

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. OP _____

MATTHEW MONFORTON,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as
Attorney General; CHRISTI JACOBSEN,
in her official capacity as Secretary of State,

Respondents.

**PETITION CHALLENGING ATTORNEY GENERAL'S (1) LEGAL
INSUFFICIENCY DETERMINATION AND (2) FISCAL STATEMENT**

Original Proceeding Arising Under Mont. Code Ann. § 13-27-316(1)

APPEARANCES:

Matthew G. Monforton
32 Kelly Court
Bozeman, MT 59718
Telephone: (406) 570-2949
matthewmonforton@yahoo.com

Appearing Pro Se

COMES NOW Petitioner Matthew G. Monforton and, pursuant to Mont.

Code Ann. § 13-27-316(1), files this Petition seeking the following relief:

- an order overruling the Attorney General’s determination that Ballot Issue #2 is legally insufficient; and
- an order invalidating the fiscal statement for Ballot Issue #2.

This Court has exclusive jurisdiction over this matter. Mont. Code Ann. § 13-27-316(5). Monforton respectfully requests that this Petition “take[] precedence over other cases and matters” and that the Court “as soon as possible render a decision as to the adequacy of the ballot statements [and] the correctness of the Attorney General’s determination.” Mont. Code Ann. § 13-27-316(3)(c).

Pursuant to M. R. App. 14(5), Monforton alleges as follows:

FACTS IN SUPPORT OF JURISDICTION

1. On April 18, 2023, Monforton submitted to the Secretary of State (1) the text of a proposed constitutional initiative for the 2024 ballot, which the Secretary designated as Ballot Issue #2, and (2) a proposed ballot statement.

Exhibit 1.¹

¹ This case is not affected by Senate Bill 93 (2023), which amended several statutory provisions governing ballot issues. Section 62 of Senate Bill 93 limits the bill’s applicability to ballot issues submitted to the Secretary after the bill’s effective date (May 19, 2023). Monforton submitted Ballot Issue #2 to the Secretary on April 18, 2023. Accordingly, all statutory references in this Petition are to the 2021 Montana Code Annotated.

2. Ballot Issue #2 would amend Mont. Const. Art. VIII, § 3 to establish an acquisition-based system of taxation for real property, *i.e.*, the taxable value of real property would be based upon its value at the time of purchase rather than current market value. **Exhibit 1.** Ballot Issue #2 would limit annual increases of a property's taxable value to 2% until a change of ownership occurs, at which time the property's taxable value would be reset to its current market value. *Id.* Ballot Issue #2 would also limit the total tax rate to 1% of the value of the property. *Id.*

3. Ballot Issue #2 would thus limit both of the variables used in calculating taxes on real property: (1) the taxable value of the property and (2) the rate by which it is taxed.

4. Montana's Legislative Services Division reviewed Ballot Issue No. 2 and, on May 1, 2023, emailed a letter to Monforton stating that it did not recommend any changes to the text of the ballot issue and suggested only minor changes to the ballot statement. **Exhibit 2.**

5. On May 2, 2023, Monforton sent an email to the Legislative Services Division stating that he accepted its suggestions. **Exhibit 3.**

6. On May 23, 2023, the Attorney General issued a fiscal note along with a proposed ballot statement and proposed fiscal statement for Ballot Issue #2. **Exhibit 4.**

7. On June 5, 2023, the Attorney General determined that Ballot Issue #2 was legally insufficient due to its alleged (1) violation of the separate-vote requirement in Mont. Const. Art. XIV, § 11 and (2) ambiguous wording. **Exhibit 5.**

8. The Attorney General determined that Ballot Issue No. 2 was legally insufficient even though he had determined in December 2021 that a nearly identical ballot initiative (CI-121) passed muster. **Exhibit 6.**² He has not explained this contradiction.

9. Because of the Attorney General's legal insufficiency determination, the Secretary has not delivered for signature gathering a petition form for Ballot Issue #2. Mont. Code Ann. § 13-27-312(10)(c).

10. The Secretary provided notice to Monforton on June 9, 2023, of the Attorney General's legal insufficiency notice. **Exhibit 8.**

ANTICIPATED LEGAL ISSUES

11. Monforton anticipates the following legal issues will be raised in this proceeding:

² A copy of the text of CI-121 is attached as **Exhibit 7.**

- (a) Whether the Attorney General violates the Montana Constitution’s separation of powers provision (Mont. Const. Art. III, § 1) when he declares a ballot issue to be legally insufficient based upon matters of constitutional interpretation;
- (b) Whether Ballot Issue No. 2, which the Attorney General admits “amends a single section of the Montana Constitution and relates to a single purpose of limiting tax increases,” nevertheless violates the separate-vote requirement of Mont. Const. Art. XIV, § 11;
- (c) Whether Ballot Issue No. 2 is legally insufficient because it includes supposedly ambiguous terms such as “real property” and “ad valorem taxes”;
- (d) Whether Respondents may require ballot issue petitions to include a fiscal statement even though Mont. Const. Art. XIV, § 9 requires such petitions to include only the “full text of the proposed amendment”;
- (e) Whether the Attorney General’s fiscal statement may include predictions about a ballot issue’s fiscal effect upon *local governments* even though Mont. Code Ann. § 13-27-312(3) limits such statements to predictions about the fiscal effects upon the *state*.

ARGUMENTS AND AUTHORITIES FOR ACCEPTING JURISDICTION

I. The Attorney General Lacks Authority to Issue Declarations About The Constitutionality of Ballot Issues

12. Under the separation-of-powers rule in Mont. Const. Art. III, § 1, the judiciary has the “exclusive authority and duty to adjudicate the nature, meaning, and extent of applicable constitutional, statutory, and common law.” *Larson v. State*, 2019 MT 28, ¶ 42, 394 Mont. 167, 434 P.3d 241; *Cottonwood Environmental Law Center v. Knudsen*, 2022 MT 49, ¶¶ 32-33, 408 Mont. 57, 505 P.3d 837 (McGrath, C.J., concurring).

13. As an executive branch officer, “the Attorney General does not have authority to make a declaration regarding the constitutionality of” ballot issues. *Hoffman v. State*, 2014 MT 90, ¶ 9, 374 Mont. 405, 328 P.3d 604; *Cottonwood Environmental Law Center*, ¶ 34 (McGrath, C.J., concurring).

14. Therefore, “[a]ny future determination by the Attorney General that bases legal deficiency on a matter of constitutional interpretation cannot stand.” *Cottonwood Environmental Law Center*, ¶ 36 (McGrath, C.J., concurring).

15. The Attorney General determined Ballot Issue No. 2, a constitutional initiative, is legally insufficient because it (1) violates the separate-vote rule in Mont. Const. Art. XIV, § 11 and (2) contains ambiguous terms. **Exhibit 5.**

16. Determining whether a proposed constitutional initiative comports with the Montana Constitution's separate-vote rule is a matter of constitutional interpretation and, therefore, "properly decided by a judicial body, not an administrative official, under the principle of separation of powers." *Hoffman*, ¶ 9.

17. The interpretation of an allegedly ambiguous constitutional provision, by its nature, is also a matter of constitutional interpretation. See, e.g., *Keller v. Smith*, 170 Mont. 399, 406-407, 553 P.2d 1002, 1007 (1976) (holding that Mont. Const. Art. VII, § 8 was ambiguous and applying extrinsic rules of construction in interpreting it).

18. Therefore, Respondents are violating the Montana Constitution's separation-of-powers provision by determining that Ballot Issue #2 is legally insufficient due to matters of constitutional interpretation.

II. Ballot Issue #2 Does Not Violate the Separate-Vote Rule

19. Should the Court reach the merits of the Attorney General's legal insufficiency determination, it should reject that determination in its entirety.

20. The Attorney General wrongly determined that Ballot Issue #2 violates the separate-vote rule in Mont. Const. Art. XIV, § 11. That rule prohibits constitutional initiatives that "would make two or more changes to the Constitution that are substantive and not closely related." *Montana Ass'n of Counties v. State*, 2017 MT 267, ¶ 28, 389 Mont. 183, 404 P.3d 733.

21. The constitutional initiative at issue in *Montana Ass'n of Counties* would have substantively changed six (6) provisions of the Montana Constitution. *Id.* ¶ 49.

22. By contrast, the Attorney General does not identify any provision of the Montana Constitution (other than Mont. Const. VIII, § 3) that Ballot Issue #2 would change.

23. The Attorney General nevertheless claims that a 1% cap on tax rates for real property and a 2% cap on annual valuation increases for real property are not “closely related” and, therefore, Ballot Issue #2 violates the separate-vote rule. **Exhibit 5** at 27.

24. The Attorney General admits that Ballot Issue No. 2 “amends a single section of the Montana Constitution and relates to a single purpose of limiting property tax increases...” **Exhibit 5** at 27. This admission, standing alone, is fatal to his claim that the initiative violates the separate-vote rule.

