

ORIGINAL

FILED

07/01/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0408

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0408

HANNAH RHODES, JOE ADDY, and
MONTANA LIFE DEFENSE FUND,

Petitioners,

v.

STATE OF MONTANA,

Respondent,

and

DOCTOR SAMUEL DICKMAN, PLANNED
PARENTHOOD ADVOCATES OF MONTANA,
ACLU of MONTANA, and FORWARD
MONTANA,

Intervenors.

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Clerk of Supreme Court
State of Montana

ORDER

Petitioners Hannah Rhodes, Joe Addy, and Montana Life Defense Fund (collectively the “Defense Fund”) seek declaratory judgment on original jurisdiction under M. R. App. P. 14(4). The Defense Fund seeks to challenge the constitutionality of Constitutional Initiative No. 128 (CI-128). CI-128—described, in part, as “A constitutional initiative that would amend the Montana Constitution to expressly provide a right to make and carry out decisions about one’s own pregnancy, including the right to abortion”—appeared on the 2024 General Election Ballot. On November 5, 2024, Montana voters approved CI-128, with 345,070 (58%) voting in favor and 252,300 (42%) voting against.

On June 9, 2025, the Defense Fund filed this original proceeding, asking this Court to “declare CI-128 null and void.” The Defense Fund alleges the rights of election-day

registrants were violated because the Secretary of State did not print the full text of CI-128 on the ballot, which it claims is required by Article XIV, Section 9(3), of the Montana Constitution.¹ Although it advises the Court it seeks only to challenge the validity of CI-128, the Defense Fund asserts every constitutional initiative printed on Montana's ballots since 1978 has been similarly constitutionally deficient.

First, we consider whether this matter is properly before us as an original proceeding. Pursuant to M. R. App. P. 14(4), an original proceeding in the form of a declaratory judgment action may be commenced in this Court when urgency or emergency factors make litigation in the trial courts and the normal appeal process inadequate and the case involves purely legal questions of statutory or constitutional interpretation that are of statewide importance.

In this case, the Defense Fund alleges urgency or emergency factors exist in this case because "CI-128 will be effective July 1, 2025, and if enacted will eliminate all regulation of abortion up to the moment of birth." However, the actions the Defense Fund complains of occurred on November 5, 2024. Any urgency or emergency that exists is entirely of the Defense Fund's own making, because it waited seven months to file this petition. We have repeatedly warned parties they cannot manufacture an emergency due to lack of diligence. *Hert v. Mont. Sixteenth Jud. Dist. Ct.*, No. OP 24-0070, 416 Mont. 551, 545 P.3d 1067 (Feb. 6, 2024) (supervisory control summarily denied where delay in petitioning meant effective relief was unavailable); *State v. Mont. First Jud. Dist. Ct.*, No. OP 22-0315, 409 Mont. 557, 512 P.3d 1178 (June 14, 2022) (supervisory control summarily denied where State waited nine months without attempting to resolve dispute and then alleged need for clarification was emergent). The Defense Fund does not explain why it waited until mid-2025 to petition this Court on an issue that, at the latest, arose in

¹ The Defense Fund did not name the Secretary as a party to this original proceeding, nor did it serve her with the Petition. The Defense Fund also did not attach a copy of a ballot as an exhibit, in violation of M. R. App. P. 14(5)(iv), which requires, in part, that petitions made under Rule 14 include, as exhibits, copies of those documents necessary to make out a prima facie case or substantiate the petition.

late 2024.

