

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. OP 23-0331

MATTHEW G. MONFORTON,

Petitioner

v.

AUSTIN KNUDSEN, IN HIS OFFICIAL CAPACITY AS MONTANA
ATTORNEY GENERAL; CHRISTI JACOBSEN, IN HER OFFICIAL
CAPACITY AS SECRETARY OF STATE

Respondents.

**AMICUS CURIAE BRIEF OF THE MONTANA LEAGUE OF CITIES
AND TOWNS, MONTANA ASSOCIATION OF COUNTIES, AND
MONTANA QUALITY EDUCATION COALITION IN SUPPORT OF
THE STATE RESPONDENTS**

ORIGINAL PROCEEDING

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The Montana League of Cities and Towns (“League”), the Montana Association of Counties, (“MACO”), and the Montana Quality Education Coalition (“MQEC”), (collectively “local government amici”) by leave of Court granted on motion, respectfully submits this *amicus curiae* brief in support of the Montana Attorney General and Montana Secretary of State.

STATEMENT OF THE CASE

The issues presented are of paramount importance to Montana local governments. Montana’s cities, towns, counties, and school districts fund and provide basic critical services for most Montanans. Law enforcement, fire, medical, water, and wastewater services exist because property is taxed.

Petitioner’s proposed ballot issue threatens the very fabric of local government. It does so without giving voters the information needed to understand the broad effects of the ballot issue, by violating constitutional requirements, and rendering a vote on the ballot issue as destructive as it would be pointless. Through the fiscal statement, the Attorney General provided essential context which Petitioner complains is too much information for voters. Petitioner has not challenged the substance of the fiscal statement. Local government *amici* urge this Court to dismiss the Petition.

ARGUMENT

As State Respondents explain, Ballot Issue No. 2 is legally insufficient and

should not be presented to voters. The Attorney General has statutory and constitutional authority to interpret the Montana Constitution and Ballot Issue No. 2 is constitutionally infirm. *See Meyer v. Knudsen*, 2022 MT 109 ¶ 9, 409 Mont. 19, 510 P.3d 1246 (Attorney General may review for legal sufficiency by determining “whether . . . ballot issue complies with statutory and constitutional requirements ‘governing submission of proposed issue to the electors’”).

Local government amici seek to provide context to the importance of including fiscal impacts to local governments. The only impetus to exclude the fiscal impact on local government is to keep the public in the dark about the absolutely devastating impact of Ballot Issue No. 2. Not only is such a position at odds with the statutory framework, laid out below, it ultimately undermines the public's fundamental right to know under Article II, Section 9 of the Montana Constitution.

1. The Court does not have original jurisdiction over Petitioner's Arguments IV and V.

Mont. Code Ann. § 13-27-316, limits review in an original proceeding before this Court to challenges of either the adequacy of the ballot statement or the attorney general's determination regarding legal sufficiency. *See Hoffman v. State*, 2014 MT 90 ¶ 10, 374 Mont. 405, 328 P.3d 604 (“this Court may exercise original jurisdiction . . . to review the Attorney General's legal sufficiency determination”). Petitioner asks the Court to review and conclude that § 13-27-312(3), MCA (repealed 2023

Mont. Laws Ch. 647), unconstitutionally requires a fiscal statement to be placed on the ballot issue petition forms. *See Montana AFL-CIO v. McCulloch*, 2016 MT 200 ¶5, 384 Mont. 331, 380 P.3d 728 (for proposition that “the statute [§ 13-27-316] does not confer original jurisdiction for any other purposes” citing *Hoffman v. State*, 2014 MT 90 ¶ 10, 374 Mont. 405, 328 P.3d 604). Petitioner also alleges, in the alternative that, the Attorney General’s fiscal statement unlawfully includes effects on local governments instead of limiting financial effects to the “State.”

