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.

BRIEF OF *AMICI CURIAE* MONTANA FEDERATION OF PUBLIC EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 775, MONTANA CONSERVATION VOTERS, WILD MONTANA, MONTANA PUBLIC INTEREST RESEARCH GROUP, CATALYST MT, AND AMERICAN CIVIL LIBERTIES UNION OF MONTANA

APPEARANCES:

James H. Goetz
Jeffrey J. Tierney
Cameron T. Clevidence
GOETZ, GEDDES & GARDNER, P.C.
35 North Grand Ave.
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: 406-587-0618
Fax: 406-587-5144
Email: jim@goetzlawfirm.com
jtierney@goetzlawfirm.com
cclevidence@goetzlawfirm.com

Nate McConnell
MCCONNELL LAW OFFICES, PLLC
721 Howell St.
Missoula, MT 59802
(406) 214-2445
nate@natemcconnelllaw.com

Attorneys for *Amici Curiae*

APPEARANCES (CONTINUED)

Raph Graybill
Rachel Parker
GRAYBILL LAW FIRM, P.C.
300 4th Street North
PO Box 3586
Great Falls, MT 59403
Ph: 406-452-8566
Email: raph@graybilllawfirm.com
rachel@graybilllawfirm.com

Attorneys for Petitioner

Constance Van Kley
VAN KLEY LAW PLLC
PO Box 451
Missoula, MT 59806
Ph: 605-517-0673
Email: constance@vankleylaw.com

Attorneys for Campaign Legal Center,
Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

SECONDARY SOURCES

INTERESTS OF *AMICI CURIAE*

Amici are Montana organizations whose tens of thousands of members have historically relied on Montana's ballot initiative process as a means of proposing, supporting, and opposing constitutional change. The initiative process plays a foundational role in *amici*'s work, allowing their members to participate meaningfully in constitutional governance and to pursue change through democratic means independent of the political branches.

INTRODUCTION

Before 2023, this Court had never withheld a proposed constitutional initiative from voters under the single amendment rule before an election. Since 2023, it has withheld 60% of the initiatives to come before it.

In considering whether Ballot Issue 8 amounts to a single amendment within the Framers' understanding of Article XIV, Section 11—and it is—the Court should return to its previous practice of resolving single amendment questions in favor of ballot access. The Court should also reject the Attorney General's false premise that any initiative that could conceivably be subdivided violates the single amendment rule—a view the Court historically rejected but that has driven adverse determinations since 2023. Finally, the Court should adopt neutral, governable standards for applying the single amendment rule, moving away from its reliance on an implied effects test and instead adopting a framework similar to Montana's

mountain west neighbors in Arizona, Idaho, Washington, or Utah, consistent with recommendations made 20 years ago to this Court in a brief by then-Attorney General Mike McGrath and Solicitor Anthony Johnstone. Under these frameworks, Ballot Issue 8 is plainly a single proposal within the scope of permissible constitutional change envisioned by the Framers and should be allowed to proceed.

BACKGROUND

I. For over 100 years, the ballot issue process has provided the People with a means to govern themselves when political institutions are not responsive.

Montana's unique commitment to direct democracy began 120 years ago in response to the "Copper King" era and the attendant failure of policymaking institutions to respond to the political needs of the People. As then-Justice Brian Morris explained,

> Direct democracy removes the filter of the voters' elected representatives and takes the audacious step of posing questions directly to the voters. Montana voters originally adopted the initiative process in 1906 as part of the incomplete effort to cast aside the "copper collar" that bedeviled Montana politics for much of the 20th century.

Mont. Consumer Fin. Ass'n v. State ex rel. Bullock ("*MCFA*"), 2010 MT 185, ¶ 20, 357 Mont. 237, 238 P.3d 765 (Morris, J., specially concurring). The Framers of the 1972 Montana Constitution redoubled this commitment. They carefully considered whether to continue the experiment in direct democracy and ultimately chose to enshrine the people's right to amend the Constitution and enact laws by initiative.

Id. ¶ 21. That decision followed more than 65 years of experience with the initiative system and reflected the Framers' understanding that the initiative represents "a unique and important retained power," emphasizing "the degree of control the people desired to retain" over constitutional and statutory change. *Id.* (citing Mont. Const. art. III, § 4, and quoting *State ex rel. Mont. Sch. Bd. v. Waltermire*, 224 Mont. 296, 299, 729 P.2d 1297, 1299 (1986)).

