

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.

***AMICI CURIAE* BRIEF OF MISSOURI VOTER PROTECTION
COALITION, LEAGUE OF WOMEN VOTERS OF OHIO, AND
FLORIDA DECIDES HEALTHCARE**

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- Andrew J. Tobias, *Voting amendment backers accuse Dave Yost of ‘shameful abuse of power’ in new lawsuit*, Cleveland.com (Feb. 8, 2024), <https://www.cleveland.com/news/2024/02/voting-amendment-backers-accuse-dave-yost-of-shameful-abuse-of-power-in-new-lawsuit.html>17
- Daniel Hays Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 U.C.L.A. L. Rev. 936, 957-58 (1983)24
- Florida Decides Healthcare, *Florida Decides Healthcare Files Lawsuit Challenging Desantis’ Attack on Direct Democracy* (May 5, 2025), available at <https://floridadecideshealthcare.org/wp-content/uploads/2025/05/HB-1205-Press-Release.pdf>22
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- J. Collin Marozzi, *Commentary: Ohio lawmakers once again ambush the citizen ballot initiative process*, Ohio Capital Journal (June 11, 2025), <https://ohiocapitaljournal.com/2025/06/11/ohio-lawmakers-once-again-ambush-the-citizen-ballot-initiative-process/>18
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The Fairness Project, <i>Gov. Desantis Places Nation’s Most Severe Restrictions on Florida Ballot Measure Process</i> (May 5, 2025), https://thefairnessproject.org/blog/2025/05/05/gov-desantis-places-nations-most-severe-restrictions-on-florida-ballot-measure-process/	21
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INTERESTS OF *AMICI CURIAE*

Amici are civic organizations in states where legislative encroachments have made the ballot issue process virtually impossible for citizens to utilize.

The Missouri Voter Protection Coalition (MOVPC) is a nonpartisan statewide coalition dedicated to advancing free, fair, and accessible elections in Missouri and strengthening democratic participation through voter engagement, policy advocacy, election protection, and strategic litigation. A core focus of MOVPC's work is safeguarding the mechanisms through which Missourians exercise direct democratic authority, including the citizen-initiated constitutional amendment process. Through its two decades of engagement with election administration, ballot access, and voter participation, MOVPC has observed how legal standards governing pre-election review can shift effective control over the initiative process away from voters and towards the elected officials charged with administering it.

The League of Women Voters of Ohio (LWVO) is a nonpartisan, grassroots civic organization committed to promoting informed and active participation in government and to protecting the integrity of Ohio's democratic processes. For decades, LWVO has supported Ohio's citizen-initiative process as a vital means by which voters exercise sovereign authority over constitutional governance. In carrying out its mission through voter education, advocacy, and litigation, LWVO

has witnessed how expanding pre-election review by elected officials and other elected bodies can transform the initiative power from a constitutional right into a permission-based process run by politicians, not voters.

Florida Decides Healthcare (FDH) is a citizen-led ballot initiative working to expand Medicaid in Florida so that more low-income adults can access affordable, comprehensive health coverage. FDH seeks to place a Medicaid expansion amendment on the 2028 statewide ballot; it originally planned to propose the amendment for the 2026 election, but was forced to pivot due to restrictive changes made by Florida's House Bill 1205 (HB 1205), a law that severely restricts the Florida ballot measure process. FDH has since challenged HB 1205 as a direct attack on Floridians' constitutional right to propose amendments, and trial is scheduled for February 2026. Like its fellow *amici*, FDH has observed how legislative and executive control over initiative procedures can substantially undermine the people's ability to use the initiative as an independent check on government, rendering the right almost unusable.

Amici submit this brief to provide a comparative perspective grounded in their experience in Missouri, Ohio, and Florida—states in which constitutional provisions reserving amendment power to the people remain formally intact, but where control over whether that power may be exercised has increasingly shifted to elected officials and government actors and away from voters. *Amici* seek to

assist this Court by contextualizing how doctrinal shifts intended to protect voters can, over time, create an imbalance of power that fundamentally reshapes the initiative right. This comparative institutional perspective may be useful as the Court considers the scope and function of Montana’s separate vote requirement under Article XIV, Section 11 of the Montana Constitution, and the downstream effects of its analysis.