Furthermore, original proceedings under Rule 14(4) must involve purely legal questions of statutory or constitutional interpretation. The Defense Fund argues the alleged failure to print the entire text of CI-128 on the ballot violated the constitutional rights of election-day registrants because they were not mailed a copy of the Voter Information Pamphlet (VIP) prior to November 5, 2024, and thus the failure to print the full text of CI-128 on the ballot denied these election-day registrants the right to “know what they are voting for or against.” The Defense Fund asks us to “declare CI-128 null and void” because of this alleged violation of the rights of election-day registrants.² The Defense Fund provides declarations from Rhodes and Addy, who each declared, “Prior to the election on November 5, 2024, I had never been provided with an opportunity to read, evaluate, or analyze the full text of the constitutional amendment proposed by CI-128.” They further declared, “I was not provided with a copy of the Voter Information Pamphlet published by the Secretary of State.” In the Petition, the Defense Fund declares that “election-day registrants are not provided with a copy of the VIP. However, Rhodes’ and Addy’s declarations, and the Defense Fund’s unsubstantiated assertion, do not provide sufficient factual support for the Defense Fund’s argument that election-day registrants were denied the right to consider the full text of CI-128 because the Montana Constitution and applicable statutes provide several opportunities for Montanans to read the full text of proposed constitutional initiatives both prior to and on Election Day, and the VIP is available to election-day registrants.

Article XIV, Section 9, of the Montana Constitution, allows the people the right to 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, including at least ten percent of the qualified electors in each of two-fifths of the legislative districts. Mont. Const. art. XIV, § 9(1). “The petitions shall be filed with the

² The Defense Fund does not tell us how many election-day registrants exist for the 2024 General Election, nor does it assert that the number of election-day registrants was sufficient to change the outcome of this vote.

secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.” Mont. Const. art. XIV, § 9(2).

An earlier proposed version of Section 9 would have specified that the Secretary of State would cause the amendment “to be published in full in at least one newspaper in each county, if such there be . . .” Montana Constitutional Convention, Verbatim Transcript, February 18, 1972, Vol. III, p. 505. However, the Delegates debated if Section 9 should provide broader language to allow communication via media other than newspapers. After considerable debate, Delegate George B. Heliker proposed the language that was ultimately approved: in place of “in full in at least one newspaper in each county, if such there be,” the Delegates substituted “as provided by law.” Conv. Tr., Vol. III, p. 513. As Delegate Heliker explained, “[T]here may be a revolution in communications technology which we cannot now even imagine, and to include a provision in a constitution that the publication be in a newspaper seems, to me, to be the maximum of inflexibility.” Conv. Tr., Vol. III, p. 513.

Article XIV, Section 9(2), of the Montana Constitution, requiring the Secretary of State to publish proposed constitutional initiatives “as provided by law” means she must comply with § 13-27-311, MCA, which states:

(1) If a constitutional initiative is submitted to the people, the secretary of state shall have the proposed constitutional initiative published in full twice each month for 2 months prior to the election at which it is to be voted upon by the people in not less than one newspaper of general circulation in each county.

(2) (a) For a proposed constitutional referendum, the secretary of state may arrange for newspaper publication or radio or television broadcast of the constitutional referendum in each county.

(b) The ballot statements reviewed or prepared by the attorney general for the constitutional referendum, as described in 13-27-220, are sufficient for the publication allowed by this subsection (2) and should be made at least twice each month for 2 months prior to the election.

(c) The secretary of state shall select the method of notification that the secretary of state believes is best suited to reach the largest number of potential electors.

In addition to the pre-election notification in § 13-27-311, MCA, the Secretary of State is also required, by statute, to prepare and publish the VIP in accordance with § 13-27-410, MCA. Before each election, the Secretary of State prepares a VIP that must include the full text of any initiative that will appear on the upcoming ballot. Section 13-27-401(1)(a), MCA. The Secretary of State further must arrange for the printing and delivery of the VIP. Section 13-27-410, MCA. Pursuant to § 13-27-410(4), MCA, no later than 30 days before the election, the county official responsible for voter registration in each county shall mail a copy of the VIP to each registered voter in that county who is on the active voter list. In addition to these mailing and distribution requirements, § 13-27-410(5), MCA, provides, “Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the statewide ballot issues.”