For more than a century, the initiative process has allowed Montanans to place before voters issues their elected representatives have been unable or unwilling to resolve, ranging from "the enlightened" to "the controversial" to "the banal." *Id.* ¶ 22. The process relies on the judgment of voters to accept or reject proposals, and for better or worse, it has served as a functional mechanism of self-government. *Id.*

Amici are Montana organizations whose tens of thousands of members rely on the ballot initiative process.

The **Montana Federation of Public Employees** ("MFPE") is Montana's largest labor union. It represents tens of thousands of politically and geographically diverse Montanans. In the modern constitutional era, MFPE and its predecessor organizations, Montana Education Association ("MEA"), Montana Federation of Teachers ("MFT"), and Montana Public Employees Association ("MPEA") led popular efforts to support or oppose ballot questions nearly every election cycle. In

1986, MEA led the effort to reject CI-27, which would have abolished all property taxes. In 1994, MEA led the effort to approve CI-25, which is now Article VIII, Section 15 of the Montana Constitution. In 1996, MEA and MFT led efforts to reject CI-66 and CI-67, which would have crippled the state's tax system, and CI-30, which would have abolished the Board of Regents. In 2006, MEA and MFT were part of the coalition effort to approve I-151, which raised Montana's minimum wage. In 2014, MEA and MFT helped lead the effort to defeat LR-126 and LR-127, which would have eliminated election day registration and primary election of party nominees for office. In 2016, MEA-MFT helped defeat I-181, which would have crippled the state's bonding capacity. MFPE has previously petitioned this Court to withhold initiatives on valid single amendment grounds; however, it believes the Attorney General's recent interpretation and application of the single amendment rule is inconsistent with the Court's historic treatment of the doctrine.

The **Service Employees International Union Local 775** ("SEIU") represents more than 55,000 long-term care workers providing quality home care, nursing home care, and residential services in Washington, Montana, and Alaska. Its organizing work in Montana traces back to a ballot issue, the 2006 minimum wage initiative I-151. Since that time, SEIU has grown to represent more than 1,400 long-term care workers in Montana, including 25% of Montana's agency

home health care workers. SEIU has long fought for fair wages and has been a leader in advocating for Medicaid expansion coverage, including through a 2018 ballot issue on the subject.

Wild Montana, formerly the Montana Wilderness Association, has been uniting and mobilizing communities across Montana, creating and growing a conservation movement around a shared love of wild public lands and waters since 1958. The organization's work has resulted in 16 wilderness areas, the Upper Missouri River Breaks National Monument, and other legislative, administrative, and executive victories that have protected millions of acres of public lands from irresponsible development and degradation, while helping Montana communities benefit from public lands. Wild Montana and its members have been active in the ballot issue process in Montana. Notably, they played a crucial role in the development of I-190 and CI-118 in the 2020 election, which passed overwhelmingly and advanced the organization's mission by providing substantial funding for conservation and public lands in Montana through the legalization and taxation of adult-use cannabis. In 2024, Wild Montana organized in support of CI-126 and CI-127.

Montana Conservation Voters ("MCV") protects Montana's clean air, clean water, public lands and democracy by supporting leaders who fight for these rights and by holding accountable leaders who do not. MCV has been active in the

ballot issue process in Montana for decades. MCV similarly supported the qualification and passage of I-190 and CI-118 in the 2020 election, and opposed I-147 in 2004, which would have allowed new cyanide heap leach mining.

The **Montana Public Interest Research Group** ("MontPIRG") is a student-directed and funded non-partisan organization dedicated to affecting tangible, positive change through educating and empowering the next generation of civic leaders. For 45 years, MontPIRG has educated and prepared young people for community leadership by developing their civic competencies including awareness, skills, habits, and values, paired with hands-on public policy work. MontPIRG has long been a leader in Montana's ballot issue process. In 1994, MontPIRG successfully led the effort to pass I-118, which was a first-in-the-nation law limiting PAC contributions to state legislative campaigns. In 1996, MontPIRG led the effort to pass I-125, banning corporate contributions to ballot initiative campaigns. In 1998, MontPIRG helped pass I-137, which banned the use of cyanide leach mining. MontPIRG continued the fight against cyanide heap leach mining in 2004 by running a major grassroots campaign to oppose I-147 and uphold the ban. It helped defeat the initiative that would have overturned the will of the voters, despite being outspent 3-1 by the opposition. MontPIRG joined the "free and fair" coalition in 2014 to successfully oppose the proposed repeal of election day registration and other changes to the electoral process.