25. The Attorney General further admits that if Ballot Issue #2 “applied to only one variable in the property tax equation, it likely would fail in its goal of property tax limitation.” *Id.*; see also *Amador Valley Joint Union High Sch. Dist. v. State Bd of Equalization*, 583 P.2d 1281, 1290-91 (Cal. 1978) (“Since the total real property tax is a function of both rate and assessment, sections 1 and 2 [of

California’s Proposition 13] unite to assure that both variables in the property tax equation are subject to control.”).

26. The Attorney General’s argument is further undermined by his prior legal sufficiency determination concerning CI-121. That initiative, like Ballot Issue #2, included a 1% cap on tax rates and a 2% cap on annual valuation increases. **Exhibit 7**. Yet the Attorney General found that CI-121 was legally sufficient. **Exhibit 6**. He does not explain these contradictory determinations.

III. Ballot Issue #2 is Not Ambiguous

27. The Attorney General cites *State ex rel. Montana Citizens for Preservation of Citizen’s Rights v. Waltermire*, 227 Mont. 106, 738 P.2d 1255 (1987) as authority for invalidating Ballot Issue #2 due to “ambiguity.” **Exhibit 5** at 27-28. His argument has several problems.

28. First, *Waltermire* is not on point. In that case, a copy of the constitutional initiative that was published in the voter information guide differed from the actual text that proponents filed with the Secretary. *Id.*, 227 Mont. at 89-90, 738 P.2d at 1257-58. The Court held that the difference between the voter guide and the actual text was “material” and invalidated election.

29. *Waltermire* did not involve claims that the actual text of the initiative at issue was ambiguous. When ambiguity exists in a constitutional provision, courts rely on extrinsic rules of construction. See, e.g., *Keller*, 170 Mont. at 406-

407, 553 P.2d at 1007; *Education Freedom PAC v. Reid*, 512 P.3d 296, 302 (Nev. 2022) (when interpreting an ambiguous constitutional provision, courts “look to the history, public policy, and reason for the provision.”). This rule applies with equal force to constitutional initiatives. See, e.g., *Zolly v. City of Oakland*, 47 Cal.App.5th 73, 87, 260 Cal.Rptr.3d 541, 551 (2020) (holding that constitutional initiative containing ambiguous property tax exemption should be interpreted according to “the intent and objective of the voters in enacting the provision.”).

30. To whatever extent an ambiguity exists within the text of Ballot Issue #2, the initiative should be construed by the courts, not invalidated by the Attorney General.

31. Second, Ballot Issue No. 2 is not ambiguous. The Attorney General argues that because Ballot Issue No. 2 “substantially changes Article VIII which governs ‘the valuation of all property’ by including the limiting language contained in subsections (2), (3), and (4), it is ambiguous as to its application and limitations.” **Exhibit 5** at 28. This conclusory statement does not explain how Ballot Issue No. 2 is ambiguous.

32. The Attorney General also criticizes Ballot Issue No. 2 for failing to define terms such as “real property” and “ad valorem taxes.” **Exhibit 5** at 28. These terms, however, are already well-defined. See, e.g., *American Equity Ins. Co. v. Van Ginhoven*, 788 So.2d 388, 390 (Fla. App. 2001) (“the term ‘real

property’ is a clearly understandable and defined legal term”); Merriam-Webster Unabridged Dictionary (defining “ad valorem” as “imposed at a rate percent of value.”)³

33. Third, the Attorney General’s prior, inconsistent determination approving CI-121 undermines his current argument. Like Ballot Issue #2, CI-121 would have substantially changed Article VIII by including limiting language in its subsections. **Exhibit 7**. CI-121 also included the terms “ad valorem” and “significantly improved.” *Id.* Yet the Attorney General found CI-121 to be legally sufficient, **Exhibit 6**, and even included the terms “ad valorem” and “significantly improved” in the ballot statement for CI-121 that he himself drafted. **Exhibit 7** at 37. Indeed, the Attorney General included the same terms in his proposed ballot statement that he prepared in May 2023 for Ballot Issue #2. **Exhibit 4** at 21. The Attorney General does not explain why terms that were clear to him as recently as last month are now so ambiguous as to render Ballot Issue #2 legally insufficient.

34. Fourth, the Attorney General seems not to grasp the nature of constitutions. A constitution is composed of “great outlines,” and “we must never forget that it is a constitution we are expounding.” *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 407, 4. L.Ed. 579, 601-02 (1819). Thus, the “true theory of a

³ See <<https://www.merriam-webster.com/dictionary/ad%20valorem>>

constitution” is “to establish only broad principles and to leave details to be wrought out by the Legislature according to the varying demands of policy and expediency.” *In re Opinion of the Justices*, 108 N.E. 502, 503 (Mass. 1915).

35. Ballot Issue #2 does not attempt to define “substantially improved” for the same reason Mont. Const. Art. X, §1(3) does not define “quality public elementary and secondary schools.” “Substantial improvements,” like “quality schools,” come in all shapes and sizes. Because Ballot Issue #2 is a constitutional initiative rather than a statute or tax regulation, it need not and should not have the length and specificity required by an architect or general contractor.

IV. The Montana Constitution Does Not Authorize the State to Place Fiscal Statements on Ballot Issue Petitions

36. Monforton objects to the fiscal statement prepared by the Attorney General for placement on petition forms for Ballot Issue #2.

37. Pursuant to Mont. Code Ann. § 13-27-312(3), the Attorney General obtained a fiscal note for Ballot Issue #2 and from that note prepared a fiscal statement for placement on petition forms. **Exhibit 4** at 21-22.

38. A threshold issue is whether the State has any constitutional authority to place fiscal statements on petition forms.

39. For a constitutional initiative to qualify for the ballot, the Montana Constitution requires the petition to (1) include “the full text of the proposed

amendment” and (2) be signed by a sufficient number of voters. Mont. Const. Art. XIV, § 9(1).⁴ These are *necessary* conditions established by the Montana Constitution for an initiative to be placed on the ballot. They are also *sufficient* conditions:

An initiative ... that qualifies for the ballot under ... Article XIV shall be submitted to the qualified electors...”.

Mont. Const. Art. IV, §7(1) (emphasis added).

40. Therefore, proponents seeking to qualify constitutional initiatives for the ballot need only include the full text of the proposed amendment on their petitions and obtain sufficient numbers of signatures. Mont. Const. Art. XIV, § 9.

41. The Montana Constitution neither requires nor authorizes the Legislature to impose additional burdens for circulating petitions for constitutional initiatives, such as requiring petitions to include fiscal statements. *Noll v. City of Bozeman*, 166 Mont. 504, 507, 534 P.2d 880, 882 (1975) (“Constitutional provisions are conclusive upon the legislature and prevent the enactment of any law which extinguishes or limits the powers conferred by the Constitution.”).

⁴ The full text of Mont. Const. Art. XIV, § 9(1) is as follows:

The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

42. The Court should, therefore, order the Secretary to deliver petition forms for Ballot Issue #2 without fiscal statements included on the forms.

V. Fiscal Statements Must be Limited to Effects on the State Rather than Local Governments

43. Besides being unconstitutional, the Attorney General's fiscal statement for Ballot Issue #2 violates Mont. Code Ann. § 13-27-312(3)

44. Fiscal statements prepared by the Attorney General for ballot issue petitions are derived from fiscal notes submitted to his office:

If the proposed ballot issue has an effect on the revenue, expenditures, or fiscal liability of *the state*, the attorney general shall order a fiscal note incorporating an estimate of *the effect*, the substance of which must substantially comply with the provisions of **5-4-205**. The budget director, in cooperation with the agency or agencies affected by the ballot issue, is responsible for preparing the fiscal note and shall return it to the attorney general within 10 days. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words, and the statement must be used on the petition and ballot if the issue is placed on the ballot.

Mont. Code Ann. § 13-27-312(3) (emphasis added).

45. The scope of such fiscal notes is limited to the effects of ballot issues on the *state*. That scope does not include the effects of ballot issues on *local governments*. Therefore, the fiscal statements the Attorney General prepares based upon fiscal notes must also be limited to effects on the state.

46. The fiscal note obtained by the Attorney General for Ballot Issue #2 includes effects on local governments. **Exhibit 4** at 16-20. From that fiscal note, the Attorney General prepared the following fiscal statement for Ballot Issue #2:

If CI-XX passes, state and local revenues will decrease. State revenues will decrease by \$459.4 million in 2027, \$509.5 million in 2028, and \$519.7 million in 2029. Local revenues; including county, municipal, school district, and special district revenues, will decrease by \$1.508 billion based on 2022 data.

(emphasis added).

47. The last sentence of the fiscal statement consists of effects on local governments and is therefore unauthorized by Mont. Code Ann. § 13-27-312(3).

48. Moreover, the fiscal statement's description of the effects on local governments will result in voter confusion. As stated in the fiscal note, the current tax rates differ substantially for different classes of real property. For example, Class 13 property (electrical generation and telecom) is taxed at a 6% rate, while residential property is taxed at a rate of 1.35%. **Exhibit 4** at 18. As a result, Ballot Issue #2 would have a different impact on urban counties such as Missoula County than it would on counties such as Rosebud County, where the Colstrip power plant is situated.