INTRODUCTION

Missouri, Ohio, and Florida share similar constitutional provisions reserving to the people the power of constitutional initiative. They also share a tradition of robust pre-election review by their respective attorneys general, secretaries of state, and court systems. Over time, that structure has produced a recurring constitutional problem: standards intended to regulate the form of initiatives have expanded in scope, enabling government officials to determine whether the people may exercise their initiative power at all. Doctrines that began as procedural safeguards thus become mechanisms of control by elected officials, which is contrary to the basic principle advanced by direct democracy.

In recent years, Montana has started down a similar path. Historically, this Court was reluctant to touch ballot access issues, preferring to allow voters to exercise their political judgment on initiated proposals. *See MEA-MFT v. McCulloch*, 2012 MT 211, ¶ 13, 366 Mont. 266, 291 P.3d 1075 (“Montana courts

have been reluctant to consider pre-election challenges to initiatives and referenda, guided by the principle that the initiative and referenda provisions of the Constitution should be broadly construed to maintain the power of the people.”). Some formal pre-election review has long existed under Montana law, but legislative enactments in 2021 and 2023 precipitated a sea change in the scope of the review and the subsequent involvement of this Court. *See Cottonwood Envt’l L. Ctr. v. Knudsen*, 2022 MT 49, ¶¶ 67, 408 Mont. 57, 505 P.3d 837 (discussing 2021 changes to legal review process); *Monforton v. Knudsen*, 2023 MT 179, ¶ 1, 413 Mont. 367, 539 P.3d 1078 (discussing 2023 changes to legal review process). The concern is not appropriately circumscribed pre-election review itself, but whether the standards governing that review allow elected officials to exercise effective veto power over a constitutional authority reserved to the people.

The experiences of *amici* in Missouri, Ohio, and Florida illustrate how this transfer of control occurs. In those states, doctrines like the separate vote rule, intended to promote procedural regularity, have evolved into substantive screens administered by government actors—the very institutions the initiative power is meant to check. As those standards harden, initiatives increasingly fail not because voters reject them, but because officials prevent voters from ever considering them.

Montana now stands at a similar inflection point. How pre-election review standards like the separate vote rule are enforced will determine whether the

initiative remains an independent instrument of popular sovereignty or becomes contingent on executive approval and judicial line-drawing. This Court has the opportunity—and the duty—to return the scope of review to its roots, ensuring that Article XIV, Section 11 regulates how the people vote, not whether they may do so.

ARGUMENT

I. Article XIV, Section 11 should be enforced to preserve the people’s control over constitutional change.

Article XIV, Section 11 must be interpreted in light of the Framers’ deliberate decision to reserve the power of constitutional amendment to the people. The separate vote requirement was carried forward from the 1889 Constitution to prevent voter confusion and coercive bundling of amendments, not to authorize elected officials and courts to determine the permissible scope of constitutional change. Experience from other states demonstrates that when executive and judicial actors extend such procedural safeguards beyond their limited protective purpose, the people’s reserved power of amendment is not merely constrained, but nonviable.

Missouri, Ohio, and Florida illustrate how that displacement occurs incrementally. Each retains constitutional amendment provisions in form. Yet in each, the practical ability to exercise that power increasingly depends on the discretionary judgments of elected officials. Montana’s Constitution does not

permit that inversion of authority. Article XIV, Section 11 must therefore be enforced in a manner consistent with its original function as a safeguard of procedural regularity, not a vehicle for governmental control.

A. Missouri’s Constitutional Initiative Landscape

Missouri’s Constitution reflects the state’s longstanding commitment to direct democracy by reserving to the people the power to propose and adopt constitutional amendments by initiative. Mo. Const. art. III, § 49 (“The people reserve power to propose and enact or reject laws and amendments to the constitution by initiative, independent of the general assembly.”). In practice, however, the viability of that power has become increasingly dependent on discretionary decisions by elected officials and courts, making initiatives onerous to qualify—and keep valid, post-election.

