

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

THERESA KENDRICK, CLAUDIA CLIFFORD, and MONTANANS
DECIDE,

Petitioners,

v.

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

Respondent.

**RESPONSE TO PETITION FOR DECLARATORY
RELIEF ON ORIGINAL JURISDICTION**

APPEARANCES:

Austin Knudsen
Montana Attorney General
Michael D. Russell
George Carlo L. Clark
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
Michael.Russell@mt.gov
George.Clark@mt.gov

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

Attorneys for Petitioners

Attorneys for Respondent

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INTRODUCTION

The Attorney General (“AG”) acted within his authority determining Ballot Issue No. 8 (“BI-8”) legally insufficient because it violates the Montana Constitution’s separate-vote requirement. Mont. Const. art. XIV, § 11. BI-8 not only adds a new text but also amends at least three other areas of the Montana Constitution. Petitioners disagree with the AG and bring this challenge under MCA § 13-27-605(5). The Court should deny the petition and affirm the AG’s legal insufficiency determination.

ARGUMENT

I. The AG correctly determined BI-8 legally insufficient.

BI-8 is legally insufficient because it violates the Montana Constitution’s separate-vote requirement. BI-8 not only adds a new fundamental right to the Constitution, but also implicitly amends (1) the judicial power and the provisions governing pre-election challenges; (2) the ability of public officials to speak on measures directly affecting their office; and (3) the Legislature’s authority to provide for the administration of elections. Petitioners posit these changes are merely the contours of a new right. Not so. These are unrelated changes that

prevent voters from expressing their opinions for each change independently.

Petitioners ultimately cannot save BI-8 by simply stating the measure creates a new right and then defines the contour of that right. The contours of the new right must still comply with the separate-vote requirement. *See Mont. Ass'n of Counties v. State*, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (“*MACo*”) (invalidating constitutional initiative that created a new bill of rights for criminal victims under the separate-vote rule). And here they do not.

A. The Montana Constitution limits the power of constitutional initiative.

The Montana Constitution provides popular initiative as one of three avenues for amending it. Mont. Const. art. XIV, §§ 1–9. Unlike a constitutional convention, which may consider unlimited proposals to “revise, alter, or amend” the Montana Constitution, Article XIV, Sections 1–2, initiative or referendum amendments must be presented to the voters so each amendment “can be voted upon separately.” Mont. Const. art. XIV, § 11. The AG ensures compliance to this constitutional command. *Transparent Election Initiative v. Knudsen*, 2026 MT 2, ¶ 4, __ Mont. __, __ P.3d __ (“*TEI*”); MCA §§ 13-27-110(7), -226(2).

Article XIV, Section 11 provides, “[i]f 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 was designed to aid voters in casting their votes on constitutional issues, and as a check on the possible action of grouping several issues under one innocuous title.” *TEI*, ¶ 5. Ultimately, Section 11 allows Montanans to accept or reject each amendment, “guaranteeing the people have complete control over Montana’s fundamental law.” *MACo*, ¶ 18.

The people thus chose to “reserve to themselves the powers of initiative and referendum,” Mont. Const. art. V, § 1, while also ensuring “[t]he sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed.” *State ex rel. Mont. Citizens for Pres. Of Citizen’s Rights v. Waltermire*, 227 Mont. 85, 91, 738 P.2d 1244 (1987). “The Committee determined limitations were necessary because it was ‘not unreasonable to demand strict standards when dealing with something as fundamental and important as Constitutional change.’” *MACo*, ¶ 14 (quoting Committee Proposal, at 363).

B. BI-8 violates the separate-vote requirement.

BI-8 prevents Montanans from considering independently at least four changes to the Montana Constitution. “[T]he separate-vote requirement pertains to submission of a proposed amendment, providing that if more than one constitutional amendment is presented to voters during the same election, voters must have the option to vote on each amendment separately.” *MACo*, ¶ 15. This constitutional provision has two objectives: (1) “to avoid voter confusion and deceit”; and (2) “to avoid ‘logrolling’ or combining unrelated amendments into a single measure[.]” *Monforton v. Knudsen*, 2023 MT 179, ¶ 10, 413 Mont. 367, 539 P.3d 1078. This Court explained that the second objective prevents voters from having to “secure some part, even though not approving all parts of a multifarious amendment.” *Id.*

The *Monforton* Court, building on *MACo*, stated four factors to determine when changes are “closely related”: (1) “whether various provisions are facially related”; (2) “whether all the matters addressed by the proposition concern a single section of the constitution”; (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*, ¶ 12 (quoting *MACo*, ¶ 29) (cleaned up). An initiative thus violates the separate-vote rule if it “prevent[s] the voters from expressing their opinions as to each proposed change separately.” *Monforton*, ¶ 12.

