

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0729

MONTANANS FOR NONPARTISAN COURTS,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA
ATTORNEY GENERAL,

Respondent.

RESPONSE TO PETITION FOR DECLARATORY RELIEF ON
ORIGINAL JURISDICTION

APPEARANCES:

Austin Knudsen
Montana Attorney General
Michael Russell
George Carlo L. Clark
Assistant Attorneys General
P.O. Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
Michael.Russell@mt.gov
George.Clark@mt.gov

Attorneys for Respondent

Raph Graybill
GRAYBILL LAW FIRM, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59401
Phone: (406) 452-8566
raph@graybilllawfirm.com

Alex Rate
ACLU of Montana
P.O. Box 1968
Missoula, MT 59806
(406) 203-3375
ratea@aclumontana.org

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
ARGUMENT.....	2
I. The Court should accept the AG’s rewritten ballot statement.	2
A. The AG’s statement of purpose and implication expresses a true and impartial explanation of CI-132.....	4
1. The AG’s ballot statement accurately reflects what CI- 132 does.	4
2. The AG’s ballot statement informs voters of the meaning of “nonpartisan.”	8
CONCLUSION	12
CERTIFICATE OF COMPLIANCE	14

TABLE OF AUTHORITIES

CASES

<i>Citizens Right to Recall v. McGrath</i> , 2006 MT 192, 333 Mont. 153, 142 P.3d 764)	12
<i>Harper v. Greely</i> , 234 Mont. 259, 763 P.2d 650 (1988)	2
<i>Monforton v. Knudsen</i> , 2023 MT 179, 413 Mont. 367, 539 P.3d 1078.....	12
<i>Montana Ass’n of Ctys. v. Fox</i> , 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017)	12
<i>Montanans Against Tax Hikes v. State</i> , 2018 MT 201, 392 Mont. 344, 423 P.3d 1078	passim
<i>Montanans Securing Reprod. Rights v. Knudsen</i> , 2024 MT 67, 416 Mont. 138, 546 P.3d 183.....	3, 6, 7, 12
<i>State ex rel. Wenzel v. Murray</i> , 178 Mont. 441, 585 P.2d 533 (1978).....	3, 9

STATUTES

Mont. Code Ann. § 13-10-507	10
Mont. Code Ann. § 13-12-203	9, 10, 11
Mont. Code Ann. § 13-14-112	9, 11
Mont. Code Ann. § 13-14-122	10
Mont. Code Ann. § 13-27-212	2, 4, 7, 12
Mont. Code Ann. § 13-27-226	2, 3
Mont. Code Ann. § 13-27-605	1

OTHER AUTHORITIES

Mandate, Merriam-Webster, <https://www.merriam-webster.com/dictionary/mandate> (last accessed Oct. 27, 2025).....5

CONSTITUTIONAL PROVISIONS

Mont. Const. art. VII..... 4, 5, 6, 8

INTRODUCTION

The Attorney General (“AG”) acted within his statutory and constitutional authority in rewriting Constitutional Initiative 132’s (“CI-132”) ballot statement because it failed to meet the statutory requirements to appear on the ballot. Petitioner thinks differently. Mont. Code Ann. § 13-27-605(1) provides Petitioner may seek an original proceeding in the Montana Supreme Court if it challenges the AG’s determination on the ballot statement.

Upon reviewing CI-132’s ballot statement, the AG determined the statement was deficient in two ways: the proposed ballot statement (1) did not contain a true reflection on the Montana Constitution; and (2) insufficiently informs voters of what is meant by “nonpartisan.” The AG remedied these statutory shortcomings with a rewritten ballot statement. Petitioner disagrees with the rewrites and in turn seeks to have this Court adopt its original language. The Court should decline that request as explained further below.

