determination is incorrect.

ARGUMENT

The A.G.’s response repeatedly asserts that BI-8 “amends” judicial power, legislative authority, and public officials’ speech rights. These assertions do not answer the only question at issue: whether BI-8 contains multiple substantive, *not-closely-related* amendments. *MACo*, ¶ 28. Because *TEI* does not overrule *MACo sub silentio*, this inquiry—which is analyzed under the *MACo* factors—still controls. Further, if the A.G. is right—if *TEI* sets up a new test whereby no proposed amendment can be submitted to the voters if it is possible to subdivide it—the single amendment provision will have swallowed the citizen initiative whole.

I. *TEI* has not replaced *MACo*, and BI-8 constitutes a single amendment under *MACo*.

Under the A.G.’s theory, this Court overruled *MACo* and its progeny *sub silentio*, replacing this Court’s established precedent with a new, impossible-to-

satisfy standard. But unless and until this Court in fact overrules *MACo*, its test governs whether a proposed amendment’s provisions—and their implied effects—are “closely related.”

The A.G. places heavy weight on *TEI*, arguing it establishes a categorical rule that any proposal “capable of division” violates Article XIV, Section 11. *See, e.g.*, Resp. at 8 (citing *TEI*, ¶ 8). That reading cannot be correct. *TEI* did not hold that conceptual divisibility *alone* is grounds for single amendment disqualification; such a result would silently overrule decades of precedent and render *MACo*’s “closely related” analysis meaningless. Every conceivable constitutional amendment is capable of subdivision at some level of abstraction. If “capable of division” were the test, no amendment could survive. *TEI* cannot reasonably be read to compel that result.

Far from overruling *MACo*, *TEI* cites to it extensively, reaffirming that the single amendment requirement must be construed to further the twin goals of avoiding logrolling and voter confusion. *TEI*, ¶ 13 (quoting *MACo*, ¶ 15). The Court determined that *TEI*’s proposed initiative ran afoul of the anti-logrolling purpose because it would have both broadly revoked corporate powers and regranted some limited but undefined powers. *Id.* ¶¶ 11, 14. The Court concluded that voters supportive of the initiative’s primary purpose—to keep corporate

money out of politics—are unlikely to understand or desire the “significant but unspecified other ways” the initiative would limit corporate powers. *Id.* ¶ 14.

In contrast, BI-8 has no broad, unresolved impacts that are hidden from voters or at odds with the proposed amendment’s purpose of establishing and safeguarding the right of initiative. There is no reasonable concern that a voter would support recognizing the right of initiative as fundamental but reject provisions that would give effect to the very same right. The difference between this case and *TEI* is demonstrated by the *MACo* factors, which target logrolling, “or combining unrelated amendments into a single measure which might not otherwise command majority support.” *TEI*, ¶ 13 (quoting *MACo*, ¶ 15). The second factor is unhelpful, as both BI-8 and BI-4 “concern a single section of the constitution,” but the remaining three are dispositive.

First, the provisions of BI-8 are “facially related.” *MACo*, ¶ 29. In this matter, the AG does not appear to dispute that the component elements of the right established in BI-8 are, necessarily, facially related to one another and to the subject of ballot issues. On the other hand, in *TEI*, the Court found that the initiative’s provisions were insufficiently related to the purpose of the initiative. *TEI*, ¶ 12.

Next, the third factor—the history of “treat[ing] the matters addressed as one subject”—is the most important in this matter, and it should control. At issue in

TEI, the scope of corporate charters presents a different area of law than campaign finance. *See* Mont. Code Ann. titles 13 (“Elections”), 35 (“Corporations, Partnerships, and Associations”). In contrast, the Legislature has consistently treated BI-8’s subject as a single, integrated domain. The Legislature’s comprehensive revisions to the initiative process in 2007 and 2023 addressed the same core aspects of ballot issues that BI-8 addresses now—timing, procedure, review, and interference—through unified statutory schemes. 2023 Mont. Laws ch. 647 (enacted May 19, 2023); 2007 Mont. Laws ch. 481 (enacted May 11, 2007). Even more important, Montana voters have approved a constitutional amendment addressing the same subject in a single proposal. Mont. Const. art. IV, § 7 (adopted by voters in 1990 as Constitutional Amendment 21).