“A singular goal or purpose is insufficient to meet the separate-vote requirement if the proposed initiative can be split into separate votes.” *TEI*, ¶ 8 (citing *Montanans for Nonpartisan Courts v. Knudsen*, 2025 MT 268, ¶ 10, 425 Mont. 51, 579 P.3d 536 (“*MNC*”) and *Monforton*, ¶ 13). In *Monforton*, a single purpose to limit tax increases nonetheless prevented voters from expressing an opinion on the separate “valuation” and “millage” caps within the property tax formula. *TEI*, ¶ 8. Similarly, in *MNC*, the measure proposed a single purpose of “nonpartisan” courts “now and in the future,” but it combined “separate issues of nonpartisan judicial elections and [requiring] newly created courts having elected judges.” *TEI*, ¶ 9.

Like the petitioners in *Monforton* and *MNC*, BI-8’s proponents claim a central purpose, but the measure itself involves multiple separate amendments.

1. *BI-8 creates a new fundamental right to exercise the power of initiative and referendum.*

BI-8 proposes adding to the Montana Constitution a new “fundamental right to exercise [] powers of initiative and referendum under Article III and Article XIV. The government may not deny or burden this right unless justified by a compelling government interest achieved by the least restrictive means.” BI-8, (proposed) Mont. Const. art. II, § 37(1) (hereafter “BI-8, § 37”). That new language is one change. *MACo*, ¶ 28. BI-8 then purports to define the contours of the right. BI-8, § 37(2). This is where the problems lie. BI-8 likely satisfies the separate-vote requirement if it stopped with Section 1. But it does not.

By defining the “components of that right,” Pet. at 15, BI-8 goes past a single policy and instead advances three implicit amendments that change other constitutional principles. *See TEI*, ¶¶ 12, 14; *MNC*, ¶¶ 15–17. First, BI-8 implicitly amends the judicial power and the provisions governing pre-election challenges. BI-8, § 37(2)(c), (g). Second, BI-8 implicitly amends the ability of public officials to speak on measures directly affecting their office. BI-8, § 37(2) (prohibiting the “use of government resources to support or oppose the ballot issue”). Third, BI-8

implicitly amends the Legislature’s authority under Mont. Const. art. IV, § 3 to provide for the administration of elections. BI-8, § 37(2)(a)–(g).

2. *BI-8 amends the judicial power.*

“[T]he question of when cases shall be decided and the manner in which they shall be decided, is a matter solely for the judicial branch of government.” *Coate v. Omholt*, 203 Mont. 488, 492, 662 P.2d 591, 593 (1983). “A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.” Mont. Const. art. IV, § 7. “The sufficiency of the initiative petition shall not be questioned after the election is held.” Mont. Const. art. III, § 4(3).

BI-8 requires “resolution of legal challenges to the determination made in subsection (2)(b) and the issuance of an approved petition for circulation within 90 days of the initial submission of the ballot issue to the government[.]” BI-8, § 37(2)(c). And “the resolution of legal challenges to the qualification of a ballot issue for the ballot prior to the deadline for finalizing ballots for the election[.]” BI-8, § 37(2)(g). Petitioners argue

“each of [BI-8’s] provisions in some way tell the government how it must or must not act.” Pet. at 18. But that ignores the separate-vote inquiry.

In *Coate*, this Court concluded imposing date-certain deadlines to dispose of a case contravenes the judicial power. “[T]he court ... must be the judge of the order in which it will dispose of cases and what period of time proper disposition shall require.” 203 Mont. at 495, 662 P.2d at 595 (quoting *State ex rel. Kostas v. Johnson*, 69 N.E.2d 592, 596 (Ind. 1946)). This authority derives from the judicial power itself. “*There are spheres of activity so fundamental and so necessary to a court, so inherent in its very nature as a court that to divest it of its absolute command within these spheres is to make meaningless the very phrase judicial power.*” *Id.* at 493, 662 P.2d at 594 (citation and quotation omitted). The Montana Supreme Court found support in many federal and state cases that held imposing hard deadlines invades the judicial power. *Id.* at 495–97, 662 P.2d at 595–96 (collecting cases). For example, the Indiana Supreme Court, in *Johnson*, found a statute that divested courts of jurisdiction “if no decision was reached within 90 days” unconstitutional. *Id.* at 494, 662 P.2d at 595.