Catalyst MT was founded in 2024 through the merger of **Montana Human Rights Network** and **Montana Women Vote**. Montana Human Rights Network and Montana Women Vote spent years working closely together, including on the ballot issue process in Montana. Both organizations helped lead the 2018 ballot issue effort to renew Medicaid expansion in Montana. And both organizations and their members were crucial to the success of I-151 in 2006, the "Raise Montana" initiative that successfully raised the minimum wage and indexed future increases to inflation, as well as I-155 in 2008, which created the Healthy Montana Kids program. Additionally, Montana Women Vote was on the ballot committee to defeat LR-126 in 2014 and worked to defeat LR-131 in 2022.

The **American Civil Liberties Union of Montana** ("ACLU Montana") is dedicated to protecting civil rights and securing a Montana where everyone is treated with dignity and respect and has equal access to rights and freedoms. ACLU Montana and its members have long worked to qualify, support, and oppose ballot initiatives and referenda in Montana. In 2024, for example, ACLU was a primary sponsor of CI-128. Though qualification of that initiative took five separate trips to the court system, it went on to become among the most popular items on the 2024 general election ballot. ACLU is also a principal supporter of 2026 CI-132, which would preserve Montana's system of nonpartisan judicial elections.

II. Recent changes by elected officials severely limit access to the ballot issue process in Montana, contrary to its constitutional purpose.

Together, *amici* and their members have worked intimately with the initiative process in Montana for decades. Historically, the ballot has served as Montanans' recourse when political institutions fail to respond to the demands of the People. Today, however, it is harder than ever to propose a ballot question to Montana voters. Layers-upon-layers of requirements from the Legislature have made the process increasingly complex while effectively shrinking the available timeline. Initiative proponents must start more than a year before an election to navigate review by various legislative and executive entities, including a review by the Attorney General for perceived "business harm" by a proposed initiative. Until a court ruling last year, initiative proponents also faced the prospect of legislative interim committee hearings and would have been required to present legislative views on petitions when seeking signatures—even though the initiative process exists precisely to allow citizens to act independent of the Legislature. The Legislature has also imposed exacting requirements on signature gathering, extending to who may solicit signatures for petitions and what font may adorn signature gatherers' name badges.

Executive officers have likewise contributed to closing off the initiative process. Despite receiving more signatures than any initiative in Montana history, CI-128 proponents did not receive a valid signature petition from the Secretary of

State until after seeking and receiving mandamus relief. Then, during the verification process for signatures, she purported to change the eligibility requirements for signing, prompting further litigation. After being sued by proponents for CIs-126, -127, and -128, she purported to settle the matter in a collusive suit brought by political allies, resulting in more litigation.

Especially pertinent to this matter, the Attorney General has advanced an expansive reinterpretation of the single amendment requirement. Since 2023, in every case reaching this Court, the Attorney General has concluded that the proposed initiative at issue is actually two or more amendments and should be withheld from voters. As described below, this Court has addressed the single amendment requirement only ten times since 1972, issuing substantive rulings in just seven cases—five of those within the last three years.

The statutory initiative process is effectively moribund, because Montana does not expressly protect initiated statutes against legislative repeal. In recent years, the Legislature has shown little compunction about amending recent statutory initiatives. For example, although 2020 I-190 (legalizing adult-use cannabis) was wildly popular among voters, the Legislature almost immediately repealed and replaced it with a totally different legalization scheme in 2021. Accordingly, when the people seek to govern themselves in ways the Legislature cannot immediately override, they must turn to their Constitution—just as the

Framers anticipated they would.