Under Missouri law, the Secretary of State is responsible for preparing the ballot title for proposed citizen-initiated constitutional amendments, subject to judicial review. Mo. Rev. Stat. § 116.334 (providing for Secretary of State ballot title and statement); § 116.190 (providing for judicial review of ballot title and statement). Although the statute requires only that the title be “fair and sufficient” and not “intentionally misleading”—procedural safeguards—ballot title review has become a litigious, expensive, and outcome-determinative stage of the initiative process. *See, e.g., Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. Ct. App. 2023).

The “fair and sufficient” standard was already permissive, granting the Secretary of State significant latitude in the ballot language. But in February 2025, the Missouri Legislature passed Senate Bill 22, which allows the Secretary of State three tries at the ballot language. Mo. S.B. 22, 102nd Gen. Assemb. (Mo. 2025). Ballot initiative supporters, like *amici*, worry that the Secretary of State is now incentivized to delay signature gathering and drive up the cost of initiatives in multiple rounds of confusing language and legal battles. See League of Women Voters of Missouri, *Politicians Limit Voice of People*, available at <https://my.lwv.org/missouri/article/politicians-limit-voice-people> (last accessed Jan. 6, 2026); Missouri Jobs with Justice, *Missouri Senate Passes Bill to Allow Politicians to Skew Ballot Language and Undermine Election Integrity* (Feb. 27, 2025), available at <https://mojwj.org/press-release/missouri-senate-passes-bill-to-allow-politicians-to-skew-ballot-language-and-undermine-election-integrity/>.

The power imbalance does not stop at pre-election challenges. The Missouri Legislature has mounted repeated efforts to make signature gathering more arduous, see Rudi Keller, *Four bills making initiative petition process harder passed by Missouri House committee*, Missouri Independent (Jan. 26, 2023), <https://missouriindependent.com/2023/01/26/four-bills-making-initiative-petition-process-harder-passed-by-missouri-house-committee/>; Scout Hudson, *Missouri GOP renew push to make it harder for voters to amend the state constitution*,

Missouri Independent (Mar. 4, 2025),

<https://missouriindependent.com/2025/03/04/missouri-gop-renew-push-to-make-it-harder-for-voters-to-amend-the-state-constitution/>. And the Secretary of State has attacked the referendum power, too, seeking to cut away the 90-day post-session collection period for citizen vetoes to legislative action. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484 (Mo. 2022) (striking down statutory barriers that delayed petition circulation and effectively curtailed the 90-day post-session period for citizens attempting to referendum newly enacted anti-abortion legislation); *see also Mo. Gen. Assemb. v. Von Glahn*, No. 4:25-cv-01535, 2025 WL 3514277 (E.D. Mo. Dec. 8, 2025) (action initiated by Secretary of State asserting that the Missouri Constitution does not permit citizens to referendum redistricting litigation); *Protect the Vote Missouri v. Hoskins*, No. 25AC-CC08724 (Mo. Cir. Ct. Cole Cnty. filed Nov. 20, 2025) (citizen challenge to misleading ballot language); *Maggard v. Missouri*, No. 25AC-CC09120 (Mo. Cir. Ct. Cole Cnty. filed Dec. 23, 2025) (citizen challenge to Secretary of State’s attempt to implement a law halted by referendum).

Moreover, in September 2025, Missouri lawmakers passed a resolution to substantially halt the citizen initiative process by requiring citizen initiatives, but not legislatively referred initiatives, to achieve a nearly impossible super-majority to pass. Mo. HCS HJR 3, 103rd Gen. Assemb. (Mo. 2025).

Taken together, these developments have produced a power dynamic that substantially erodes Missouri citizens' initiative and referendum rights. In the absence of proper judicial management, procedural constitutional safeguards—never intended to interfere with the people's exercise of direct democracy—have been co-opted by executive and legislative officials, to the detriment of the popular sovereign.

B. Ohio's Constitutional Initiative Landscape

Ohio similarly reserves to the people the power to propose and adopt constitutional amendments by initiative. Ohio Const. art. II, § 1g. The pre-election review process is thorough: proposed initiatives must survive Attorney General certification of a “fair and truthful” summary, Ohio Rev. Code § 3519.01, and approval by the Ohio Ballot Board, Ohio Const. art. II, § 1g. Ohio courts exercise original jurisdiction over both stages.