Elsewhere, this Court has said the phrase “shall not be questioned erects an absolute bar that prohibits courts or administrative officials from engaging” in any further inquiry into a petition’s sufficiency after an election is held. *Montanans for Laws v. State*, 2007 MT 75, ¶ 25, 336 Mont. 450, 154 P.3d 1202.¹ Unlike Article IV, Section 7, which grants priority to preelection challenges, Article III, Section 4(3) moots any challenge to a petition’s sufficiency after an election. *Id.* ¶¶ 48–51.²

Article VII, Section 1 vests courts with an inherent power to control case timelines. Article IV, Section 7 grants priority to preelection challenges without imposing hard deadlines on courts. And Article III, Section 4(3) imposes an absolute bar to challenging the sufficiency of a petition after an election is held. BI-8 would change all of these.

First, the 90-day deadline from issue submission to final legal sufficiency adjudication implicitly amends Article VII, Section 1. *See Coate*, 203 Mont. at 495, 662 P.2d at 595. Next, BI-8 adds to the

¹ The Court adopted an identical meaning for the phrase “shall not be questioned” under Article III, Section 4(3) of the Montana Constitution as federal courts apply to legislative privilege matters under the U.S. Constitution’s Speech or Debate Clause. *Id.* ¶ 25 (citing *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 501 (1975)).

² Constitutional initiatives do not contain this language. *Compare* Article III, Section 4(3) *with* Article XIV, Section 9.

language of Article III, § 4(3) and Article XIV, § 9, by mooted challenges to the legal sufficiency of proposed issues 90 days after submission. See BI-8, § 37(2)(c) (the government must issue an “approved petition for circulation within 90 days of the initial submission of the ballot issue” regardless of the status of legal challenges). BI-8 further amends Article III, § 4(3) and Article XIV, § 9, by moving the deadline to challenge signatures from the date of election to the date of ballot certification. BI-8, § 37(2)(g); see *Montanans for Laws*, ¶¶ 48–52; *Montanans for Justice v. State*, 2006 MT 277, ¶ 31, 334 Mont. 237, 146 P.3d 759.

Practically, these changes preclude preelection challenges. The clock starts on issue submission to the government. BI-8, § 37(2)(c). The Secretary of State and Legislative Services Division must then review the submission. MCA §§ 13-27-216(1)-(3), -218(1)-(3), -225. The measure next goes to the budget direct for fiscal review and finally to the AG for legal sufficiency review. MCA §§ 13-27-216(4)–(6), -218(4)–(6), -226. If legally insufficient, proponents may then challenge that determination in this Court on a priority basis. Mont. Const. art. IV, § 7; MCA § 13-27-605.

In *TEI*, petitioners submitted their proposal on August 1, 2025.³ The AG issued his legal sufficiency determination on October 24, 2025. TEI petitioned this Court on November 3, 2025, and the AG responded on November 17, 2025. This Court issued its decision on January 6, 2026. In total, it took 158 days from submission to adjudication. TEI’s petition, the AG’s response, and this Court’s decision alone took 64 days.

The new deadline is not closely related to BI-8, § 37(1). Rather than advance the policy of a new fundamental right, this deadline is a separate policy about timeliness of proceedings. *Cf. MACo*, ¶¶ 39–41 (holding imposing new procedural requirements on courts implicitly amended the guidelines for initiating criminal procedures).

First, this Court’s general power to set deadlines and the specific priority for preelection ballot challenges are different from the power of initiative and referendum. *See* Mont. Const. art. III, §§ 4, 5; art. IV, § 7; art. VII, § 1; art. XIV, § 9. Second, the Constitution only contains an absolute bar to post election challenges to petition signatures for statutory initiatives. Mont. Const. art. III, § 4(3). Finally, this Court routinely applies current law that—it has found—provides ample time

³ https://sosmt.gov/elections/ballot_issues/proposed-2026-ballot-issues/

for submission, review, challenge, adjudication, and signature gathering. *Meyer v. Knudsen*, 2022 MT 109, ¶ 18, 409 Mont. 19, 510 P.3d 1246. The 90-day deadline is not necessary to realize a new right to exercise the existing power of initiative and referendum.