The net result of the encroachments on the initiative process described above has been to displace the process from its constitutional roots. What the Framers envisioned—and what *amici* experienced until recently—as an accessible and functional mechanism of popular self-government has become slow, unpredictable, and prohibitively expensive. Even organized, popular campaigns now face extraordinary procedural and financial barriers, compounded by the uncertainty and cost of serial litigation. As a result, and based on their experiences, *amici* believe that some successful initiative efforts in recent years would not qualify for the ballot today.

ARGUMENT

I. The Court should resolve single amendment disputes in favor of ballot access.

Where there is a bona fide question about whether a proposed ballot initiative presents a single constitutional amendment, the Court should return to its practice of resolving such disputes in favor of ballot access. Only until very recently, the Court routinely declined to withhold ballot issues from voters on the basis of the single amendment requirement.

Serial litigation around the single vote requirement is a new phenomenon. Excluding the instant matter, the Court has had about ten cases directly raising a challenge under the single amendment provision since 1972. It had none from 1972

to 1986. In 1986, in two decisions issued the same day, the Court twice declined to withhold proposed ballot issues from the voters that were challenged on single amendment grounds, citing the Court's longstanding commitment to minimize its intervention into the people's exercise of their powers of initiative and referendum and to resolve questions in favor of ballot access. *State ex rel. Mont. Citizens for Pres. of Citizens' Rts. v. Waltermire* ("*Citizens*"), 224 Mont. 273, 729 P.2d 1283 (1986); *State ex rel. Mont. Sch. Bd. Ass'n v. Waltermire* ("*MSBA*"), 224 Mont. 296, 729 P.2d 1297 (1986). The Court's next single amendment case was in 1999, when it invalidated a tax initiative in a post-election challenge in *Marshall v. State ex rel. Cooney*, 1999 MT 33, 293 Mont. 274, 975 P.2d 325. In 2002, the Court again declined to rule on the merits of a single amendment challenge to term limits, on laches grounds. *Cole v. State ex. rel. Brown*, 2002 MT 32, 308 Mont. 265, 42 P.3d 760. Fifteen years went by before the Court took up a single amendment issue in the post-passage case *MACo*, in which it invalidated an initiative that, by its own text, performed significant, substantive amendments to multiple sections of the constitution. *Mont. Ass'n of Cntys. v. State ex. rel. Fox* ("*MACo*"), 2017 MT 267, 389 Mont. 183, 404 P.3d 733.

Starting in 2023, there has been an explosion in single amendment cases. Six times since 2023, counting this case, the Attorney General has held that a proposed initiative can be subdivided and thus, in his view, violates the single

amendment rule. *Monforton v. Knudsen*, 2023 MT 179, 413 Mont. 367, 539 P.3d 1078; *Montanans for Election Reform Action Fund v. Knudsen* ("*MER*"), 2023 MT 226, 414 Mont. 135, 545 P.3d 618; *Montanans Securing Reprod. Rts. v. Knudsen* ("*MSRR*"), 2024 MT 54, 415 Mont. 416, 545 P.3d 45; *Montanans for Nonpartisan Cts. v. Knudsen* ("*MNC*"), 2025 MT 268, 579 P.3d 536; *Transparent Election Initiative v. Knudsen* ("*TEI*"), 2026 MT 2, __ Mont. __, __P.3d __. Twice, the Court has reversed the Attorney General and thrice the Court has affirmed him.

As a result, before 2023, this Court had never invalidated a ballot initiative on single amendment grounds in a pre-election challenge. Since 2023, it has invalidated 60% of those before it.

In resolving single amendment rule challenges, the Court should return to its historical practice of resolving these disputes in favor of ballot access. In *Citizens*, the Court began its analysis of whether to withhold the proposed initiative there with the premise that "[t]he reasons which have been recognized for this Court's intervention in the initiative process prior to an election are quite limited." 224 Mont. at 276, 729 P.2d at 1285. "The right retained by the people of Montana to change our Constitution by initiative is unique. . . . [W]e should decline to interfere with this right of constitutional change by initiative unless it appears to be absolutely essential." *Id.*, 729 P.2d at 1285 (citing *MSBA*, 224 Mont. 296, 729 P.2d 1297). Responding to the plaintiffs' argument that the proposed initiative there

