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STATE OF MONTANA
Case Number: OP 25-0770

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP _____

TRANSPARENT ELECTION INITIATIVE,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY GENERAL; and CHRISTI JACOBSEN, in her official capacity as MONTANA SECRETARY OF STATE,

Respondents.

PETITION FOR DECLARATORY RELIEF ON ORIGINAL JURISDICTION

EXPEDITED CONSIDERATION REQUESTED

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RELIEF REQUESTED

Transparent Election Initiative and Jeff Mangan (collectively, TEI) bring this original action under § 13-27-605, MCA, seeking a declaration that Ballot Issue #4 (Ex. 1, "BI-4"), which proposes to amend the Montana Constitution, does not violate the separate-vote requirement of Mont. Const. art. XIV, § 11. TEI challenges the Attorney General's contrary legal sufficiency determination. (Ex. 2.)

TEI asks this Court to declare that the Attorney General erred in finding BI-4 legally insufficient and direct the Attorney General to either approve TEI's ballot statement or prepare and forward a ballot statement to the Secretary of State (Secretary) within five days. Additionally, TEI asks this Court to strike the Attorney General's fiscal statement, which he lacked authority to prepare, and the statement of material harm based on its inaccuracies.

JURISDICTION

This Court has original jurisdiction to review the Attorney General's legal sufficiency determinations in an action brought under § 13-27-605, MCA. Section 3-2-202(3), MCA. A ballot issue proponent may file an original proceeding challenging the Attorney General's legal

sufficiency determination. Section 13-27-605(1), MCA. These original actions take priority over other matters. Mont. Const. art. IV, § 7(2); § 13-27-605(3)(c), MCA.

FACTS

1. TEI certifies there are no factual issues affecting this Court's consideration of this matter. Section § 3-2-202(3)(b)(1), MCA.

2. Transparent Election Initiative is registered with the Montana Commissioner of Political Practices.

3. Jeff Mangan is the sole incorporator and president of Transparent Election Initiative and is designated as the lead petitioner for BI-4.

4. On August 1, 2025, Jeff Mangan personally submitted to the Secretary (1) the text of a proposed constitutional initiative for the 2026 ballot, and (2) a proposed ballot statement. The same day, TEI's counsel submitted the documents electronically. (Ex. 3.)

5. The Secretary designated the proposed initiative as BI-4 and referred the ballot issue and ballot statement to the Legislative Services Division (LSD).

6. On August 15, 2025, LSD provided TEI with its recommended changes. (Ex. 4.)

7. On September 5, 2025, after responding to LSD (Ex. 5), TEI submitted BI-4's finalized initiative text and ballot statement to the Secretary. (BI-4.)

8. The Secretary accepted the final text and referred BI-4 to the Attorney General and the Budget Director's Office of Budget and Program Planning (OBPP) on September 8, 2025. (Ex. 6.)

9. Stringent timing requirements apply to OBPP's and the Attorney General's review of ballot initiatives.

10. Section 13-27-218(5), MCA, requires that OBPP "shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note" within 10 days of the Secretary's referral.

11. Following OBPP's notification within this 10-day timeframe, the Attorney General has a maximum of 30 days to complete a legal sufficiency review. Sections 13-27-218(5), (7), MCA.

12. As the Secretary referred BI-4 on September 8, 2025, OBPP had until September 18, 2025, to determine whether a fiscal note was necessary for BI-4 and, if so, to prepare and provide the fiscal note.

13. OBPP did not make a fiscal note determination within the statutory timeframe.

14. Instead, on September 24, 2025, 16 days after the Secretary's referral, OBPP provided a purported fiscal note for BI-4. (Ex. 7.)

15. Rather than initiating his legal sufficiency review of BI-4 when OBPP's time frame expired, the Attorney General delayed the start of the 30-day review period until receiving OBPP's purported fiscal note.

16. On October 24, 2025, 46 days after the Secretary's referral, the Attorney General issued an opinion that BI-4 is legally insufficient under the separate-vote requirement. (Ex. 2.)

17. The Attorney General also prepared a fiscal statement.

18. Because of the legal sufficiency determination, the Secretary has not delivered for signature gathering a petition form for BI-4.

19. The Secretary provided notice of the Attorney General's determination on October 27, 2025.

ANTICIPATED LEGAL ISSUES

This Petition raises the following issues:

1. Whether BI-4 would make two or more changes to the Montana Constitution that are substantive and not closely related.

2. Whether the document OBPP transmitted after the statutory deadline had legal effect to authorize the Attorney General to prepare a fiscal statement.

3. Whether this Court should strike the Attorney General's statement of material harm because it inaccurately characterizes BI-4.