BI-8, § 37(2)(c), thus intrudes on the judicial power and implicitly amends the specific sections dealing with preelection ballot issue challenges.

Next, BI-8, § 37(2)(g), prohibits challenges to the sufficiency of signatures after ballot certification. This implicitly amends Article III, Section 4(3) and Article XIV, Section 9.

Montanans for Justice illustrates this point. There, out-of-state signature gatherers finished collecting signatures on June 23, 2006. *Montanans for Justice*, ¶ 11. The Secretary certified the measures to the Governor on July 21, 2006. *Id.* ¶ 12. Opponents then timely challenged the signatures as fraudulent on August 16, 2006. *Id.* ¶ 13; *see* MCA § 3-5-302(6) (2005) (now codified at MCA § 13-27-606(1)). Meanwhile, the Secretary certified the ballot on August 24, 2006. *Id.* The district court held a trial on September 8, 2006, and issued its findings and conclusions

on September 13, 2006. *Id.* ¶ 17. By October 26, 2006, the parties completed the appellate process.

BI-8, by changing the day in Article III, § 4(3) from the day the “election is held” to the “deadline for finalizing ballots for the election,” BI-8, § 37(2)(g), replaces this entire structure. So in 2006, the Opponents would have had to challenge the rampant signature fraud after July 21, 2006 (certification to governor). That means the full trial and appellate process would have had to finish by August 24, 2006 (certification of ballot). That leaves slightly more than 30 days to fully litigate fact-finding at the trial court and resolve legal issues on appeal.

Petitioners conspicuously do not address these amendments, Pet. at 17–20, despite the AG raising the issue in his legal sufficiency determination. Pet. Ex. 2 at 2–4 (citing BI-8, § 37(2)(g); *Montanans for Justice*; and *Montanans for Laws*).

Ultimately, BI-8 would amend the judicial power by stripping jurisdiction from this Court at a date-certain. Petitioners may do that. But voters must be able to voice their opinion on that change separately from the proposed fundamental right.

3. *BI-8 amends public officials' current ability to communicate with the public regarding ballot issues.*

“Under our republican form of government, public officials must have the freedom to make difficult and informed decisions based upon the best information available.” 38 Op. Att’y Gen. No. 41, 141 (Sept. 18, 1979). “Any constraint on [a public officials’] deliberations, inquiries, or exchange of information and ideas is in direct conflict with Montana’s guarantee of the public’s right to know.” *Sheehy v. Comm’r of Pol. Practices for Mont.*, 2020 MT 37, ¶ 69, 339 Mont. 26, 458 P.3d 309 (McKinnon, J., concurring).

In *Sheehy*, then-Regent Martha Sheehy was accused of violating the code of ethics for improperly using state resources to support a pending ballot issue. *Sheehy*, ¶¶ 1, 6. Regent Sheehy solicited support for the 2018 6-Mill Levy during Board of Regent Meetings. *Id.* ¶¶ 5–6. This Court held the complaint lacked merit because Regent Sheehy’s support of the 6-Mill Levy was “properly incidental” to her duties as regent. *Id.* ¶¶ 28–29. “[S]upporting and discussing the 6-Mill Levy, a major financing source for the MUS, is inherently an action authorized by law and properly incidental to Regent Sheehy’s duties.” *Id.* ¶ 29.

Government entities routinely participate in the ballot issue process—either directly or through their relevant associations. *See e.g.*, *MACo*, ¶ 9 (plaintiff Montana Ass’n of Counties); *Marshall v. State*, 1999 MT 33, 293 Mont. 274, 975 P.2d 325 (plaintiffs included the Montana School Boards Association, Montana League of Cities and Towns, and Montana Association of Counties); *see also Mont. Fed’n of Pub. Emples. v. State*, __ MT __, 397 Mont. 553, 449 P.3d 788 (plaintiffs included the City of Missoula, Montana Federation of Public Employees, and Montana League of Cities and Towns). This participation comports with *Sheehy*. Public officials may support or oppose ballot issues so long as the issue is “properly incidental” to the discharge of public duties.