The Attorney General is directed by statute to determine only whether the summary is a “fair and truthful statement” of the proposal. But that review has evolved into a prolonged and iterative process in which sponsors are frequently required to revise and resubmit summaries multiple times, each rejection delaying the start of signature gathering and increasing the cost of qualifying an initiative. Sponsors of recent voting rights and redistricting amendments have alleged that the Attorney General engaged in bad-faith review, demanded unnecessary revisions,

and used the summary-certification process to maliciously delay campaigns during critical signature-gathering windows. *See* Aaron Burd, *Ohio attorney general accused of ‘abuse of power’ in lawsuit over voter rights amendment*, NBC4i (Feb. 3, 2024), <https://www.nbc4i.com/news/local-news/columbus/ohio-attorney-general-accused-of-abuse-of-power-in-lawsuit-over-voter-rights-amendment/>; Frank W. Lewis, *Proposed Ohio voting rights amendment delayed by legal fight with state official*, Signal Cleveland (Feb. 15, 2024), <https://signalcleveland.org/proposed-voting-rights-amendment-delayed-by-legal-fight-with-state-official/>; Andrew J. Tobias, *Voting amendment backers accuse Dave Yost of ‘shameful abuse of power’ in new lawsuit*, Cleveland.com (Feb. 8, 2024), <https://www.cleveland.com/news/2024/02/voting-amendment-backers-accuse-dave-yost-of-shameful-abuse-of-power-in-new-lawsuit.html>.

These delays have consequences. Each time a summary is rejected and resubmitted, sponsors must restart preparatory work, renegotiate contracts with signature-gathering firms, collect additional signatures, and risk missing statutory and strategic deadlines—all before collecting a single valid signature. As a result, the Attorney General’s discretionary control over summary approval operates not as a procedural check, but as an existential gatekeeping mechanism.

The Ohio Legislature compounded these burdens through the redesign of Form 15, the petition form required for constitutional initiatives. Ohio Secretary of

State, Statement of Receiving or Providing Compensation for Circulating a Statewide Issue Petition (last updated April 2025), *available at* <https://www.ohiosos.gov/globalassets/elections/forms/15.pdf>. Recent changes to the form have been criticized for introducing technical requirements that increase the risk of invalidation and impose additional compliance costs on sponsors, even where voter intent is clear. *See* J. Collin Marozzi, *Commentary: Ohio lawmakers once again ambush the citizen ballot initiative process*, Ohio Capital Journal (June 11, 2025), <https://ohiocapitaljournal.com/2025/06/11/ohio-lawmakers-once-again-ambush-the-citizen-ballot-initiative-process/>. If any individual fails to file Form 15 in a timely manner, the entire petition is thrown out. As with summary review, these formal requirements function less as safeguards and more as traps for disqualification at the whim of elected officials.

Even after sponsors overcome these hurdles and qualify an initiative for the ballot, Ohio law vests the Secretary of State and the Ohio Ballot Board—both partisan—with authority to draft or revise ballot language and to determine whether a proposal constitutes one amendment or multiple amendments. Ohio Rev. Code §§ 3505.062; 3519.21. That authority has repeatedly been exercised in ways alleged to advance political objectives rather than neutral voter understanding. *See* Susan Tebben, *Ohio Ballot Board fights back against abortion amendment lawsuit*, Ohio Capital Journal (Apr. 5, 2023),

<https://ohiocapitaljournal.com/2023/04/05/ohio-ballot-board-fights-back-against-abortion-amendment-lawsuit/>; Julie Carr Smyth, *Backers blast revised ballot language for Ohio's fall abortion amendment as misleading*, Associated Press (Aug. 25, 2023), available at <https://www.pbs.org/newshour/politics/backers-blast-revised-ballot-language-for-ohios-fall-abortion-amendment-as-misleading>. More recently, initiative sponsors have challenged ballot language and amendment-splitting decisions as partisan efforts to defeat measures at the ballot by confusing voters or imposing additional signature requirements. See Susan Tebben, *Anti-gerrymandering amendment supporters sue Ohio Ballot Board over ballot language*, Ohio Capital Journal (Aug. 20, 2024), <https://ohiocapitaljournal.com/2024/08/20/anti-gerrymandering-amendment-supporters-sue-ohio-ballot-board-over-ballot-language/>; Megan Henry, *Ohio Ballot Board splits proposed Ohio Equal Rights Amendment into two amendments*, Ohio Capital Journal (July 10, 2025), <https://ohiocapitaljournal.com/2025/07/10/ohio-ballot-board-splits-proposed-ohio-equal-rights-amendment-into-two-amendments/>.