PURPOSE OF BI-4

BI-4 expresses the will of the people of Montana that the state no longer grants artificial persons—corporations and other entities created under state law—the power to spend money or anything of value on election or ballot-issue activity. To give effect to that will, BI-4 revokes all existing grants of power and regrants only those necessary or convenient to lawful business or charitable purposes, expressly stating that this list does not include political-spending power.

ARGUMENT

I. BI-4 does not violate the Constitution's separate-vote requirement.

Every provision of BI-4 flows from one constitutional question: whether the people will direct that the state's grant of powers to artificial persons excludes political-spending power. It establishes the premise in subsection (1), answers that question in subsection (2), implements that answer through subsections (3)–(5), and defines its terms in subsection (6).

The Attorney General wrongly concluded that BI-4 would amend more than a dozen constitutional provisions, including fundamental rights in Article II such as the rights to dignity and reproductive autonomy. His opinion rests on faulty interpretation and an overbroad reading of the separate-vote requirement. Because every provision of BI-4 is integral and closely related, it satisfies the separate-vote test. This Court should reverse the Attorney General's legal-sufficiency determination.

A. BI-4 proposes a single amendment.

Article XIV, Section 11 of the Montana Constitution provides that if "more than one amendment is submitted at the same election, each

shall be so prepared and distinguished that it can be voted upon separately." This separate-vote requirement serves two objectives. First, it ensures voters understand what they are deciding by preventing confusion or deception and by requiring that proposed initiatives be understandable and not conceal their effects. *Mont. Ass'n of Counties v. State (MACo)*, 2017 MT 267, ¶ 15, 389 Mont. 183, 404 P.3d 733. Second, it prevents logrolling—combining unrelated measures that might not pass on their own. *Id.*

In applying this requirement, the Court asks whether a proposal "would make two or more changes to the Constitution that are substantive and not closely related." *Montanans for Election Reform Action Fund v. Knudsen (MER)*, 2023 MT 226, ¶ 7, 414 Mont. 135, 545 P.3d 618 (quoting *Monforton v. Knudsen*, 2023 MT 179, ¶ 12, 413 Mont. 367, 539 P.3d 1078). "Substantive" means "an essential part or constituent or relating to what is essential." *Id.* (quoting *Monforton*, ¶ 12.) A substantive change alters something fundamental rather than incidental.

To determine relatedness, the Court considers whether the provisions are facially connected, address a single constitutional

section, have traditionally been treated as one subject, and are qualitatively similar in effect on procedural or substantive law. *MER*, ¶ 7; *Monforton*, ¶ 12. When a proposal does not implicate a separate constitutional provision, "there is no separate amendment that would require a separate vote." *Montanans Securing Reprod. Rights v. Knudsen (MSRR I)*, 2024 MT 54, ¶ 22, 415 Mont. 416, 545 P.3d 45. The rule must be applied so as not to frustrate the people's right to amend their Constitution. *Id.*, ¶ 23.

The Court has consistently described the separate-vote requirement as protecting voters' ability to express their opinions on each constitutional change separately. *Monforton*, ¶ 12; *MACo*, ¶ 27. But where a measure's subparts have no operative meaning apart from the amendment they implement, voters have no meaningful opinion they can separately express on those parts. The separate-vote rule seeks to preserve meaningful choice, not to require an empty one. Here, because each subpart derives meaning from BI-4's redefinition of artificial person powers, separating them would render the subparts unintelligible and leave the main question functionally incoherent—stripped of the provisions that make it workable.

The Court's decision in *MER* is illustrative. There, the Court rejected the Attorney General's claim that creating a top-four primary was a distinct amendment from specifying which offices it would cover. The Court "could not envision" how the system "could be accomplished without specifying the offices to which it would apply." *MER*, ¶ 12. The designation of covered offices was not a separate question voters could decide independently; it had meaning only within the amendment creating the top-four primary.

Under these standards, BI-4 satisfies the separate-vote requirement. It adds one new section to Article XIII, and every part of that section implements the same constitutional decision: the people's direction that the state no longer grant corporations and similar entities the power to spend in politics. Subsection (1) states the premise that artificial persons exist only by state grant and may exercise only powers expressly provided; subsection (2) directs that the Legislature act consistently with that principle and specifies the people's intent regarding election-related activity; subsection (3) revokes prior grants of power and provides a transitional safe harbor to protect existing contracts and obligations; subsection (4) regrants powers and defines

their scope and the parameters critical to implementation; subsection (5) confirms that election activity and ballot issue activity are ultra vires; and subsection (6) defines the amendment's terms. Each provision is qualitatively similar in effect and integral to the amendment's unified framework.