ARGUMENT

I. The Court should accept the AG's rewritten ballot statement.

“A statement of purpose and implication expresses the true and impartial explanation of the proposal in plain, easily understood language. The statement of purpose and implication may not be argumentative or written so as to create prejudice for or against the issue.” Mont. Code Ann. § 13-27-212(1). “[T]he attorney general shall review the ballot statements to determine whether ... [the] statement of purpose and implication ... complies with 13-27-212.” Mont. Code Ann. § 13-27-226(3)(a)(i). “[I]f the attorney general determines in writing that a ballot statement clearly does not comply with the relevant requirements of subsection (3)(a), the attorney general shall prepare a ballot statement that complies with the relevant requirements of subsection (3)(a).” Mont. Code Ann. § 13-27-226(3)(c). The basic requirement of the ballot statement is to “identify the measure on the ballot so that a Montana voter, drawing on both official and unofficial sources of information and education, [can] exercise his or her political judgment.” *Harper v. Greely*, 234 Mont. 259, 268, 763 P.2d 650 (1988).

“[T]he statute gives the Attorney General the authority to determine whether a proponent’s ballot statement meets the requirements of § 13-27-226(3)(a), and if he determines the proponent’s statement does not meet those requirements, he shall then prepare a ballot statement that does meet those requirements.” *Montanans Securing Reprod. Rights v. Knudsen*, 2024 MT 67, ¶ 21, 416 Mont. 138, 546 P.3d 183 (“*MSRR*”). And this Court rejected arguments that the statute imposes a “necessary threshold” before the AG may rewrite a ballot statement. *Id.* ¶ 23.

“As long as the [AG’s] wording ‘fairly states to the voter what is proposed within the Initiative, direction as to the choice of language ... is entirely his.” *Montanans Against Tax Hikes v. State*, 2018 MT 201, ¶ 7, 392 Mont. 344, 423 P.3d 1078 (“*MATH*”) (quoting *State ex rel. Wenzel v. Murray*, 178 Mont. 441, 448, 585 P.2d 533 (1978)). The Court intervenes only when “a ballot statement’s language would prevent a voter from casting an intelligent and informed ballot.” *MATH*, ¶ 7.

A. The AG’s statement of purpose and implication expresses a true and impartial explanation of CI-132.

Petitioner submitted the following proposed ballot statement:

“CI-[132] amends the Montana Constitution to require that judicial elections remain nonpartisan.” Pet., at 4.

The AG determined this proposed ballot statement failed to meet Mont. Code Ann. § 13-27-212. Pet., at 2. The AG submitted the following revised statement:

CI-[132], if passed, amends Article VII of the Montana Constitution to create a new Section 12 that mandates all judicial elections be nonpartisan. A nonpartisan election prohibits labeling candidates on the ballot according to the political party the candidate aligns with including labels like independent.

Pet., at 5. The AG’s ballot statement does two things. First, it replaces misleading language about the constitutional status-quo. Second, it informs voters what is meant by “nonpartisan.”

1. The AG’s ballot statement accurately reflects what CI-132 does.

The AG’s ballot statement first states CI-132 is an amendment to the Montana Constitution that creates a new constitutional mandate that all judicial elections be nonpartisan. This sentence is true. CI-132 is a constitutional amendment that creates a new section in Article VII to

impose a new constitutional requirement that judicial elections be nonpartisan. The Constitution currently allows for, but does not require, nonpartisan elections in the same sense it allows for, but does not require, partisan elections.

Petitioner's objections to this sentence lack merit.

First, Petitioner mistakenly claims that the AG's statement "does not actually describe what CI-132 does (it amends the constitution)" Pet., at 7. The AG's statement, quite literally begins with "CI-[132], if passed, *amends* Article VII of the Montana Constitution to create a new Section 12...." Pet., at 5 (emphasis added). The AG's statement is true—CI-132 amends the constitution by creating a new section in Article VII. Any contrary argument is frivolous.

Second, Petitioner incorrectly argues the term "mandates" is pejorative. Pet., at 7. Petitioner rests that argument on an unadorned statement that "mandates" is pejorative because it says so. "Mandate" commonly means "to officially require." *Mandate, Merriam-Webster*, <https://www.merriam-webster.com/dictionary/mandate> (last accessed Oct. 27, 2025). "Mandate" is no more pejorative than "requires"; it impartially describes the effect of CI-132.

Third, Petitioner argues this Court should graft the *statutory* status quo onto the *constitutional* status quo vis-à-vis the term “remain.” Pet., at 10. But as Petitioner says, “[t]here is no hiding the ball that CI-132 effects a change.” *Id.*, at 9.