made multiple changes to Article II, Section 16 of the Constitution, the Court held that, "[e]ven if plaintiffs' view is correct, this type of multiplicity is not a proper basis for this Court's intervention in the initiative process prior to election." *Id.*, 224 Mont. at 277, 729 P.2d at 1285. In *MSBA*, released the same day, the Court again declined to withhold the ballot issue, noting "there are strong arguments on both sides of the issue of whether the Initiative violates the constitutional requirement that initiatives must address only one subject." 224 Mont. at 300, 729 P.2d at 1299-300. "[T]o pull this Initiative off the ballot while we considered this aspect more carefully would be an unjustified infringement on the people's right of initiative." *Id.*, 729 P.2d at 1300.

The Court took an approach similarly deferential to voters and the electoral process in *Cole*, where it declined to take up a single amendment challenge years after enactment of the term limits initiative, largely on the basis of laches. 2002 MT 32, 308 Mont. 265, 42 P.3d 760. By contrast, the two pre-2023 cases where the Court invalidated initiatives on single amendment grounds, *Marshall* and *MACo*, were both challenges in which the challenged initiative specifically amended three or more different sections of the Montana Constitution—not close calls.

The Court's longstanding preference for resolving single amendment challenges in favor of ballot access is consistent both with the constitutional purpose of the ballot issue process and with the Court's treatment of other election-

related matters. First, the Court has long highlighted the unique role that the ballot issue process plays in Montana's constitutional order, which deliberately places citizens on the same footing as elected officials in their ability to propose and advocate for statutory and constitutional change—a direct function of the core, foundational rights of popular sovereignty and self-government. In *Harper v. Greely*, for example, the Court cited Article II, Sections 1 (popular sovereignty) and 2 (self-government) as the underlying basis for the Court's trepidation in intervening to withhold ballot initiatives from voters: "The initiative and referendum process enable the people to peacefully accomplish the goals of these two sections of our constitution by allowing important issues to be placed before the people for a popular vote." 234 Mont. 259, 267-68, 763 P.2d 650, 655 (1988). "To deny the right to vote would thwart these provisions." *Id.*, 763 P.2d at 655. That rule of thumb tracks closely with the constitutional purpose of the initiative process. It would make little sense to interpret the procedural requirements of the ballot issue process—like the single amendment requirement, which in the Constitution is literally contained in a short section titled "submission"—in ways that would empower elected officials to stifle it. The very purpose of the ballot issue process is to empower the People to circumvent elected officials who seek to thwart political change. *MCFA*, ¶ 20 (Morris, J., specially concurring) ("[t]he initiative process [has] allow[ed] citizens to put before voters issues that their

elected representatives either have chosen not to address, or more likely, have been unable to resolve").

Resolving disputes in favor of ballot access is also consistent with the Court's treatment of other election-related questions, both within and outside of the context of ballot issues. For example, the Court has identified "an obligation to construe the statutes to promote, rather than to curtail, the people's right of direct democracy," which is why "the Court interprets the Attorney General's 'legal sufficiency' review authority narrowly." *Montanans Opposed to I-166 v. Bullock*, 2012 MT 168, ¶ 13, 365 Mont. 520, 285 P.3d 435 (Baker, J., concurring); *see also Cottonwood Env'tl. Ctr. v. Knudsen*, 2022 MT 49, ¶¶ 28-36, 408 Mont. 57, 505 P.3d 837 (McGrath, C.J., concurring) (arguing, in part, that constitutional importance of the initiative process counsels courts to hesitate before intervening and limits the Attorney General's ability to withhold a ballot issue as a matter of separation-of-powers). The Court routinely disfavors efforts to strike proposed initiatives from the ballot on other grounds before voters have a chance to weigh in. *E.g.*, *Montana AFL-CIO v. McCulloch*, 2016 MT 200, 384 Mont. 331, 380 P.3d 728. And, outside the context of ballot issues, the Court has generally decided complex questions of candidate eligibility, for example, in favor of ballot access. *See, e.g.*, *Cross v. VanDyke*, 2014 MT 193, 375 Mont. 535, 332 P.3d 215. The same logic applies to the single amendment requirement and favors an approach

that facilitates ballot access and, like the Framers envisioned, providing voters with political choices rather than withholding them through litigation.