Finally, the fourth factor also favors BI-8. Each of its provisions has a qualitatively similar effect on the law—each of BI-8’s components gives effect to and is in fact an integral part of the right it establishes, all centered around the right of initiative. On the other hand, in *TEI*, the Court found that BI-4 had profound and indiscernible impacts on corporate law, potentially untethered to the initiative’s purpose. *TEI*, ¶¶ 12, 14.

II. If the A.G.’s reading of *TEI* is correct, *TEI* must be clarified or overruled.

Construed to support its purposes, the single amendment rule safeguards and prioritizes voter intent by ensuring that proponents do not confuse voters or hide

one constitutional amendment behind another, more popular one. *MACo*, ¶ 15.

The A.G. applies *TEI* to suggest that any proposal that hypothetically *could* be voted on separately *must* be voted on separately, searching for ways to subdivide BI-8 without regard to the principles supported by Article XIV, Section 11. Like a game of telephone, this proposed standard transforms a provision intended to promote voter competency into a standard that would prevent voters from having any voice at all.

Consistent with his misreading of *TEI*, the A.G.'s response focuses almost entirely on arguing that BI-8 has multiple implied effects—but stops there. There is no serious consideration of *MACo*'s closely related inquiry, which expressly contemplates that lawfully submitted amendments may affect the Constitution in multiple ways if they are closely related in a single plan.

The A.G.'s analysis drifts into substantive review of the initiative itself—conjecturing about how it will be interpreted by future courts and its perceived impact, feasibility, and, ultimately, political wisdom. This is fundamentally inappropriate for a pre-election single amendment review, but it features prominently in the A.G.'s response because his proposed standard collapses the distinction between substantive review and single amendment review. That is not the law in Montana. In a pre-election challenge, this Court reviews the structural content of a proposal, not its ultimate constitutionality. *See Cottonwood Emt'l L.*

Ctr. v. Knudsen, 2022 MT 49, ¶¶ 28-36, 408 Mont. 57, 505 P.3d 837 (McGrath, C.J., concurring) (clarifying that the A.G. “lacks the power to reject a proposed ballot initiative based on an opinion about its constitutionality” and recognizing that the Court “should hesitate to ‘interfere with the constitutional right of the people of Montana’” through pre-election assessments of unconstitutionality (quoting *State ex rel. Mont. Citizens for the Preservation of Citizens’ Rts. v. Waltermire*, 224 Mont. 273, 278, 729 P.2d 1283, 1286 (1986)).

The A.G.’s theory erases that distinction and fundamentally blurs the scope of pre-election review. Under his logic, any initiative that operates in the constitutional system necessarily “amends” every provision it interacts with. Ultimately, he objects to the ways BI-8 might be interpreted by future courts and questions whether its policy is necessary or feasible. Setting aside the lack of support for his proposed analysis, BI-8 does not “amend” the judicial power. It recognizes and regulates pre-election review of initiatives—something this Court has long exercised, and that voters in Montana have historically affected through initiated constitutional change. *See* Mont. Const. art. IV, §7 (2). The same is true for BI-8’s interaction with legislative authority. Every constitutional right constrains legislative discretion, by design. That is the essence of constitutional change in a closed system where the People share power with three branches of

government, not evidence of logrolling. Finally, there is simply no basis for the contention that BI-8 “amends” officials’ speech rights.

The A.G.’s reasoning would permit disqualification of virtually any comprehensive reform before it ever reaches voters. This is simply inconsistent with this Court’s long-standing approach to the right of initiative, and would import a standard that bears resemblance to those criticized as being overly political, and thus entirely unpredictable and unusable.¹ This Court has never endorsed such a result. But if *TEI* does, in fact, allow the framework the A.G. seeks to apply, it must be clarified to prevent further interference with popular sovereignty.

CONCLUSION

This case does not require the Court to reinvent its single amendment jurisprudence. It *does* require rejecting the A.G.’s attempt to transform that doctrine into a mechanism for substantive constitutional review at the qualification stage. Under this Court’s precedent and the Constitution’s text and history, BI-8 is a single amendment. The A.G.’s legal sufficiency determination should be reversed and the fiscal impact statement removed.

¹ See Anthony Johnstone, *The Constitutional Initiative in Montana*, 71 Mont. L. Rev. 325, 368-69 (2010).

DATED this 16th day of January, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. P. 11, the undersigned certifies that this brief is set in a proportionally spaced font and contains 1,750 words.

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