Also, the “revolution in communications technology” Delegate Heliker predicted has arrived. Although not explicitly required by statute, the Secretary of State maintains a website, accessible to the public, that includes the VIP along with other information about Montana’s elections.³ The website includes a page dedicated to the VIP, with links to the written 2024 VIP, as mailed to voters in accordance with § 13-27-410, MCA, audio and electronic Braille versions of the VIP, and a “FAQ” (Frequently Asked Questions). Christi Jacobsen, *2024 Montana Voter Information Pamphlet* (retrieved June 27, 2025), <https://perma.cc/KU4Y-S8LR>. The FAQ explains the VIP, advising the reader what the VIP will contain, when it will be available for the upcoming election, and how to obtain one—noting that, in addition to requesting a hard copy, individuals may view an electronic version of the VIP on the Secretary of State website. The FAQ further notes that copies of the VIP will be available at each precinct as required by Montana law. Christi Jacobsen,

³ <https://sosmt.gov>

2024 Voter Information Pamphlet (VIP) FAQs (retrieved June 27, 2025), <https://perma.cc/MPE8-WQJM>.

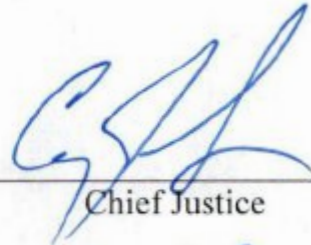
In support of the present petition, Rhodes and Addy declare they were “not provided” VIPs and were “never . . . provided with an opportunity to read . . . the full text of . . . CI-128.” However, their declarations do not explain why such opportunity did not exist for them. Are they alleging the Secretary of State failed to publish CI-128 for two months prior to the election as required by Article XIV, Section 9(2), of the Montana Constitution? Or that the Secretary of State violated § 13-27-410(5), MCA, by failing to make ten copies of the VIP available at their respective precincts on election day? Why did the information on the Secretary of State’s website—including the VIP, accessible variations of the VIP, and the FAQ’s instructions for obtaining a printed copy—also not provide Rhodes and Addy with “an opportunity to read . . . the full text of . . . CI-128?” Declarations of two election-day registrants who were, for unexplained reasons, unable to avail themselves of the pre-election newspaper publications, the Secretary of State website, the statutorily mandated copies of the VIP available at every precinct on Election Day, and possibly other methods of dissemination not mentioned in this Order, do not provide adequate factual support for the Defense Fund’s assertion that election-day registrants were denied “the right to know what they were voting for or against” because the full text of the initiative was not printed on the ballot itself. Quoting *State ex rel. Montana Citizens for Preservation of Citizen’s Rights v. Waltermire*, 227 Mont. 85, 90, 738 P.2d 1255, 1258 (1987), the Defense Fund argues that “the electorate must be provided with the full text of any amendment to guard against voters being ‘misled to the extent they do not know what they are voting for or against.’” However, the Defense Fund has not demonstrated that the electorate was not provided with the full text of CI-128. Moreover, the Defense Fund’s entire argument is undermined by *Waltermire*’s next sentence: “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.” *Waltermire*, 227 Mont. at 90, 738 P.2d at 1258.

Since the Defense Fund has not demonstrated urgency or emergency factors make litigation in the trial courts and the normal appeal process inadequate, and it has not developed the facts necessary to support its legal arguments, we conclude this matter is not appropriate for an original proceeding in the form of a declaratory judgment action before this Court. We decline to exercise original jurisdiction because the Defense Fund has not met the requirements of M. R. App. P. 14(4).

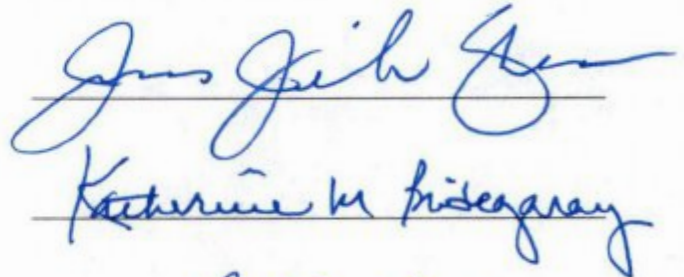
IT IS THEREFORE ORDERED that the Petition for Declaratory judgment on Original Jurisdiction is DENIED and DISMISSED.

The Clerk is directed to provide notice of this Order to all counsel of record.

DATED this 1st day of July, 2025.



Chief Justice



Justices