The State may seek to distinguish the Court's earlier cases because they involved the discretionary exercise of the Court's jurisdiction, and in this matter there is clearly statutory jurisdiction for Petitioner's challenge to the Attorney General's determination. But as described below, all single amendment analysis involves the exercise of immense discretion by the Court. The fundamental purpose of the submission requirement is to ensure a fair election by eliminating logrolling and confusion—the analysis of which turns entirely on the Court's exercise of its discretion. Just as the Court's historic exercise of discretion to decline to address the merits of initiative opponents' single amendment challenges allowed those amendments to proceed to voters, here the Court should likewise employ its vast discretion to favor ballot access and voter choice. Specifically, it should reject the Attorney General's artificially narrow view of the single amendment requirement and allow Ballot Issue 8 to proceed to voters for signature gathering.

II. The single amendment rule does not halt any initiative proposal that might conceivably be subdivided.

The single amendment rule is a submission requirement, designed to ensure a fair election result by eliminating voter confusion or impermissible "logrolling" —the conjoining of clearly unrelated proposals. It is not a prohibition on

comprehensive proposals, on having subsections, or on tackling big issues: it was through constitutional initiatives that the coal tax trust fund and the current public pension system were established, for example. And, contrary to the Attorney General's vast reimagination of the requirement in recent years, the single amendment rule is not activated—and does not prohibit an amendment's submission to voters—anytime a proposal *might* conceivably be subdivided.

Consistent with this core purpose of the single amendment requirement, the Court has long rejected the very kind of reasoning the Attorney General has employed in recent years and asks the Court to adopt here. On his logic, any time a comprehensive proposal has more than one effect in the world—effects about which some voter *might* have differing opinions—then the proposal amounts to more than one amendment. In other words, anytime a voter *might* subdivide a proposal because she has mixed feelings about its elements, the proposal *must* be subdivided or it cannot proceed. The dissent in *Citizens* follows identical logic, hypothesizing about the ways voters might feel about different aspects of the proposal. 224 Mont. at 293, 729 P.2d at 1295. But the majority declined to adopt that view as a basis to intervene in the ballot issue process and withhold the initiative. The majority holding makes sense, because it is the only holding consistent with the Constitution's treatment of the ballot issue process as a function of popular sovereignty and self-government. It is *proponents* who have the right to

present their proposals to voters. If voters dislike one sub-aspect of a proposal enough, they may simply vote against it. That is the power and the responsibility that the Constitution vests in voters. If the Attorney General's view were right, then the mere *possibility* that any voter might propose the initiative differently, or reconfigure it, would stop any constitutional change from proceeding. That is not the process envisioned by the Framers, nor does it find any support in the actual text of Article XIV, Section 11—which, again, simply identifies the single amendment rule as a "submission" requirement.

Properly construed, the single amendment requirement will not shield voters from proposals they might have done differently had they written it themselves. It does not force the subdivision of proposals that tackle big problems, or constrain the scope of constitutional change only to the simplest, narrowest ideas. Rather, it empowers voters to exercise their political judgment provided there is no legitimacy-endangering confusion or logrolling in the proposal itself. That means voters may face tough, binary choices about proposed policies that do not align entirely with their preferences. That is the nature of direct democracy: voters are free to support or oppose their peers' proposals and have the responsibility to grapple with the power of their choice even when it is not easy. But the Framers put their trust in voters, and did not insulate them from constitutional change by transforming the single amendment rule into a rule against change, or a rule of

maximum intellectual subdivision—such a rule would effectively stifle any meaningful constitutional change. In the absence of *true* logrolling or *true* confusion, the Court should follow the Framers and allow voters to make their own political judgments, rather than hypothesizing about how an imagined voter might wish an initiative had been proposed differently. The Framers did not envision the Attorney General or this Court playing such a plenary, discretionary gatekeeping role over constitutional change; the Constitution's bare treatment of the single amendment rule confirms it.

III. The Court should adopt governable, neutral standards for the single amendment requirement, consistent with the DOJ's historical position.