49. The proposed fiscal statement does not (and cannot) inform voters what the effects of Ballot Issue #2 would be on a county-by-county basis, or a school-district-by-school-district basis. As a result, the fiscal statement's one-

sentence description of the effect of Ballot Issue #2 upon localities is confusing and misleading.

50. Therefore, if the Court holds that petition forms should include fiscal statements notwithstanding Mont. Const. Art. XIV, § 9, the Court should at least strike the second sentence of the Attorney General's proposed fiscal statement for Ballot Issue #2.

VI. Relief Sought

51. For all of the foregoing reasons, Petitioner Matthew Monforton respectfully requests the following relief from this Court:

- an order overruling the Attorney General's determination that Ballot Issue #2 is legally insufficient; and
- an order invalidating the fiscal statement for Ballot Issue #2.

DATED: June 15, 2023

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Appearing Pro Se

CERTIFICATE OF COMPLIANCE WITH M. R. App. P. 11(4)(e)

I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and quoted and indented material; and the word count calculated by Microsoft Word is exactly 3147 words, excluding the caption page, Certificate of Compliance and Certificate of Service.

DATED: June 15, 2023

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Appearing Pro Se

EXHIBITS

<u>Description of Document</u>	<u>Bates No.</u>
Exhibit 1: Email from Monforton to the Secretary containing Text and Proposed Ballot Statement for Ballot Issue #2 (Apr. 18, 2023)	1
Exhibit 2: Email from Legislative Legal Services (May 1, 2023).....	5
Exhibit 3: Email from Monforton to Legislative Legal Services (May 2, 2023)	9
Exhibit 4: Email from Attorney General with (1) Proposed Initiative, (2) Fiscal Note, and (3) Proposed Ballot Statement and Fiscal Statement (May 23, 2023).....	12
Exhibit 5: Attorney General’s Legal Insufficiency Determination for Ballot Issue #2 (June 5, 2023).....	23
Exhibit 6: Attorney General’s Legal Sufficiency Determination for CI-121 (December 22, 2021)	30
Exhibit 7: Text and Ballot Statement for CI-121.....	36
Exhibit 8: Notice from Secretary to Monforton of Legal Insufficiency of Ballot Issue #2 (June 9, 2023).....	40

EXHIBIT 1

Proposed Constitutional Initiative

From: Matthew Monforton (matthewmonforton@yahoo.com)

To: soselections@mt.gov

Date: Tuesday, April 18, 2023 at 10:31 AM MDT

Pursuant to Mont. Code Ann. sec. 13-27-202, please find attached the text of my proposed ballot issue as well as a draft ballot issue statement.

Feel free to call or email me anytime if there is anything else you need from me

Thank you,

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
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230418 Property Tax Initiative & Statement.docx
15.7kB

TEXT OF PROPOSED BALLOT ISSUE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VIII, section 3, of The Constitution of the State of Montana is amended to read:

“Section 3. Property tax administration. (1) The Subject to subsections (2), (3), and (4), the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(2) The base valuation of real property must be the amount assessed by the state as of December 31, 2019.

(3) The value of real property may be reassessed annually on January 1 of each year. If real property is not newly constructed or significantly improved or did not have a change of ownership after January 1, 2020, any increase in the assessed valuation may not exceed 2 percent.

(4) After January 1, 2020, whenever real property is newly constructed or significantly improved or has a change of ownership, it may be assessed by the state at its fair market value with subsequent changes to the assessment made in accordance with the limits in subsection (3) and this subsection.

(5) At the request of the owner, the valuation must be reduced to reflect substantial damage, destruction, market conditions, or other factors causing a decrease in value.

(6) For purposes of this section, the terms “change of ownership”, “constructed”, and “significantly improved” may not include the following:

(a) the purchase or transfer of real property between spouses or between parents and their children; or

(b) the acquisition of real property as a replacement for comparable property resulting from eminent domain proceedings, acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation.

(7) Total ad valorem taxes assessed against real property may not exceed 1 percent of the valuation established by this section.

(8) The limitation provided for in subsection (7) does not apply to ad valorem taxes assessed to pay the interest on any indebtedness approved by the voters prior to [the effective date of this section].”

NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

PROPOSED BALLOT ISSUE STATEMENT

CI-___ limits annual increases and in valuations of residential property to 2% when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. CI-___ establishes 2019 state valuations as the base year for the valuations of residential property and permits annual reassessment. It requires valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner.

EXHIBIT 2



Montana Legislative Services Division

Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

May 1, 2023

Matthew G. Monforton, Esq.
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, MT 59718

Re: Review of Constitutional Initiative Regarding Real Property Tax Limitations

Dear Mr. Monforton,

On April 18, 2023, the Legislative Services Division received the text of your proposed initiative to amend Montana's Constitution.

The text of the initiative and the ballot issue statements were reviewed pursuant to [13-27-202\(2\)\(a\)](#), MCA, for clarity, consistency, and other factors normally considered when drafting proposed legislation. This letter constitutes the Legislative Services Division's review of your proposed statutory initiative.

Section [13-27-201\(2\)](#), MCA, requires the text of an initiative to be in the bill form provided in the most recent issue of the [Bill Drafting Manual](#) furnished by the Legislative Services Division. Section [13-27-202\(2\)\(a\)](#), MCA, requires both the text of the initiative and the ballot statements to conform to the [Bill Drafting Manual](#), which is available on the Legislative Branch website at <https://leg.mt.gov/content/Publications/2022-bill-drafting-manual.pdf>.

The text of the proposed ballot issue and the draft ballot issue statements must comply with [13-27-312](#), MCA. Ballot statements include: (1) the statement of purpose and implication, which may not exceed 135 words; and (2) the yes and no statements. Pursuant to [13-27-312\(4\)](#), MCA, the statement of purpose "must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language." In addition, the statement of purpose may not be argumentative or written in a manner that creates prejudice for or against the issue. While it is not always feasible to include a complete explanation of each part of a ballot issue in the statement of purpose, the statement must at least explain both the purpose and implication of the ballot issue in easily understood, nonargumentative language. *See Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 12.

Unless altered by a court pursuant to [13-27-316](#), MCA, the statement of purpose becomes the title for the ballot issue that is circulated to the electorate and the ballot title if the ballot issue is placed on the ballot. However, proponents of a ballot issue are not entitled "to the ballot statements of their choosing," and the Attorney General and, if necessary, the Supreme Court

may alter proposed statements of purpose and implication to comply with the provisions of [13-27-312](#), MCA. See *Mont. Consumer Fin. Ass'n v. State*, 2010 MT 185, ¶ 11.

The text of your submission is nearly identical to [Senate Bill No. 542](#) (2023), which was reviewed and edited by the Legislative Services Division this session. Consequently, I do not have any recommendations regarding the proposed amendment.

Your submission includes a statement of purpose and implication as required by [13-27-312](#), MCA. The statement of purpose appears to have two typos in the first sentence. I suggest that near the beginning of the first sentence after "increases" that you delete "and" and that near the end of the submitted first sentence you strike "2019" and insert "2020". I also deleted the references to "residential property" since the proposed text applies to all real property in the state while not including residential personal property. Moreover, there was no discussion about the limitation in subsection (7) of the submission that limits *ad valorem* taxes to 1 percent. I suggest the following changes:

"CI-___ amends the Montana Constitution to ~~limits~~ limit annual increases ~~and~~ in valuations of ~~residential~~ real property to 2% when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, ~~2019-2020~~, while also providing that total ad valorem taxes assessed against real property may not exceed 1% of the established valuation. CI-___ establishes 2019 state valuations as the base year for the valuations of ~~residential~~ real property and permits annual reassessment subject to certain limitations. It requires valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner."

Lastly, your submission does not include yes and no statements as provided for in [13-27-312\(6\)](#), MCA. I do not have any recommendations regarding the lack of the statements from the submission other than to include them.

Conclusion

Please note that pursuant to [13-27-202\(2\)\(c\)](#), MCA, you are required to respond in writing to this office accepting, rejecting, or modifying the recommended changes before submitting the final text of the proposed ballot issue and ballot statements to the Secretary of State. Your response

will terminate the role of this office in this process. After responding to this office, further correspondence should be submitted to the Secretary of State.

Sincerely,

/s/ Jaret R. Coles

Jaret R. Coles
Deputy Director of Legal Services

cc: Christi Jacobsen, Secretary of State

EXHIBIT 3

Re: Legal Response to Ballot Initiative 2

From: Matthew Monforton (matthewmonforton@yahoo.com)

To: fong.hom@legmt.gov

Cc: jaret.coles@legmt.gov; todd.everts@legmt.gov

Date: Tuesday, May 2, 2023 at 03:49 PM MDT

Fong:

Thank you for providing this.

You have stated that your office has no recommended changes to the proposed amendment, so I will leave it as is.

I accept all of your suggested changes to the statement of purpose.

Here is our yes-no statement:

YES on Constitutional Initiative CI- ____

NO on Constitutional Initiative CI- ____

Please let me know what other steps are needed for us to begin collecting signatures. By my calculation, state law permits us to begin collecting signatures on June 21, 2023 (13-27-104, 13-27-202(1)(a), 13-27-301(1)).