The way BI-4's subparts function shows that it is a single amendment. While this Court does not require subparts to be "so interdependent that they constitute a whole and cannot be separated" (*MACo*, ¶ 26), the subparts here are both interdependent and integral to the amendment, and it would make no sense for voters to consider each provision separately because none stands alone. A forfeiture mechanism without a boundary on artificial-person powers would have nothing to enforce; a transitional safe harbor without a revocation and regrant would have nothing to transition; a foreign-entity parity clause without a new definition of powers would have nothing to equalize; and definitions would serve no purpose without the framework they explain. In short, each clause has operative meaning only through its relationship to the amendment redefining the powers of artificial

persons. As in *MER*, these interdependent provisions present voters with one coherent constitutional choice, not multiple ones.

That BI-4 is longer or more detailed than some initiatives does not make it multiple amendments. A proposal may be "comprehensive, specific, and detailed" without violating Article XIV, Section 11 so long as its provisions are closely related. *MSRR I*, ¶ 48 (McKinnon, J., concurring). BI-4 constitutes a single amendment to the Montana Constitution.

B. The Attorney General incorrectly decided that BI-4 violated the separate-vote requirement.

The Attorney General's authority in reviewing ballot initiatives is narrowly confined. He may determine only whether a petition meets the procedural requirements for submission to the voters, including the separate-vote requirement. *Monforton*, ¶¶ 7, 11. He has no power to assess the substantive legality of a measure, to interpret how it might operate, or to predict litigation outcomes. *MSRR I*, ¶ 15. His role is limited to identifying non-substantive statutory or constitutional defects. *Monforton*, ¶ 7.

The Attorney General exceeded that authority and misapplied the separate-vote test. His determinations—that BI-4 would amend Articles

II and IX, alter Article XIII § 1, and create a separate "regrant" amendment—all rest on legal interpretations he lacks authority to make and that are wrong under constitutional interpretive principles.

1. BI-4 does not amend Articles II or IX.

The Attorney General claims that revoking artificial person powers under Section 8(3)(a) would amend nearly one-third of Article II's fundamental rights and water rights in Article IX. (Ex. 2 at 2.) The Attorney General provides no rationale for how an amendment targeting *artificial*-person powers could be understood as amending provisions that apply to only *natural* persons, such as Article II, § 3 ("[a]ll persons are born free and have certain inalienable rights"); Article II, § 4 ("dignity of the human being is inviolable"); Article II, § 36 (providing "right to make and carry out decisions about one's own pregnancy"). Artificial persons can do many things, but they are not "born," are not "human being[s]," and do not experience their "own pregnancy."

More fundamentally, the Attorney General's contention blurs the line between the powers of natural persons and those of artificial ones. Human beings possess their own powers independent of

government; the State does not grant them. Artificial persons, by contrast, exist only through state creation, and the powers they exercise arise from that grant. When the people adjust the scope of those state-conferred powers, they alter only the framework the State has established for artificial entities, not the inherent powers or constitutional rights of natural persons. While a proposed amendment can implicate the separate-vote requirement if it implicitly makes substantive, unrelated changes to the Constitution (*MACo*, ¶ 28), BI-4 effects no such change.

BI-4 also preserves existing contracts and obligations through its safe-harbor provisions. The simultaneous revocation and regrant of corporate powers ensure that no entity loses its legal existence or previously acquired obligations or approvals. *See* BI-4, §§ 8(3)(b), 8(4)(a). These subsections underscore that the measure operates prospectively, not retroactively, and reinforce how its provisions are closely related and essential to its unified purpose.

The Attorney General's expansive reading of Article II and BI-4 disregards this Court's interpretive principles. Constitutional interpretation follows the same rules as statutory interpretation: look

first to the plain language, consider the context, harmonize related provisions, and avoid absurd results. *Brown v. Gianforte*, 2021 MT 149, ¶ 33, 404 Mont. 269, 488 P.3d 548; *Oster v. Valley County*, 2006 MT 180, ¶ 17, 333 Mont. 76, 140 P.3d 1079. The Attorney General's approach violates each of these principles—leading to the absurd conclusion that revoking corporate powers somehow amends an individual's constitutional right to make decisions about pregnancy.

2. BI-4 does not amend Article XIII, § 1.

Sections 8(4)(b) and 8(4)(d) of BI-4, which void charter language authorizing political spending, do not amend Article XIII, § 1, which governs how corporate charters are granted, modified, or dissolved. Under this Court's decision in *MER*, a constitutional amendment that leaves the Legislature's authority to act by "general law" intact does not create a separate amendment requiring a separate vote. *MER*, ¶ 19.