The Montana Constitution requires Supreme Court justices, district court judges, and justices of the peace to be elected. Mont. Const. art. VII, §§ 5, 8. The Montana Constitution leaves it to the Legislature to decide the manner of those elections. Historically, the Legislature used nonpartisan elections. Recently, some legislators expressed a desire for change, making some, or all, judicial elections partisan elections. That ongoing debate fills out the background of CI-132. Regardless of that backdrop, however, the current Constitution permits both partisan and nonpartisan judicial elections. CI-132 uproots this status quo by constitutionally requiring all judicial elections be nonpartisan.

“Remain,” as Petitioner uses it in the ballot statement, conveys that it is already the Constitution’s status quo for nonpartisan judicial elections. That is incorrect.

This Court agreed with the AG’s reasoning on a similar issue in *MSRR*. Petitioners there, as here, used misleading language to say CI-14

“affirms the right ... [to] abortion.” *MSRR*, ¶ 25. But the measure did more than “affirm” a preexisting right. Similarly, “remain” misleads voters by creating the impression the Constitution already calls for nonpartisan judicial elections.

Using “remain” in the ballot statement, Petitioner hides the ball from Montana voters. The Montana Constitution does not require nonpartisan elections. As a result, the political branches fill in the gap. Petitioner tries to pull wool over the voters’ and this Court’s eyes by arguing “Nonpartisan courts are the status quo in Montana.” *Pet.*, at 8. Nonpartisan Supreme Court and district court elections are the policy position of the political branches—a policy that the Legislature and Governor can change. They do not reflect the Constitution’s text. Petitioner is remiss to equate a legislative policy with a constitutional principle. Petitioner’s use of “remain” does not reflect the text of the Montana Constitution.

“Remain” also creates prejudice for nonpartisan judicial elections. “The statement of purpose and implication may not be argumentative or written so as to create prejudice for or against the issue.” *Mont. Code Ann.* § 13-27-212(1). “Remain” prejudices the ballot statement by

importing a notion of continuity. Indeed, Petitioner’s definition of remain—“to continue unchanged”—shows using “remain” only helps persuade voters of Petitioner’s imagined status quo. Pet., at 10. Generally, people dislike change. “Remain” carries the connotation that CI-132 does not amount to a change. But this is far from the truth.

The AG’s ballot statement accurately reflects the Montana Constitution’s status quo. Rather than importing a particular prejudice one way or the other, the AG’s statement simply restates “what is proposed within the Initiative.” *MATH*, ¶ 7. Namely, “CI-132, if passed, amends Article VII of the Montana Constitution to create a new Section 12 that mandates all judicial elections be nonpartisan.”

Petitioner’s attempt to paint this information as “argumentative, misleading, prejudicial, and deeply confusing” rings hollow. Pet., at 4–8. On the contrary, the AG’s rewrites remove Petitioner’s misleading and argumentative language.

2. The AG’s ballot statement informs voters of the meaning of “nonpartisan.”

CI-132’s core legal term is “nonpartisan.” That goes without argument. The AG, therefore, provided a summary definition of “nonpartisan” based on similar language in Title 13. See Pet., at 5 (“A

nonpartisan election prohibits labeling candidates on the ballot according to the political party the candidate aligns with including labels like independent.”).

Petitioner reiterates ad nauseam that “nonpartisan” is term that “requires no further definition.” *See Id.*, at 6–7, 10, 11. But the AG’s obligation here is to “fairly state to the voter what is proposed.” *MATH*, ¶ 7 (quoting *Murray*, 178 Mont. at 448). That includes providing a working definition for CI-132’s key term.

Nonpartisan, while not unknown in Montana, is regardless a term of art within Montana’s statutes. Under current law, a nonpartisan candidate declaration may not indicate “political affiliation” or “any principles or measures that the candidate advocates.” Mont. Code Ann. § 13-14-112. On the ballot itself, “in nonpartisan general elections, the candidates’ names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the word ‘Nonpartisan.’” Mont. Code Ann. § 13-12-203(2).