Thank you,

Matthew G. Monforton, Esq.
CA State Bar #175518, MT State Bar #5245
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
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On Monday, May 1, 2023 at 10:21:55 AM MDT, Hom, Fong <fong.hom@legmt.gov> wrote:

Greetings,

Attached to this email is the Legislative Services Division's legal review of your proposed ballot initiative: Review of Constitutional Initiative Regarding Real Property Tax Limitations.

If you have any concerns, please address them to Jaret Coles at Jaret.Coles@legmt.gov. Thank you.

Fong Hom

Legislative Secretary

Fong.Hom@legmt.gov

406.444.0502



2023 Ballot Issue 2 Review Letter.FINAL.pdf

94.9kB

EXHIBIT 4

Proposed Ballot Issue No. 2 - Interested Parties

From: Mead, Brent (brent.mead2@mt.gov)
To: Brent.Mead2@mt.gov
Cc: David.Ortley@mt.gov
Date: Tuesday, May 23, 2023 at 03:22 PM MDT

To Interested Parties:

The Attorney General received proposed Ballot Measure No. 2 sponsored by Matthew Monforton on May 4, 2023. Pursuant to MCA § 13-27-312 (2021), the Attorney General seeks your advice on the proposed measure. Attached are the full text of the proposed measure, fiscal note, and proposed ballot statements. Please return any comments by **THURSDAY, JUNE 1, 2023**, to david.ortley@mt.gov and brent.mead2@mt.gov.




Thank you.

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-  230418 Property Tax Initiative Statement.pdf
150.8kB
-  OBPP FN BI2.pdf
2.7MB
-  Ballot Statements.pdf
53.5kB

TEXT OF PROPOSED BALLOT ISSUE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VIII, section 3, of The Constitution of the State of Montana is amended to read:

“Section 3. Property tax administration. (1) The Subject to subsections (2), (3), and (4), the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(2) The base valuation of real property must be the amount assessed by the state as of December 31, 2019.

(3) The value of real property may be reassessed annually on January 1 of each year. If real property is not newly constructed or significantly improved or did not have a change of ownership after January 1, 2020, any increase in the assessed valuation may not exceed 2 percent.

(4) After January 1, 2020, whenever real property is newly constructed or significantly improved or has a change of ownership, it may be assessed by the state at its fair market value with subsequent changes to the assessment made in accordance with the limits in subsection (3) and this subsection.

(5) At the request of the owner, the valuation must be reduced to reflect substantial damage, destruction, market conditions, or other factors causing a decrease in value.

(6) For purposes of this section, the terms “change of ownership”, “constructed”, and “significantly improved” may not include the following:

(a) the purchase or transfer of real property between spouses or between parents and their children; or

(b) the acquisition of real property as a replacement for comparable property resulting from eminent domain proceedings, acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation.

(7) Total ad valorem taxes assessed against real property may not exceed 1 percent of the valuation established by this section.

(8) The limitation provided for in subsection (7) does not apply to ad valorem taxes assessed to pay the interest on any indebtedness approved by the voters prior to [the effective date of this section].”

NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

PROPOSED BALLOT ISSUE STATEMENT

CI-___ limits annual increases and in valuations of residential property to 2% when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. CI-___ establishes 2019 state valuations as the base year for the valuations of residential property and permits annual reassessment. It requires valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Ballot Issue:

Ballot Issue #2 -- A Constitutional Initiative Regarding Real Property Tax Limitations

Status:

As Proposed

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
Expenditures:				
General Fund	\$0	Unknown	Unknown	Unknown
State Special Revenue	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	(\$432,150,000)	(\$479,330,000)	(\$488,860,000)
State Special Revenue	\$0	(\$27,265,000)	(\$30,237,000)	(\$30,842,000)
Net Impact-General Fund Balance:	<u>\$0</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

Description of fiscal impact: Ballot Issue #2 makes two changes to the property tax system. The first changes the basis of valuation, the second sets the maximum level of (consolidated mills) tax. The change to valuation sets the base valuation for all real property to its TY 2019 assessed value and then limits assessed value growth to 2% per year. Property resets to the current year's valuation only if sold or significantly improved. As in current law, valuations may be decreased if there is substantial damage. The tax limitation on a property's tax (all mills, all jurisdictions) cannot exceed 1% of assessed value. Because Montana property tax rates are different for distinct classes of property, the ballot issue's 1% tax limitation would result in the most significant revenue effect. The initiative's passage is estimated to decrease statewide property tax that could be levied by 88%.

There is significant uncertainty in how the Legislature would choose to modify tax structures to accommodate the constitutional change. The Department of Revenue is likely to incur costs associated with implementation legislation. Those costs cannot be estimated at this time.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

- BI 2 sets the tax year 2019 value as the base value for all real property in the state and limits the reappraisal growth that may be assessed yearly upon that property to 2%.

Fiscal Note Request – Ballot Issue 2 as Proposed

2. Real property consists of most classes of property outside of class 8 business equipment. The largest component of real property is class 4 property.

Estimate of the class 4 property effects

- 3. Class 4 had a taxable value of \$1.952 billion in TY 2019.
- 4. It is assumed that changes in the total property tax class taxable value contained in the HJ 2 revenue forecast is a proxy for appreciation.
- 5. The Department of Revenue currently reappraises class 4 property on a two-year cycle in even fiscal years.
- 6. Therefore, the current law growth rate of odd fiscal years is expected new construction.
- 7. The growth rate in even years is the combination of reappraisal value increases and expected new growth.
- 8. Under BI 2, the growth rate on market value for property that has not changed hands or undergone significant remodeling is capped at 2%.
- 9. It is assumed that 5% of class 4 properties will be bought or sold during a year and/or undergo significant remodeling which would lead to reassessment to the contemporaneous full market value.
- 10. In this estimate the revaluation effect is simulated by adding 5% of the difference between current law and the simulated values under BI 2 to the BI 2 tax base each year.
- 11. The table below details the percentage change in class 4 taxable value from FY 2020 through FY 2029, as well as the percentage that is attributed to reappraisal. It models the taxable value of class 4 property under current law and under BI 2 and shows the general fund and state special revenue collections impacts.

Fiscal Year	Total Change	Reappraisal Change	Current TV (millions)	BI 2 TV (millions)	General Fund (millions)	University (millions)
2020	N/A	N/A	1,952.2	1,952.2	0.000	0.000
2021	1.8%	0.0%	1,987.6	1,987.6	0.000	0.000
2022	14.8%	11.6%	2,255.2	2,097.5	-\$15.058	-\$0.946
2023	3.1%	0.0%	2,325.4	2,211.3	-\$10.903	-\$0.685
2024	37.4%	35.0%	3,211.6	2,353.5	-\$81.950	-\$5.149
2025	2.4%	0.0%	3,287.2	2,500.8	-\$75.106	-\$4.719
2026	9.8%	7.4%	3,608.2	2,665.7	-\$90.003	-\$5.655
2027	2.4%	0.0%	3,693.8	2,836.7	-\$81.848	-\$5.142
2028	13.5%	11.1%	4,192.2	3,034.6	-\$110.551	-\$6.946
2029	2.4%	0.0%	4,291.9	3,240.2	-\$100.444	-\$6.311

Effects on all other real property

- 12. Other classes of real property are subject to the 2% reappraisal limitation. Functionally, this only has tax implications for class 9 property (pipelines and non-electric generating property of electric utilities) based on HJ 2 overall taxable value estimates.
- 13. Other classes of property are projected to decrease in value relative to their values in 2019, not appreciate by more than 2% per year, or are not real property.
- 14. It is assumed that 25% of the yearly growth in class 9 has been due to new property and 75% due to appreciation in property value.
- 15. The table on the following page shows expected class 9 property values under BI 2.

Timing considerations

16. BI 2 will appear on the 2024 ballot. The 2025 Legislature would be charged with implementing the provisions of the bill. It is likely the earliest year that necessary changes could be implemented in is Tax Year 2026. The revenue impacts therefore have impact starting in FY 2027.

Net effects of the changes in the basis of assessment

17. The limitation on reappraisal value changes for real property to 2% per year is estimated to cause the state general fund to lose approximately \$87.5 million in FY 2027, \$116.3 million in FY 2028, and \$106.3 million in FY 2029.

18. The 6 mills levied for the Montana University System will lose approximately \$5.5 million in FY 2027, \$7.3 million in FY 2028, and \$6.7 million in FY 2029.