2. Fiscal statements must include impacts to local government.

Assuming *arguendo* that the Court undertakes review of whether the legislature can require fiscal statements for ballot issues, the answer to the question is a resounding yes. § 13-27-312(3), MCA. Fiscal statements help voters make informed decisions. Far from interfering with the citizens’ initiative, fiscal review under § 13-27-312(3), MCA, increases voter competency and engagement. A fiscal statement must estimate “where possible, the dollar amount of the increase or decrease in revenue or expenditures, costs, and long-term financial effects.” *Montana Consumer Finance Ass’n v. State*, 2010 MT 185 ¶ 15, 375 Mont. 237, 238 P.3d 185. Further, a fiscal statement serves as objective analysis for financial impacts. *Id.* Absent a fiscal statement, voters would not have critical information related to the revenue impacts.

By statute, fiscal statements must include effects on local government. Section

13-27-312(3), MCA, (cross-referencing § 5-2-205, MCA) states:

(3) 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.

Ballot Issue No. 2 assuredly would affect revenue, expenditures, and fiscal liability of the State, obligating the Attorney General to order a fiscal note which must “substantially comply” with § 5-4-205, MCA. When a fiscal note is required, as is the case at hand, the Attorney General is obligated to follow the substance and procedure provided for in statute. Fiscal notes, under § 5-4-205, MCA, include consultation with local governments and must provide whether there will be a substantial fiscal impact on local government.

For its part, § 5-4-205, MCA, details the required contents of fiscal notes, requiring objective analysis of fiscal impact and does not limit analysis of fiscal impact to the State. In fact, the “state” is not even listed. Section 5-4-203, MCA, provides that the budget director “*in cooperation with the state or local agencies or officials or organizations representing local agencies or officials affected by the bill,* is responsible for the preparation of the fiscal note[.]” [emphasis added].

Petitioner reads “the state” in § 13-27-312(3), MCA, to the exclusion of the

rest of the statute and ignores the direction to comply with § 5-4-205, MCA. Further, Petitioner ignores § 5-4-210, MCA where an estimate of local government impact is required for bills that would have a direct or indirect impact on a local government unit. Petitioner's narrow reading entirely ignores that local governments are political subdivisions of the State. To exclude fiscal effects on local governments when the ballot initiative is squarely aimed at limiting revenue to local governments that comes from property taxes would be to deny voters the most basic information about the proposed ballot initiative.

Local governments, representing their constituents as Montana citizens, are, obligated to conduct the day-to-day functions and services their residents expect, including law enforcement, fire, medical, water, and wastewater services as well as public elementary and secondary schools. To exclude the fiscal impacts of Ballot Issue No. 2 on local government would be to grossly misrepresent the "State" in the eyes of the citizens of Montana. The staggering fiscal statement points to what would be excluded from the citizens if Ballot Issue No. 2 were to pass. At a minimum, citizens should know what they are voting for. See *Mont. Citizens for the Pres. of Citizens' Rts v. Waltermire* (1987), 227 Mont. 85, 90, 738 P.2d 1255, 1258 "it is elementary that voters not be misled to the extent they do not know what they are voting for or against").

CONCLUSION

The Court should decline to accept original jurisdiction of the Petitioner's Arguments IV and V or in the alternative conclude that fiscal impact statements attendant to ballot initiatives must include statements as to the fiscal impact of the proposed ballot initiative on local governments.

DATED this 14th day of July, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE MONTANA LEAGUE OF CITIES AND TOWNS, MONTANA ASSOCIATION OF COUNTIES, and MONTANA QUALITY EDUCATION COALITION, AS *AMICUS CURIAE* complies with Montana Rule of Appellate Procedure 11(4) because the amicus brief is proportionately spaced using Microsoft Word for Office 365 in 14-point Times New Roman font and contains 1,250 words, excluding the parts of the brief excluded by the Rule.

s/ Thomas J. Jodoin
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Dated: July 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, the foregoing BRIEF FOR THE MONTANA LEAGUE OF CITIES AND TOWNS, MONTANA ASSOCIATION OF COUNTIES, and MONTANA QUALITY EDUCATION COALITION, AS *AMICUS CURIAE* was electronically filed with the Montana Supreme Court. I also certify that true and accurate copies of the foregoing brief were served on the following:

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