BI-8 changes this status quo. It prohibits “interference from the government or the use of government resources to support or oppose the ballot issue.” BI-8, § 37(2). Petitioners contend “public officials do not have a constitutional right to use government resources to support or oppose ballot issues.” Pet. at 21. That is wrong. *Sheehy* and longstanding practice prove the opposite.

The Montana Constitution vests public officials with all power necessary and proper to exercise their duties. *See, e.g.*, Mont. Const. art.

X, § 9. This includes the ability to speak out in support or opposition of ballot issues properly incidental to the official’s duties. *Sheehy*, ¶ 29; *see also id.* ¶¶ 69–70 (McKinnon, J., concurring). BI-8’s amendment would prevent a future regent from using public time in a regents’ meeting to oppose an effort to repeal the 6-Mill Levy. That is again a separate change to Montana’s Constitution.

4. BI-8 amends the Legislature’s power to administer elections under Article IV, Section 3 of the Montana Constitution.

“The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections.” Mont. Const. art. IV, § 3. “Subject to constitutional protections, the election process is purely statutory.” *Meyer v. Jacobsen*, 2022 MT 93, ¶ 21, 408 Mont. 369, 510 P.3d 52. “The Legislature has established specific procedural requirements to safeguard the integrity and fairness of the initiative process.” *Montanans for Justice*, ¶ 9.

The Legislature’s authority to administer elections abuts the power of initiative and referendum. The statutory framework outlines issue submission, pre-circulation review, signature gathering, legal challenges, and forms for appearance on the ballot. *See* MCA tit. 13, ch. 27. These

statutes' cooperation accommodates diverse interests and the realities of an election calendar. *Meyer v. Knudsen*, ¶ 18.

BI-8 however shifts the power to set procedural safeguards from Article IV, Section 3 to the new Article II, Section 37(2)(a)–(g). Current law strikes a constitutional balance between the Legislature's power to administer elections, *Montanans for Justice*, ¶ 9, and the citizens' power of initiative. BI-8 removes the Legislature's balance in that process. It thus implicitly amends Article IV, Section 3.

Petitioners' fallback is that the new right needs these procedures to protect the preexisting power of initiative and referendum. Pet. at 6. Petitioners thus try to draw an analogy to *Montanans for Election Reform* and *Montanans Securing Reproductive Rights*, but their reliance on those cases is misplaced.

In the first case, the AG deemed a proposed ballot initiative legally insufficient for violating the separate-vote requirement. *Montanans for Election Reform Action Fund v. Knudsen*, 2023 MT 226, ¶ 4, 414 Mont. 135, 545 P.3d 618 (“*MER*”). The petitioners there however argued each component of that ballot initiative was integral to the overall scheme of the new primary system. *Id.* ¶ 9. This Court agreed because, for example,

“one could [not] design a primary system without specifying the office to which it would apply.” *Id.* ¶ 12.

But that is not the case here. The power of initiative and referendum has never required imposing hard deadlines on the Court. Section I.B.2, *supra*. The Legislature’s administration of elections has always abutted the citizens’ power of initiative to “safeguard the integrity and fairness of the initiative process.” *Montanans for Justice*, ¶ 9. The power of initiative, and the new corresponding right, can be fairly defined without the specific encroachments identified above.

In the second case, the AG again deemed a proposed ballot initiative legally insufficient for violating the separate-vote requirement. *Montanans Securing Reprod. Rights v. Knudsen*, 2024 MT 54, ¶ 4, 415 Mont. 416, 545 P.3d 45 (“*MSRR*”). The Court rejected the AG’s determination because the AG “offers no theory as to how Subsection 3 would substantively change any other constitutional provision.” *Id.* ¶ 22. Petitioners posit “*MSRR* is directly on point.” Pet. at 14. But their analysis stops there. Unlike in *MSRR*, the AG here has identified four changes BI-8 makes to substantive law that are grounded in decades of this Court’s precedent.

Petitioners ignore *MACo*, which like BI-8, created a new fundamental right and then defined its contours. *MACo*, ¶ 5. This Court invalidated that initiative because the contours of the new right implicitly amended other sections of the Montana Constitution. *Id.* ¶¶ 34–49.

Ultimately Petitioners advance multiple provisions covering separate policies: one policy is to create a new fundamental right to initiative; another policy is to curtail public officials’ participation in the initiative process; a different policy is to limit the legislature’s administration of the initiative process; and the final policy is to mandate a date-certain for adjudication of these kinds of cases. These changes are not some common scheme; they are unrelated policies rolled into a new fundamental right.