Fiscal Year	Class 9 TV (millions)	BI 2 TV (millions)	General Fund (millions)	University (millions)
2020	504.8	504.8	0.000	0.000
2021	535.3	522.5	-\$1.214	-\$0.076
2022	549.2	536.4	-\$1.219	-\$0.077
2023	618.9	564.1	-\$5.227	-\$0.328
2024	635.0	579.1	-\$5.336	-\$0.335
2025	651.5	594.4	-\$5.447	-\$0.342
2026	668.4	610.2	-\$5.560	-\$0.349
2027	685.8	626.4	-\$5.675	-\$0.357
2028	703.6	643.0	-\$5.763	-\$0.364
2029	721.9	660.0	-\$5.882	-\$0.371

Ad Valorem Cap at 1% of Market Value

19. Non-school local taxing jurisdictions set mill rates based on the taxable value in their jurisdiction and their anticipated budget, subject to mill limitations in 15-10-420, MCA.
20. Property in the state is covered by overlapping jurisdictions, each with independent taxing authority. These overlapping jurisdictions form levy districts, which delineate areas of the state where all property is subject to the same consolidated mill rate. The consolidated mill rate is what is constrained by the 1% tax cap. Each levy district is, at the very least, subject to (various) county government mills, countywide local school mills, elementary and high school district mills, the statewide school equalization mills and the University 6 mill levy. Property may also be subject to city mills as well as other local jurisdiction and special district mills.
21. The percentage of assessed value paid in tax is calculated by multiplying the tax rate set by the Legislature and the consolidated mill rate. This is also known as the effective tax rate. As an example, Class 4 residential property has a tax rate of 1.35%. If the consolidated mill rate that applied to a property were 600 mills, the property would pay 0.8% of its value in taxes (0.0135*600/1000).
22. The maximum number of mills that may be levied against each tax class is 1000 multiplied by 1% , divided by the tax rate. For example, on residential property, the maximum mill rate is 740.7 (1000 X 0.01 / 0.0135).
23. Class 1 Miscellaneous Mines Net Proceeds has the highest tax rate on real property at 100%. The maximum mill levy that could be levied against this property is 10 mills.
24. A limitation of taxes that may be assessed against property will come in the form of a limitation on the consolidated mill rate, barring further change to the property tax system.
25. By definition, all properties in the same levy district must have the same mill rate. Therefore, the property in a levy district with the highest tax rate will set the mill level that applies to all (other) properties in the district.
26. The table below lists the number of levy districts that are constrained by the tax rate of each tax class.

Class	Description	Tax Rate	Max Mill	Levy Districts
1	Miscellaneous Mines	100.00%	10.0	7
2	Metal Mines	3.00%	333.3	6
3	Agricultural Land	2.16%	463.0	32
3: Non-qualified	Non-Qualified Ag Land	15.12%	66.1	843
4: Res.	Residential	1.35%	740.7	24
4: Com.	Commercial	1.89%	529.1	21
5	Pollution Control & Cooperatives	3.00%	333.3	69
9	Pipeline & Transmission Lines	12.00%	83.3	226
10	Forestland	0.31%	3225.8	2
12	Airlines and Railroads	3.06%	326.8	10
13	Electric Generation & Telecom	6.00%	166.7	52

Fiscal Note Request – Ballot Issue 2 as Proposed

- 27. Of the 1,292 levy districts there are 1,252 with consolidated mill levies greater than the 1% limitation proposed by BI 2, based on property in the levy district.
- 28. Most property will be constrained by the mill limits on class 3 non-qualified agricultural property, or class 9 pipeline and transmission property.
- 29. Applying the BI 2 (implied) maximum mills by levy district yields a collection of \$250.911 million in TY 2022, instead of the \$2.083 billion that was levied in TY 2022. This is a reduction of 88%. It is assumed general fund collections will be reduced by this proportion.
- 30. Expected 95 mill collections, after the adjustments for the decreased rate of appreciation of property under BI 2, are \$391.822 million for FY 2027, \$412.730 million in FY 2028, and \$434.921 million in FY 2029.
- 31. An 88% reduction in these revenue estimates results in revenue declines of \$344.626 million in FY 2027, \$363.016 million in FY 2028, and \$382.533 million in FY 2029.
- 32. An 88% reduction in the 6 mill Montana University System levies, after equivalent adjustments, results in a decrease of \$21.766 million for FY 2027, \$22.927 million in FY 2028, and \$24.160 million in FY 2029.

DOR Administrative Costs

- 33. The costs to the Department of Revenue are unknown and heavily dependent on the Legislature's implementing language if the initiative were to pass.

Office of Public Instruction

- 34. Limitations on the number of permissible mills will have an impact on county retirement GTB under 20-9-368, MCA, debt service GTB under 20-9-371, MCA, and general fund GTB under section 20-9-367, MCA. Currently with the variables available, this amount is undeterminable, but would cause additional general fund expenditures for school equalization and would have additional negative impact to general fund balance. Redistribution of additional GTB funds would be subject to future legislative appropriation.

Fiscal Impact:	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
FTE	0.00	Unknown	Unknown	Unknown
Expenditures:				
Personal Services	\$0	Unknown	Unknown	Unknown
Operating Expenses	\$0	Unknown	Unknown	Unknown
Equipment	\$0	Unknown	Unknown	Unknown
TOTAL Expenditures	\$0	Unknown	Unknown	Unknown
Funding of Expenditures:				
General Fund (01)	\$0	Unknown	Unknown	Unknown
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	\$0	Unknown	Unknown	Unknown
Revenues:				
General Fund (01)	\$0	(\$432,150,000)	(\$479,330,000)	(\$488,860,000)
State Special Revenue (02)	\$0	(\$27,265,000)	(\$30,237,000)	(\$30,842,000)
TOTAL Revenues	\$0	(\$459,415,000)	(\$509,567,000)	(\$519,702,000)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	\$0	Unknown	Unknown	Unknown
State Special Revenue (02)	\$0	Unknown	Unknown	Unknown

Effect on County or Other Local Revenues or Expenditures:

1. The table below shows TY 2022 tax collections by taxing jurisdiction type and the reduction due to an 88% drop in collections.

	County	Local Schools	County-Wide Schools	Cities & Towns	Fire & Misc.
TY 2022 Collections	\$587,697,349	\$675,085,981	\$124,370,782	\$234,949,526	\$92,582,726
1% Cap Reductions	-\$516,908,000	-\$593,770,000	-\$109,390,000	-\$206,649,000	-\$81,431,000

2. Total reduction in local property tax revenues based on TY 2022 data would be approximately \$1.508 billion.
3. The cost of operational changes to local government billing systems is unknown.

Long-Term Impacts:

1. The impact of BI 2 to state and local governments will grow larger over time as the gap between the true market value of property and BI 2 assessed values widens.
2. Since the constitutional amendment would cap *ad valorem* taxes, it is likely that local governments will shift taxes towards special fees, to the extent possible.


Technical Notes:

Department of Revenue

1. The revenue reductions estimated for BI 2 are largely due to differential tax rates for each tax class. Property in jurisdictions with higher tax rate classes would have lower maximum mill levies. For instance, the average effective tax rate on class 9 property is about 6%, while the average effective tax rate on residential property is 0.78%. If the initiative were to pass, implementing legislation would likely seek to address this wide range of tax rates. If the dispersion of tax rates were narrowed, relative tax burdens would likely shift to classes of property with lower tax rates and would, to some degree, offset revenue reductions as presented in this fiscal note. The 1% limit would likely still constrain some tax shifting.
2. Mill levies are set by individual taxing jurisdictions independently from each other. Determining which jurisdiction in a levy district causes mill levies to exceed the 1% limitation is unclear. It is assumed mills would be adjusted proportionally to remain below the 1% limit.

Office of Public Instruction

3. It is unclear how BI 2 would affect current law exclusion of certain school mills and school mill elections from 15-10-420, MCA and 15-10-425, MCA, limitations.
4. Currently, under the state’s school funding formula (generally Title 20, Chapter 9, MCA,) the computation of the school general fund net levy requirement, sets the number of mills for the BASE area of a district’s general fund budget. The calculation of BASE budgets and general fund budget limits (20-9-308, MCA), require that the trustees of a district adopt a general fund budget that is at least equal to the BASE budget established for the district. How BI 2’s limitations affect school funding and school equalization considerations (minimum and maximum budgets and overall required school equity) is unknown.
5. School new mill levies, approved by election, may cause conflicts with BI 2. (See 20-9-308, 20-9-353, 20-9-502(2)(b), and 20-9-533, MCA).
6. Bond elections described in Title 20, Chapter 9, Part 4, will conflict with BI 2.
7. Limitations on the number of permitted mills will cause revenue shortfalls for districts that are unable to levy to fulfil their school funding requirements.

_____ _____  5-23-23
 Sponsor’s Initials Date Budget Director’s Initials Date

Ballot Statements

Statement of Purpose and Implication

Sponsor's Proposed Statement (79 words):

CI-___ limits annual increases and in valuations of residential property to 2% when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. CI-___ establishes 2019 state valuations as the base year for the valuations of residential property and permits annual reassessment. It requires valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner.

Attorney General's Proposed Statement (135 words):

CI-XX amends the Montana Constitution to limit annual increases in the assessed value of real property for property tax purposes. CI-XX establishes 2019 state valuations as the base year for real property valuations and permits annual reassessment. If real property is not newly constructed, significantly improved, or did not have a change of ownership after January 1, 2020, any increase in the assessed valuation may not exceed 2 percent. Total ad valorem taxes assessed against real property may not exceed 1 percent of the property's valuation, except for such taxes assessed to pay the interest on voter approved indebtedness prior to the effective date of CI-XX. CI-XX allows owners of real property to request a real property's valuation be reduced to reflect substantial damage, destruction, market conditions, or other factors causing a decrease in value.