Taken together, these layers of discretionary control have transformed Ohio's initiative process into a highly partisan system controlled by everyone *but* the people. As in Missouri, the cumulative effect is that constitutional provisions reserving amendment power to the people remain formally intact, while the

practical ability to exercise that power is increasingly curtailed by the very institutions the initiative power is designed to check.

C. Florida's Constitutional Initiative Landscape

Florida's Constitution likewise reserves to the people the power to propose constitutional amendments by initiative. Fla. Const. art. XI, § 3 ("The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."). Florida pairs that reservation with mandatory pre-election judicial review by the Florida Supreme Court, which determines whether a proposed amendment satisfies the single subject requirement and whether the ballot title and summary are clear and not misleading. *See* Fla. Const. art. IV, § 10 (providing mandatory process for Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition" and providing an April 1 election-year deadline for Supreme Court review); Fla. Const. art. XI, § 5 (providing process for submission of amendment to voters, including a sixty-percent supermajority requirement).

In recent years, Florida's Legislature has gone well beyond these constitutional checks and has undertaken affirmative efforts to restrict, penalize,

and deter the citizen-initiative process. Those efforts culminated in the passage of House Bill 1205 in May 2025—a sweeping statute that imposes potential criminal penalties, restrictive registration requirements, compressed deadlines, and extraordinary financial burdens on initiative sponsors and petition circulators. Ch. 2025-21, Fla. Laws (May 2, 2025) (enacted by H.B. 1205, Reg. Sess., Fla 2025). The law represents a sharp escalation in legislative control over direct democracy, transforming an already-demanding process into one that is, for many groups like *amici*, insurmountable.

Among the most consequential of these measures is HB 1205’s restructuring of petition-verification fees. Prior to the law’s enactment, counties charged modest per-signature fees, though Florida already ranked among the most expensive states for initiative verification. HB 1205 authorized counties to impose unprecedented fee increases, resulting in verification costs that now exceed several dollars per signature in many counties. *See The Fairness Project, Gov. Desantis Places Nation’s Most Severe Restrictions on Florida Ballot Measure Process* (May 5, 2025), <https://thefairnessproject.org/blog/2025/05/05/gov-desantis-places-nations-most-severe-restrictions-on-florida-ballot-measure-process/>. By way of example, Lee County increased from \$0.95 to \$4.40 per signature (a 363% increase); Gilchrist County increased from \$0.10 to \$2.77 (a 2,670% increase); the largest counties average more than \$3.78 per signature. This law adds millions of dollars

to the cost of qualifying an initiative; a pay-to-play system that conditions ballot access on the ability to fund such extraordinary fees.

And recruiting volunteers, or even paid signature gatherers, is riskier than ever. Among other requirements, only Florida residents can collect or handle signatures and all circulators must be U.S. citizens; signature gatherers must not have any felony convictions; and there are new penalties for copying or retaining voter information. Mistakes on any of these expose the sponsoring organization to extraordinary liability. If a petition is late—collection forms must be submitted within 10 days—sponsors are subject to tiered fines. With these new barriers, *amicus* FDH was forced to shift its effort from passing the Medicaid initiative to mounting a legal challenge against HB 1205, which is set to go to trial in February 2026. Florida Decides Healthcare, *Florida Decides Healthcare Files Lawsuit Challenging Desantis' Attack on Direct Democracy* (May 5, 2025), available at <https://floridadecideshealthcare.org/wp-content/uploads/2025/05/HB-1205-Press-Release.pdf>.

When initiative procedures are layered with potential criminal penalties, discretionary enforcement, and prohibitive costs, the people's reserved power of amendment is displaced. The initiative process can no longer serve as an independent check on government when it is subject to the government's approval at every turn.

D. This Court should protect Montanans’ power of constitutional initiative from governmental interference by returning to a test consistent with the purpose of the separate vote rule.