“The clear import of the separate-vote requirement of Article XIV, Section 11, of the Montana Constitution, is to allow voters to express their separate opinion as to each proposed constitutional amendment.” *MSRR*, ¶ 18 (citing *MACo*, ¶ 25). By presenting these four changes to Montana electors in a single initiative, Petitioners “prevent the voters

from expressing their opinions as to each proposed change separately.”
Monforton, ¶ 12.

A measure violating Article XIV, Section 11 cannot be submitted to voters. *MACo*, ¶ 51. “The constitutional defect lies in the submission of the proposed amendment to the voters of Montana with more than one constitutional amendment.” *Id.* (cleaned up). Because BI-8 defies the Montana Constitution’s separate-vote requirement, it is not legally sufficient and cannot go before the voters. Denying Petitioners’ request is therefore proper.

C. The AG properly included a fiscal impact note.

OBPP confirmed a fiscal impact when it determined “the Secretary of State will likely incur significant legal costs.” Pet. Ex. 3. The Secretary of State, “based on past challenges related to complex constitutional litigation, [] assumes the costs would range from \$50,000 to \$500,000, depending on the frequency, length, and complexity of any potential litigation.” *Id.* The AG copied and pasted the Secretary’s statement of fiscal impact. Because the Secretary was the appropriate agency

identifying a fiscal impact, the AG correctly reflected her statements. *See* MCA § 13-27-226(4).⁴

CONCLUSION

This Court should concur with the AG's finding that BI-8 is not legally sufficient. BI-8 defies the Montana Constitution by violating the separate-vote requirement. It makes four unrelated changes to the Constitution that Montana's voters cannot independently vote on. This Court should accordingly deny Petitioners' requested relief.

DATED this 9th day of January 2026.

Austin Knudsen
Montana Attorney General

/s/ George Carlo L. Clark

George Carlo L. Clark
Michael D. Russell
Assistant Attorneys General

MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401

Attorneys for Respondent

⁴ A contrary finding would allow OBPP, an agency under the Governor's supervision, to ignore the fiscal impact identified by an agency outside the Governor's control.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,959 words, excluding certificate of service and certificate of compliance.

/s/ George Carlo L. Clark
George Carlo L. Clark

CERTIFICATE OF SERVICE

I, Austin Miles Knudsen, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition to the following on 01-09-2026:

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Claudia Clifford, Theresa Kendrick, Montanans Decide
Service Method: eService

Rachel Elizabeth Parker (Attorney)
300 4th St North
Great Falls MT 59403
Representing: Claudia Clifford, Theresa Kendrick, Montanans Decide
Service Method: eService

Constance Van Kley (Attorney)
PO Box 451
Missoula MT 59806
Representing: Campaign Legal Center
Service Method: eService

Cam Clevidence (Attorney)
35 N Grand Ave.
Bozeman MT 59715
Representing: Montana Federation of Public Employees, Service Employees International Union Local 775, Montana Conservation Voters, Wild Montana, Montana Public Interest Research Group, Catalyst MT, American Civil Liberties Union
Service Method: eService

James H. Goetz (Attorney)
PO Box 6580
Bozeman MT 59771-6580
Representing: Montana Federation of Public Employees, Service Employees International Union Local 775, Montana Conservation Voters, Wild Montana, Montana Public Interest Research Group, Catalyst MT, American Civil Liberties Union
Service Method: eService

Jeffrey J. Tierney (Attorney)

35 N. Grand
P.O. Box 6580
Bozeman MT 59715

Representing: Montana Federation of Public Employees, Service Employees International Union Local 775, Montana Conservation Voters, Wild Montana, Montana Public Interest Research Group, Catalyst MT, American Civil Liberties Union
Service Method: eService

Nate McConnell (Attorney)
721 Howell St
Missoula MT 59802

Representing: Montana Federation of Public Employees, Service Employees International Union Local 775, Montana Conservation Voters, Wild Montana, Montana Public Interest Research Group, Catalyst MT, American Civil Liberties Union
Service Method: eService

Austin Miles Knudsen (Respondent)
215 N Sanders, Third Floor
P.O. Box 201401
Helena MT 59620-1401
Service Method: E-mail Delivery

Electronically signed by Rochell Standish on behalf of Austin Miles Knudsen
Dated: 01-09-2026