Yes and No Statements

YES on [Initiative Number]

NO on [Initiative Number]

Fiscal Statement (47 words)

If CI-XX passes, state and local revenues will decrease. State revenues will decrease by \$459.4 million in 2027, \$509.5 million in 2028, and

\$519.7 million in 2029. Local revenues; including county, municipal, school district, and special district revenues, will decrease by \$1.508 billion based on 2022 data.

EXHIBIT 5



MEMORANDUM

To: The Office of the Montana Secretary of State (Filed by email)
From: The Office of the Montana Attorney General
Date: June 5, 2023
Re: Legal sufficiency review of Proposed Ballot Measure No. 2

Ballot Measure #2 is legally insufficient because it violates the separate vote requirement of the Montana Constitution, and is ambiguous in its terms, and its application, thereby making it impossible for voters to understand the Measure, and what they are voting for or against.

Attorney General's Authority

The Attorney General's office and authority are created and bounded by the Montana Constitution. Mont. Const. art. VI, § 4(4) ("The attorney general is the legal officer of the state and shall have the duties and powers provided by law."). The Constitutional phrase 'provided by law' delegates the matter to the Legislature. See *Brown v. Gianforte*, 2021 MT 149, ¶ 41. The Montana Legislature, by law, granted the Attorney General authority to conduct legal sufficiency reviews for proposed ballot measures. Mont. Code Ann. § 13-27-312 (2021).

Legal sufficiency "means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors, the substantive legality of the proposed issue if approved by the voters, and whether the proposed issue constitutes an appropriation as set forth in 13-27-211." MCA § 13-27-312(8). The sufficiency review can be thought of as two buckets: (1) a procedural review if the issue complies with the statutory and constitutional provisions governing submission of the issue to the electorate; and (2) a substantive review of the measure for lawfulness if passed. The Montana Supreme Court recognized the Attorney General's historic authority regarding procedural legal sufficiency issues. See *Montanans Opposed to I-166 v. Bullock*, 2012 MT 168, ¶ 6 ("[T]he Attorney General's review for legal sufficiency is limited by law to determining whether the petition for a ballot issue complies with the statutory and constitutional requirements governing submission of the proposed issue to the electors."). The Attorney General's legal sufficiency review remains subject to judicial review pursuant to MCA § 13-27-316.

DEPARTMENT OF JUSTICE

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Legal sufficiency also requires that a Ballot Issue be written in a manner, and with words which allow it to be understood so that the voters know what they are voting for or against.

Further, the Montana Supreme Court has found that due process requires constitutional initiatives be expressed in sufficiently clear terms so as not to mislead voters:

[T]he ballot issue should clearly state the substance of the proposition. *Board of Education of the City of Eldorado v. Powers* (1935), 142 Kan. 664, 51 P.2d 421. It is elementary that voters may not be misled to the extent they do not know what they are voting for or against. *Burger v. Judge* (U.S.D.C. Mont. 1973), 364 F.Supp. 504, *affd.* 414 U.S. 1058, 94 S.Ct. 563, 38 L.Ed.2d 465. Due process is satisfied if the voters are informed by or with the ballot of the subject of the amendment, are given a fair opportunity by publication to consider its full text, and are not deceived by the ballot's words.

State ex rel. Montana Citizens for Preservation of Citizen's Rights v. Waltmire, 227 Mont. 85, ¶ 90, 738 P.2d 1255 (1987).

The Court has also made clear that “the ballot language must identify the measure on the ballot so that a Montana voter, drawing on both official and unofficial sources of information and education, will [be able to] exercise his or her political judgment.” *Hoffman v. State*, 2014 MT 90, ¶ 16, 374 Mont. 405, 328 P.3d 604, (quoting *MEA-MFT*, 2014 MT 33, ¶ 11, 374 Mont. 1, 318 P. 3d 702; *Harper v. Greely*, 234 Mont. 259, 269, 763 P.2d 650, 657 (1998)).

Article XIV, Section 11

Article XIV, Section 11 of the Montana Constitution 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.” Article XIV, section 11’s separate vote requirement provides a check on the power of Montanans to amend their Constitution. See *Mont. Ass’n of Counties v. State*, 2017 MT 267, ¶ 14, 389 Mont. 183, 404 P.3d 733. “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.” *Id.*, ¶ 15 (internal citation and quotation omitted). The separate-vote requirement ensures “Montana voters always have the option to independently select or reject each constitutional amendment, guaranteeing the people have complete control over Montana's fundamental law.” *Id.*, ¶ 18 (internal citation omitted).

The separate vote requirement for constitutional initiatives prohibits a proposal that makes two or more changes to the Montana Constitution that are substantive and not closely related. *Id.*, ¶ 28. Substantive means, “an essential part of constituent or relating to what is essential.” *Id.*, ¶ 29 (quoting *Black's Law Dictionary* 1429 (6th ed. 1990)). Closely related generally means looking to “whether various provisions are facially related, whether all the matters addressed ... concern a single section of the constitution, whether the voters or the legislature historically has treated the matters addressed as one subject, and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law.” *Id.*, ¶ 29 (quoting *McLaughlin v. Bennett*, 225 Ariz. 351, 238 P.3d 619, 622 (Ariz. 2010)).

The “separate-vote requirement for constitutional amendments is a different and narrower requirement than is a single-subject requirement” for legislation found in Article V, Section 11 of the Montana Constitution. *Marshall v. State*, 1999 MT 33, ¶ 22. The separate vote requirement ensures “voters have complete control over each and every constitutional change.” *MaCO*, ¶ 50. If a proposed constitutional amendment adds new matter to the Constitution, that proposition is at least one change in and of itself. *Id.* at ¶ 28. Modifying an existing constitutional provision is considered at least one change, whether that effect is express or implicit. *Id.*

The Montana Supreme Court favorably cited *Oregon v. Rogers* to flesh out the closely related prong. 352 Ore. 510, 288 P.3d 544 (Ore. 2012). *Rogers* interprets “closely related” to mean whether it is possible for voters to “separately decide” the component parts of a constitutional initiative. 228 P.3d at 552 (collecting and discussing decisions under the separate vote provision).

The Attorney General is also mindful that “intervention in referenda or initiatives prior to an election is not encouraged.” *Cobb v. State*, 924 P.2d 268, 269 (Mont. 1996). Even in cases where the Attorney General finds a measure legally sufficient, the people vote on, and pass a constitutional amendment, the Montana Supreme Court may later find that provision violative of Article XIV. *See generally Mont. Ass'n of Counties v. State*, 2017 MT 267.

Ballot Measure No. 2 proposes an amendment to Article VIII, Section 3 of the Montana Constitution. The proposed amendment limits changes in assessed values for real property for tax purposes and limits the amount of ad valorem taxes that may be assessed against real property. *See Proposed Article VIII, section 3(2)– (8)*.

Ballot Measure No. 2 proposes multiple changes to accomplish its overriding goal of limiting property tax burdens. First, the measure resets valuations to 2019 levels. Second, the measure imposes a 2% cap on annual valuation increases if the property is not newly constructed or significantly improved, or did not have a change in ownership since January 1, 2020. Third, the measure creates a constitutional mechanism for property owners to request a valuation be reduced to reflect

substantial damage, destruction, market conditions, or other factors causing a decrease in value. Fourth, the measure limits the level of ad valorem taxes that may be assessed against a property to 1 % of the property's valuation. The measure also includes minor definitions and exemptions.

At a minimum, the annual valuation cap and limitation on ad valorem tax assessments implicate the separate vote requirement. In simple terms, a property owner's tax bill is the product of the property's value, tax rate, and mill rate. The annual valuation cap limits a property's value for tax purposes. The ad valorem assessment cap limits the other two factors so that in combination they cannot result in a tax assessment exceeding 1% of the property's value. As reflected in the fiscal note, the ad valorem assessment limitation results in substantially more property tax reductions than the 2% cap on property valuations. These provisions clearly impose multiple substantive changes.

It is a close question whether these changes are closely related and thus survive separate vote scrutiny. The fact that the proposed measure amends a single section of the Montana Constitution and relates to a single purpose of limiting property tax increases tilts towards finding legal sufficiency. *See Mont. Ass'n of Counties*, ¶ 29 (listing factors for consideration). If the proposed measure applied to only one variable in the property tax equation, it likely would fail in its goal of property tax limitation. Instead, the measure affects multiple variables within the equation, but this doesn't equate to a violation of the separate vote requirement because it retains a singular purpose within a single section of the Montana Constitution. However, voters cannot express support for limiting increase in annual property valuations, while also opposing an overall cap on the level of taxes levied against a property. This tilts against finding the changes closely related. The staggering fiscal difference between the two changes further supports finding the changes are not closely related.