For most of its history, Montana has fiercely protected its citizens’ ability to maintain a democratically-accountable government through processes like the citizen initiative. But this Court’s recent decisions preventing ballot access under the guise of Article XIV, Section 11 of the Montana Constitution threaten a doctrinal shift that transfers the people’s power to other governmental actors, like the Attorney General. Missouri, Ohio, and Florida show how dire the consequences of such a power transfer are.

The separate vote rule is protective—it protects voters from being presented something so multifarious the average voter could not understand it and thus could not make an informed vote. It simultaneously protects against “logrolling,” the idea of nefariously bundling a popular change with an unrelated, unpopular one to corner voters into electoral horse-trading.

Recently, this Court has begun construing the separate vote rule not as a procedural, protective measure, but as an affirmative “aid” to voters. *See Transparent Election Initiative v. Knudsen*, 2026 MT 2, ¶ 8, __ Mont. __, __ P.3d __. This shift in characterization is subtle, but important: the underlying question becomes not, “Is this proposal so confusing, or made up of such blatantly unrelated components, that voters are cornered into voting for it?,” but rather, “Is this written

in the clearest, least complex way, such that a voter could never be confused or hold differing opinions of its parts?” The first question lends itself to a permissive standard that generally lands in favor of ballot access, consistent with Montana’s historic precedent generally favoring ballot access. The second question, which now appears to be the standard in Montana, creates the strictest separate vote test in the nation.

The prevention of confusion and logrolling does not mean the prevention of ambitious constitutional amendments that address big issues, or that contain subparts. Rather, historically the term “‘logrolling’ is used to describe what occurs when two or more separate proposals, none of which is able to command majority support, are combined so that the minorities behind each measure aggregate to a majority capable of passing” the provision in question. Richard Briffault, *The Single Subject Rule: A State Constitutional Dilemma*, 82 Alb. L. Rev. 1629, 1634 (2019) (citing *Commonwealth v. Neiman*, 84 A.3d 603, 611 (Pa. 2013) (quoting *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 589 (Pa. 2003))). “In its most naïve form, this argument maintains that the rule is necessary to protect the voter from being confronted with a proposition, some portions of which he favors and others of which he opposes. But the single-subject rule does not significantly further this goal.” Daniel Hays Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 U.C.L.A. L. Rev. 936, 957-58 (1983).

Lowenstein, whose article is the seminal scholarly source on single-subject type rules in the constitutional initiative space, notes that neither of the two types of logrolling—“coalition-building,” where “several provisions, each of which is so strongly supported by some minority group that the overall measure will receive the group’s support notwithstanding the group’s indifference or mild opposition to other provisions,” and “riders,” where “sponsors whose primary purpose is to enact an unpopular provision” join it with a popular provision in the hope that support for one will outweigh opposition to the other—are either common or particularly dangerous in the context of initiatives. *Id.* at 958-63; *see also id.* at 963 (explaining that the risk of riders is minimal because, like coalition-building logrolling, such an effort appears rarely in the initiative space and would likely be unsuccessful because “[i]f the sponsoring group cares at all about A, which is likely, it probably will not risk defeat of the proposition by including B. Getting an initiative passed is no easy task, and, in practice, sponsors of initiatives are usually preoccupied with making their propositions as attractive as possible.”).

Thus, the effort to protect against logrolling—an issue that is neither present nor dangerous in the constitutional initiative landscape—cannot be a wide-reaching justification to shut down the people’s exercise of their initiative power.

Expanding the separate vote rule beyond its rare protective application elevates the doctrine from a constitutional backstop to a vehicle for transferring the people’s

rights away from them. The Court should resist such doctrinal drift and recognize the limited, procedural function of Article XIV, Section 11.

CONCLUSION

This Court should not allow Montana to drift into the constitutional terrain of Missouri, Ohio, and Florida, each of which notionally protect the right of initiative in their constitutions but where, in practice, the right belongs entirely to elected officials who serve as gatekeepers. Consistent with the above authorities, the Court should hold that Ballot Issue 8 is a single amendment, and in so doing reject the restrictive, limitless view of the separate vote rule promoted by the Attorney General.

DATED this 12th 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 3,852 words, as calculated by the undersigned's word processing program.

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