The statutory scheme prohibits the *ballot* from including labels next to a nonpartisan candidate's name. *Id.* And nonpartisan candidates may not indicate a political party preference or advocate “any principles or measures” in their declarations. Mont. Code Ann. § 13-14-122. The AG simply rephrased these prohibitions.

Next, the AG felt it necessary to include the label “independent” in his description of what “nonpartisan” prohibits because: (1) nonpartisan candidates may not use labels like independent, *see* Mont. Code Ann. § 13-12-203(2); and (2) “independent” is a term of art for a partisan candidate that does not align with any political party. Mont. Code Ann. § 13-10-507.

The AG's ballot statement does not allege judicial officers harbor partisan affiliation. It is a restatement of how Title 13 handles nonpartisan elections and nonpartisan candidates.

Petitioner argues, in essence, for less information being presented to voters. Pet., at 6–8. And recycling news articles that likewise fail to define “nonpartisan” does not bolster that argument. *Id.*, nn. 1, 2. At bottom, voters should be presented with a definition of “nonpartisan” on

the ballot to better understand CI-132. Petitioner fails to make a persuasive case for why that information should be hidden from voters.

The AG's rewrite addresses any potential confusion by explaining the electoral restrictions on nonpartisan candidates relative to other kinds of candidates. For example, nonpartisan candidates cannot list any principles, measures, or slogans the candidate supports. Mont. Code Ann. § 13-14-112. Montana voters should know that, before deciding whether to support or oppose CI-132, a nonpartisan judicial election means candidates cannot use labels. Unlike other kinds of elections, nonpartisan candidate names must appear with "no description or designation" beyond "nonpartisan." Mont. Code Ann. § 13-12-203(2). This includes "title, accomplishment, award, or degree." Mont. Code Ann. § 13-12-203(3).

Petitioner may disagree with the specific language the AG used in the rewrite, but the choice of language is within the AG's discretion. *MATH*, ¶ 7. "We will not invalidate a ballot statement simply because a

better one could be written.” *Id.* ¶ 13 (citing *Citizens Right to Recall v. McGrath*, 2006 MT 192, ¶ 10, 333 Mont. 153, 142 P.3d 764).¹

CONCLUSION

This Court should concur with the AG’s rewrite of CI-132. “[W]hen dealing with something as fundamental and important as Constitutional change,” the people must have complete control. *Montana Ass’n of Ctys. v. Fox*, 2017 MT 267, ¶ 14, 389 Mont. 183, 404 P.3d 733 (2017) (quoting Committee Proposal, at 363); *Monforton v. Knudsen*, 2023 MT 179, ¶ 18, 413 Mont. 367, 539 P.3d 1078. Montanans need to know what exactly they are voting for when they decide to change the Constitution. The AG’s rewritten ballot statement clarifies CI-132 and better informs Montanans when they are in the voting booth. This Court should thus deny Petitioner’s request for declaratory judgment.

¹ The AG does not read Part.II of the Petition as an argument that Petitioner has some entitlement to a ballot statement of its choosing. That argument would be barred. *MSRR*, ¶ 23. Even if it were not, the Court should reject Petitioner’s arguments for the reasons stated above. The AG correctly determined Petitioner’s proposed statement failed to meet the requirements of Mont. Code Ann. § 13-27-212 because it failed to fully express the implication of CI-132 and was misleading and prejudicial.

DATED this 28th day of October 2025.

Austin Knudsen
Montana Attorney General

/s/ George Carlo L. Clark
George Carlo L. Clark
Michael Russell
Assistant Attorneys General
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Michael.Russell@mt.gov
George.Clark@mt.gov

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,173 words, excluding tables of contents and authorities, certificates of service and compliance, or any appendix.

/s/ George Carlo L. Clark
George Carlo L. Clark

CERTIFICATE OF SERVICE

I, George Carlo Lempke Clark, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 10-28-2025:

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Montanans for Nonpartisan Courts
Service Method: eService

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Montanans for Nonpartisan Courts
Service Method: eService

Rachel Elizabeth Parker (Attorney)
300 4th St North
Great Falls MT 59403
Representing: Montanans for Nonpartisan Courts
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Austin Miles Knudsen
Service Method: eService

Electronically signed by Elena Hagen on behalf of George Carlo Lempke Clark
Dated: 10-28-2025