In ruling on the instant matter, the Court should also endeavor to adopt governable, neutral standards for applying the single amendment rule in future cases. Twenty years ago, the Montana Department of Justice urged the Court to do so in *Citizens Against CI-97*, in which Attorney General Mike McGrath and Solicitor Anthony Johnstone warned the Court about the dangers this Court faces today. Brief of Appellant, *Not in Montana: Citizens Against CI-97 v. State*, No. DA 06-0645 (Dec. 10, 2006), attached as Exhibit A ("Johnstone Br."). The Court declined to reach the issue because it invalided the proposed amendment at issue in that case on unrelated grounds. Still, the Department's warnings about an overly-restrictive approach to constitutional change and plea for governable, neutral standards are as relevant and persuasive today as they were 20 years ago.

After noting that California, whose caselaw Montana frequently consults, and some 30 other jurisdictions hold "the separate-vote provision should be construed consistently with its kindred provision, the single subject rule," *Californians for an Open Primary v. McPherson*, 134 P.3d 299, 318 (Cal. 2006), the Department warned about the Oregon approach, which was partially adopted by this Court in *Marshall* and, years later, in *MACo*. Johnstone Br. at 13. The Department noted that, according to one commentator, the *Armatta v. Kitzhaber* decision in Oregon "has greatly affected direct democracy in Oregon . . . . Should the court adhere to *Armatta* and its reasoning, most initiative amendments are likely to fail," *id.* (quoting Comment, "Reforming Direct Democracy: Lessons from Oregon," 93 Calif. L. Rev. 1191, 1222-24 (2005) (emphasis added)), and that the approach "would seriously impede many perfectly legitimate proposed constitutional amendments," *id.* at 14 (quoting Lowenstein, "Initiatives and the New Single Subject Rule," 1 Election L. J. 35, 38 (2002)). And, the DOJ argued, "[t]he critics' predictions have proven true" and that "[w]ithin a year of *Armatta*, the Oregon Secretary of State's office had already rejected at least a half-dozen proposed constitutional initiatives for failure to meet the stringent new separate vote rule." *Id.* The DOJ argued that "Oregon's application of the *Armatta* rule has given its courts, not its people, the last word in amending their constitution" and that "[o]ne critic has compared this power to a judicial veto similar to the proposed

Council of Revision that the framers of the United States Constitution rejected." *Id.* at 17 (citing Lowenstein, 1 Election L. J. at 48).

In lieu of the Oregon approach, the Department urged the Court to adopt a neutral and less restrictive approach:

> Recognizing the heightened scrutiny constitutional amendments demand, the State suggests that the Court specify the separate amendment rule by grounding it where it stands: in the center of the spectrum, with the "separate purpose" test adopted by many of Montana's neighboring states that share a common heritage of direct democracy.

Id. at 19. It cited the Arizona Supreme Court's approach in *Korte v. Bayless*, 199 Ariz. 173, 16 P.3d 200 (2001) as a model, as well as the approaches in Idaho, Washington, and Utah. *Id.* at 11 (citing *Idaho Water Resource Bd. v. Kramer*, 548 P.2d 35, 53 (Idaho 1976); *Farris v. Munro*, 662 P.2d 821, 825 (Wash. 1983); *Lee v. State*, 367 P.2d 861, 863 (Utah 1962)). Just as the Department urged 20 years ago, as the Court considers the proposed amendment before it now, "it is important for this Court to declare a clear separate amendment test to guide the People in contemplating changes to Montana's organic law." *Id.* at 19.

CONCLUSION

Consistent with the plain text of the single amendment rule and its role in promoting Montana's unique ballot issue process, the Court should allow BI-8 to proceed to voters.

DATED this 9th day of January, 2026.

GOETZ, GEDDES & GARDNER, P.C.

/s/ Cameron T. Clevidence
James H. Goetz
Jeffrey J. Tierney
Cameron T. Clevidence

MCCONNELL LAW OFFICES, PLLC

/s/ Nate McConnell
Nate McConnell

Attorneys for *Amici Curiae*

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 fewer than 5,000 words (4,978).

/s/ Cameron T. Clevidence
Jim Goetz
Jeffrey J. Tierney
Cameron T. Clevidence

CERTIFICATE OF SERVICE

I, Cam Clevidence, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus 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

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

Electronically signed by Myriam Jackson on behalf of Cam Clevidence
Dated: 01-09-2026