Because, at a minimum, voters cannot support or oppose each change embodied within the Measure, it fails to satisfy the separate vote requirement. Failure to comply with Mont. Const. art. XIV, § 11 renders the Measure a nullity and it cannot be placed on the ballot due to this legal insufficiency. *See generally Mont. Ass'n of Counties v. State*, 2017 MT 267

Legal Insufficiency Due To Ambiguity

At least one interested party raised compliance with the Montana Supreme Court's decision in *State ex rel. Montana Citizens for Preservation of Citizen's Rights v. Waltermire*, 738 P.2d 1255 (1987). Montana voters passed CI-30, 56% to 43%, in 1986. CI-30 amended Article II, § 16, to grant the Legislature authority to determine the rights and remedies for injury or damage to person, property or character. Opponents to the measure sued to nullify the results because voters were misled as to the substance of the measure. *Waltermire*, 738 P.2d at 1257–58. The Court agreed. *Id.* "It is elementary that voters may not be misled to the extent they do not know what

they are voting for or against.” *Id.* at 1258. And the proper remedy was to invalidate the voter-passed amendment. *Id.*

The Measure isn't legally sufficient under *Waltermire*. Because the Measure substantially changes Article VIII which governs “the valuation of all property” by including the limiting language contained in subsections (2), (3), and (4) it is ambiguous as to its application and limitations. The application ambiguity is compounded by the failure to clearly define operative words such as “real property,” “ad valorem taxes,” and “significantly improved.” Section (7) of the Measure provides for a 1% cap on “Total ad valorem taxes . . .” Absent a clear definition of that phrase, it is impossible for a voter to discern whether value based special assessments are included in the cap. The lack of discernable definitions and scope deprives voters of the ability to “know what they are voting for or against.” *Waltermire*, 738 P.2d at 1258. The lack of information runs afoul of the Montana Constitution itself and must be legally insufficient. *Id.*

Significant Material Harm Statement

The Attorney General lacks authority to make a determination of significant material harm regarding Ballot Measure No. 2. *See MFPE, et al. v. State et al.*, DDV 2022-22 (1st Jud. Dist. Mont.) (Apr. 27, 2022) (the requirements of MCA § 13-27-312(9) apply only to statutory initiatives).

Senate Bill 93 (2023) does not apply to Ballot Measure No. 2. First, the Attorney General received the proposed measure on May 4, 2023, from the Secretary of State. That started the Attorney General's 30-day clock to complete the legal sufficiency review. At that time, Senate Bill 93 (2023) had not yet been transmitted to the Governor or signed into law. As such, MCA § 13-27-312(9) (2021) controls. Further, Senate Bill 93, § 58 contains an express savings clause—again, meaning that because this measure was submitted prior to Senate Bill 93's effective date, MCA § 13-27-312(9) (2021) applies.

Conclusion

Because Ballot Measure #2 violates Article XIV, Section 11 of the Montana Constitution, and contains substantive ambiguities it is legally insufficient and may not be placed on the ballot.

The Attorney General recognizes the separate-vote requirement presents a close question of law, but the Attorney General finds that because the valuation cap and ad valorem tax cap impose such differing fiscal impacts, the changes are not closely related and thus do not comply with Article XIV, Section 11 of the Montana Constitution.

Ballot Statements

The Attorney General shall ensure the ballot statements “express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.” The statement of purpose and implication must be 135 words or less. MCA, § 13-27-312(2)(a).

Ballot Measure #2's proponent submitted the following 78-word statement:

CI-___ limits annual increases and in valuations of residential property to 2% when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. CI-___ establishes 2019 state valuations as the base year for the valuations of residential property and permits annual reassessment. It requires valuations to be reduced to reflect substantial damage, destruction, market conditions, or other factors causing decreases in value if requested by the owner.

YES on Constitutional Initiative CI-___
 NO on Constitutional Initiative CI-___

The Attorney General has determined that the Measure is not legally sufficient, and therefore has not endeavored to prepare a Ballot Statement which remedies the ambiguous language of the Measure.

The Attorney General requested a fiscal note for Ballot Measure #2. The fiscal note shows no impact to state revenue, expenditures, or liabilities in FY 2026. In FY 2027 a reduction in total revenue of \$459,415,000, FY 2028 a reduction in total revenue of \$509,567,000, and in FY 2029 a reduction in total revenue of \$519,702,000. The fiscal note reflects technical notes and significant long-term impacts. Because the measure is legally insufficient, the Attorney General declines to forward a statement of fiscal impact at this time. MCA, § 13-27-312(10)(c) (2021).

Conflicting Ballot Measures

The Attorney General is not aware of any other ballot measures which conflict with Ballot Measure #2.

June 5, 2023



David M. Ortley
Deputy Attorney General

EXHIBIT 6



MEMORANDUM

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: December 22, 2021
Re: Legal sufficiency review of Proposed Ballot Measure No. 9

Legal Sufficiency

The Attorney General determines that Proposed Ballot Measure No.9 is legally sufficient.

Montana law grants the Attorney General authority to conduct substantive legal review of proposed ballot measures to determine their legal sufficiency. *See* Mont. Code Ann. § 13-27-312(8) (“[L]egal sufficiency’ means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors, the substantive legality of the proposed issue if approved by the voters, and whether the proposed issue constitutes an appropriation.”).

“[I]ntervention in referenda or initiatives prior to an election is not encouraged.” *Cobb v. State*, 924 P.2d 268, 269 (Mont. 1996). To protect the rights of initiative and referenda enshrined in the constitution pre-election review should not be routinely conducted. *See Reichert v. State*, 2012 MT 111, ¶ 59. Measures that are “unquestionably and palpably unconstitutional on [their] face,” however, may be withheld as allowing them to go forward does not protect the right of initiative and referenda, and instead is “a waste of time and money for all involved.” *Id.*

Ballot Measure No. 9 proposes an amendment to article VIII, section 3 of the Montana Constitution. The proposed amendment limits changes in assessed values for residential property for tax purposes. *See* Proposed Article VIII, Section 3(2)–(5). Generally speaking, the effect of the proposed amendment limits changes in assessed value to the lesser of two percent or the percent change in the consumer price index.

Interested parties raised potential equal protection issues created by Ballot Measure No. 9. *See* views of Montana Association of REALTORS at 4 citing *Roosevelt v. Montana Dep’t of Revenue*, 1999 MT 30, 293 Mont. 240, 975 P.2d 295. *Roosevelt* concerned the 2% phase-in of the changes in valuation under MCA, § 15-7-111(1)

DEPARTMENT OF JUSTICE

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(1997). The 2% phase-in limited the reduction in Roosevelt's property's assessed value to \$3,235 even though the appraised value declined by \$161,757. *Roosevelt*, ¶ 5. The Montana Supreme Court recognized a state interest in "avoiding further property tax increases." *Id.*, ¶ 38. But, because the statute:

Create[ed] a class of property owners whose taxes are assessed on a basis greater than the market values of their property while other property owners are assessed based on the actual, or less than the actual market values of their property, ... the property owners in the first class [] pay a disproportionate share of this state's property taxes, in violation of the Equal Protection Clause found at Article II, Section 4, of the Montana Constitution.

Id. Ballot Measure No. 9 shares similarities with the old phase-in provision in that both measures limit annual downward changes in assessed values to 2% of the change in value.

But, Ballot Measure No. 9 differs from the statutory scheme in *Roosevelt* in that it amends the Montana Constitution. The Montana Supreme Court invalidated MCA, § 15-7-111(1) on purely state constitutional grounds. *See Roosevelt*, ¶¶ 38, 51. If passed, Ballot Measure No. 9's amendment must be harmonized with other constitutional provisions. *See Board of Regents v. Judge*, 168 Mont. 433, 444, 543 P.2d 1323 (1975) (Harmonizing the "power of the legislature to appropriate" and the "power of the Regents to supervise, coordinate, manage and control the university system."). In other words, a constitutional amendment cannot be facially unconstitutional because of the duty to harmonize. Because Ballot Measure No. 9 is a constitutional amendment, it differs from the prior phase-in scheme in such a way that Ballot Measure No. 9 is not unquestionably and palpably unconstitutional.

The overriding presumption must be that Montanans enjoy the ability to amend their constitution. *See Mont. Const. art. II, § 2* ("The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary."). Ballot Measure No. 9 is legally sufficient.¹

¹ No interested parties raised procedural concerns affecting Ballot Measure No. 9's legal sufficiency. Further, no interested parties raised concerns under the "separate-vote" requirement for constitutional amendments. *See generally Mont. Assoc. of Counties v. State*, 2017 MT 267, 389 Mont. 183, 404 P.3d 733. The Attorney General, likewise, does not find any facial defects under either theory that render the proposed measure legally insufficient.

Significant Material Harm Statement

The Attorney General lacks authority to make a determination of significant material harm regarding Ballot Measure No. 9.

“When interpreting statutes, our role is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” *Comm'r of Political Practices for Mont. v. Mont. Republican Party*, 2021 MT 99, ¶ 7, 404 Mont. 80, 485 P.3d 741. The Attorney General shall “review the proposed ballot issue as to whether the proposed issue could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in Montana if approved by the voters.” MCA, § 13-27-312(9)(a). “If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-204(2) on the final form of the petition.” MCA, § 13-27-312(9)(b). MCA, § 13-27-204 governs the form of petitions for statutory initiatives. MCA, § 13-27-207 governs the form of petitions for constitutional initiatives.

Multiple interested parties asked the Attorney General to exercise this authority by finding Ballot Measure No. 9 causes significant material harm to one or more business interests. *See generally* views submitted by Montana Farm Bureau Federation, Montana Infrastructure Coalition, Montana Budget and Policy Center, Montana Association of REALTORS, Montana Federation of Public Employees, and Montana Chamber of Commerce. Ballot Measure No. 9 presents the first time interested parties requested such a finding.

The Attorney General cannot make such a finding because the plain language of the statute applies this provision only to statutory initiatives not constitutional initiatives. *See* MCA, § 13-27-312(9)(b) (The finding applies only to petitions under § 13-27-204, not -207). Ballot Measure No. 9 is a constitutional initiative. The Attorney General takes no position on the harm alleged by interested parties regarding Ballot Measure No. 9. Instead, the Attorney General simply recognizes the Legislature delegated limited authority to the Attorney General and that delegated authority does not include the power to make a ‘significant material harm’ determination for constitutional initiatives.

Changes to Ballot Statements

The Attorney General forwarded a proposed statement of purpose and implication that left intact the initiative sponsor’s proposed statement.

Based on the views of interested parties, the Attorney General amends the Statement of Purpose and Implication to read as follows:

[Initiative number] limits annual increases and decreases in valuations of residential property to either 2% or the inflation rate (whichever is lower) when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. [Initiative number] establishes 2019 state valuations as the base year for the valuations of residential property and permits annual state reassessment. It requires the Legislature to limit total ad valorem property taxes on residential property to 1% or less of the assessed valuation. It requires the Legislature to define “residential property” and provide for the application and implementation of the initiative and permits the state to assess other real property based on acquisition value.

The final statement continues to lead with the main purpose of the initiative, which is to limit changes in assessed valuation of residential property taxes. *See* views of Montana Federation of Public Employees at 1 for a contrary position. The final statement amends the proposed statement by making clear that ‘change in’ value under the text of the proposed measure includes both increases and decreases to assessed value. *See* views of Montana Association of REALTORS at 1. The final statement also adopts clarifying language proposed by views of interested parties. *See id.* at 2.

The Attorney General forwarded a proposed statement of fiscal impact to interested parties. Based on feedback from those parties, the statement now reads as follows:

[Initiative number] reduces state property tax revenue by \$24 million in 2025, \$34 million in 2026, and \$29 million in 2027 by capping allowable increases in residential property valuations. [Initiative number] will also have an undetermined impact on local government and school district tax revenue, subject to legislative action.

The amended statement incorporates views submitted regarding proper terminology. *See* views of Montana Budget and Policy Center at 1–2. The Attorney General declines to insert proposed statements such as the measure will have an “unquantifiable, substantial, negative impact” on school districts and local government. *See* views of Montana Federation of Public Employees at 1–2. Ballot statements “may not be arguments or written so as to create prejudice for or against the issue.” MCA, § 13-27-312(4). Modifiers such as ‘negative’ create prejudice by inserting argumentative language against the proposed measure. Current language reflects the uncertain effect of Ballot Measure No. 9 on local taxing jurisdictions.

The Attorney General's reliance on an 'undetermined' local impact reflects the high degree of uncertainty expressed in the fiscal note. *See* Fiscal Note Assumption #17; Effect on County or Other Local Government Revenues or Expenditures #1 ("The interaction of the reduction to the tax base (which increases mills) and the cap on mills proposed in this initiative makes the calculation [of] the true impact on local jurisdictions and taxpayers unknown.").

CONCLUSION

Proposed Ballot Measure No. 9 is legally sufficient. Further, for the reasons stated, the Attorney General cannot enter a statement of 'significant material harm' to one or more business interests.

EXHIBIT 7

Statement of Purpose and Implication:

CI-121 limits annual increases and decreases in valuations of residential property to either 2% or the inflation rate (whichever is lower) when assessing property taxes if the property is not newly constructed, significantly improved, or had a change of ownership since January 1, 2019. CI-121 establishes 2019 state valuations as the base year for the valuations of residential property and permits annual state reassessment. It requires the Legislature to limit total ad valorem property taxes on residential property to 1% or less of the assessed valuation. It requires the Legislature to define "residential property" and provide for the application and implementation of the initiative and permits the state to assess other real property based on acquisition value.

Fiscal Statement:

CI-121 reduces state property tax revenue by \$24 million in 2025, \$34 million in 2026, and \$29 million in 2027 by capping allowable increases in residential property valuations. CI-121 will also have an undetermined impact on local government and school district tax revenue, subject to legislative action.

Signature	Date Signed	Residence Address or Post-Office Address or Home Telephone Number	Printed Last Name And First and Middle Initials	Co. Election Ofc Use Only	
				Leg. Rep. Dist #	Rsvd
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

PETITION # _____ COUNTY: _____ Initials of Petitioner for Signatures on This Page: _____

Sponsor's Instructions to Signature Gatherers: (1) You must be a Montana resident. (2) Only Montana voters can sign. (3) Sign your own petition sheet if you're a Montana voter. (4) Each petition sheet must have signatures from the same county. (5) Show copies of CI-121's text to those wishing to review it. (6) You must personally witness each signature. (7) **You MUST fasten an Unsworn Declaration to your petition sheet(s).** (8) For more than 25 sheets, use a separate Unsworn Declaration. (9) Do not add signatures after signing your Unsworn Declaration – use a new petition sheet & Unsworn Declaration for subsequent signatures. (10) Deliver (or mail soon enough to ensure timely arrival) original petition sheet(s) plus your Unsworn Declaration to the county election administrator where the signers live by **6/17/22**. See: <bit.ly/3JpP6i3> for county administrator addresses. (11) Please visit www.CapPropertyTaxes.com for more information.

THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 121 (CI-121)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

Section 1. Article VIII, section 3, of The Constitution of the State of Montana is amended to read:

“Section 3. Property tax administration -- limitation. ~~(1) The~~ Subject to this section, the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(2) Except as provided in this section, the assessed valuation of residential property shall be the amount determined by the state in 2019.

(3) The value of residential property may be reassessed annually on January 1 of each year. If residential property is not newly constructed or significantly improved or did not have a change of ownership since January 1, 2019, the change in revised assessed valuation for a year may not exceed the lower of the following:

(a) two percent of the valuation for the prior year; or

(b) the percent change in the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(4) After January 1, 2019, whenever residential property is newly constructed or significantly improved or has a change of ownership, it must be assessed by the state at its fair market value with subsequent changes to that assessment made in accordance with the limits in subsections (3)(a), (3)(b), and this subsection (4).

(5) The legislature shall limit the total amount of ad valorem taxes assessed against residential property and such limit shall not exceed one percent of the valuation established by this section.

(6) The legislature shall define “residential property” and provide for the application and implementation of subsections (2) through (5), and it may provide for acquisition valuation of other real property.

NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 3. Applicability. [This act] applies to property tax years beginning after December 31, 2023.

- END -

EXHIBIT 8

FW: Ballot Measure #2

From: Dagnall, Ray (rdagnall@mt.gov)
To: matthewmonforton@yahoo.com
Cc: soselections@mt.gov
Date: Friday, June 9, 2023 at 03:40 PM MDT

Good Afternoon Mr. Monforton,

The Attorney General's Office has informed our office that they have made a determination of insufficiency with Ballot Issue submission #2. Any questions concerning this determination should be directed to the Attorney General's Office. Our office will reflect this determination on our website here [2024 Ballot Issues](#)

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Ray Dagnall | Program Specialist
Montana Secretary of State, Christi Jacobsen
State Capitol Building
Helena, MT 59601
PHONE 406.444.9009

[website](#) | [email](#) | [map](#)

From: Ortley, David <David.Ortley@mt.gov>
Sent: Monday, June 5, 2023 4:06 PM
To: Dagnall, Ray <RDagnall@mt.gov>
Cc: John@Cottonwoodlaw.org; matthewmonforton@yahoo.com; Lang, Dia <Dia.Lang@mt.gov>; Mead, Brent <Brent.Mead2@mt.gov>
Subject: Ballot Measure #2

Mr. Dagnall:

Attached, and filed by electronic message, is the Legal Sufficiency Review of the Montana Attorney General.

Cordially,

David M. Ortley

Deputy Attorney General

Montana Dept. of Justice

215 North Sanders
P.O. Box 201401
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Phone: (406) 444-2078

david.ortley@mt.gov



060523 determination of insufficiency final BM2.pdf
2.9MB

CERTIFICATE OF SERVICE

I, Matthew G. Monforton, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-15-2023:

Christian Brian Corrigan (Govt Attorney)
215 North Sanders
Helena MT 59601
Representing: Austin Knudsen
Service Method: eService

David M. Ortley (Attorney)
2225 11TH AVE
HELENA MT 59601-4880
Representing: Austin Knudsen
Service Method: eService

Austin Markus James (Govt Attorney)
1301 E 6th Ave
Helena MT 59601
Representing: Christi Jacobsen
Service Method: eService

Matthew Gerald Monforton (Petitioner)
32 Kelly Ct.
Bozeman MT 59718
Representing: Self-Represented
Service Method: Conventional

Electronically Signed By: Matthew G. Monforton
Dated: 06-15-2023