BI-4 leaves Article XIII, § 1 untouched. It concerns the *powers* the state grants to artificial persons, not the *procedures* by which charters are issued or altered. The Attorney General's suggestion that BI-4 "voids" charters ignores explicit language preserving corporate existence and prior obligations. *See* BI-4, § 8(3)(b). Further, the purpose

of Article XIII, § 1, was to prohibit the Legislature from issuing special charter grants and instead to require general charters. BI-4 does not contravene this intention. Indeed, it states that the Legislature may create artificial persons by statute and it directs the Legislature to supply implementing procedures. *See*, BI-4, §§ 8(2), (4), (5). BI-4 thus operates consistently with, not as an amendment to, Article XIII, § 1.

3. The "regrant" of powers is not a separate amendment.

The Attorney General's assertion that Section 8(4)(a)'s regranting of powers is a separate amendment misconstrues BI-4's structure. (Ex. 2 at 3.) The sequence of revocation and regrant are not separate decision points, but the mechanism to implement a single decision: the revocation and regrant work simultaneously together to redefine the scope of granted powers. The two provisions are necessary because a new, narrower constitutional grant would not automatically extinguish broader, pre-existing authority unless the prior grant were also revoked. Thus, without the revocation clause, earlier provisions conferring corporate powers would remain in force unless they were contradicted, leaving the new language uncertain in scope.

BI-4's explicit revocation therefore performs a mechanical function: it resets the baseline so that the single, unified regrant of powers takes full effect and leaves no residual authority in place. The revocation and regrant thus operate together as one legal act—the only way to make the amendment effective and unambiguous. They are complementary components, not distinct constitutional changes.

4. All provisions of BI-4 are closely related.

The Attorney General incorrectly asserts that BI-4's provisions are not closely related because they touch multiple areas of law. (Ex. 2 at 3.) Constitutional amendments often have broad effects, but BI-4's focus is singular: defining the powers of entities that exist only by state authorization. Its definitions and enforcement mechanisms are internally consistent and necessary to give effect to that framework.

The measure's definitions of "artificial person," "election activity," and related terms are tailored to its purpose and consistent with Montana's tradition of defining "person" differently depending on context, which even the Attorney General's memorandum acknowledges. *Compare* § 27-8-104, MCA, *with* § 26-1-702, MCA. Thus, concerns that the "artificial person" definition is "at odds" with other

definitions are misplaced. Similarly, even if the definition encompassed municipal corporations, that merely aligns with § 2-1-122, MCA, which already prohibits public resources for political purposes, ensuring consistency and uniform treatment of state-created entities. Likewise, the Attorney General's claim that BI-4 affects "government functions" in different statutory subsections is inapt. (Ex. 2 at 3.) That artificial persons, like corporations, operate in diverse sectors does not convert a single, coherent amendment into several unrelated ones.

Applying the factors from *MER* and *Monforton*, all provisions of BI-4 are facially related, contained within one new constitutional section, address a subject historically treated as unified, and are qualitatively similar in their effect. Each provision defines, circumscribes, or enforces the powers of artificial persons. BI-4's provisions form an integrated whole that answers one constitutional question of what powers the people grant to artificial persons. The Attorney General's contrary determination rests on an expansive interpretation of the separate-vote requirement that impermissibly restricts the people's right to amend their Constitution.

II. This Court should strike the Attorney General's fiscal statement because OBPP failed to issue a lawful fiscal determination.

Under § 13-27-218(5), MCA, OBPP must, "within 10 days" after the Secretary's ballot-issue referral, determine whether a fiscal note is necessary, prepare the fiscal note, notify the Attorney General, and provide a fiscal note. OBPP has a mandatory duty to make the determination, and if it determines a note is required, then it must complete the remaining steps within the ten-day deadline. Section 13-27-218(5), MCA.

OBPP had until September 18 to act. No fiscal note was transmitted by the deadline. OBPP instead sent a purported fiscal note on September 24. But once September 18 had passed, both agencies lacked power to act: OBPP could no longer issue a fiscal note, and without a fiscal note, the Attorney General lacked authority to prepare a fiscal statement. Section 13-27-226(4), MCA, expressly ties the Attorney General's fiscal-statement authority to a fiscal note indicating a fiscal impact. Because no such note existed, the Attorney General never acquired authority to prepare a fiscal statement.

Agencies have only those powers the Legislature confers, and any action exceeding that authority is void. *Montana Independent Living Project v. State*, 2019 MT 298, ¶ 31, 398 Mont. 204, 454 P.3d 1216. In *MSRR I*, the Court held that because OBPP's fiscal note "did not indicate a fiscal impact, the Attorney General lacked the statutory authority to append a fiscal statement." *MSRR I*, ¶ 32. Here, OBPP did not merely omit an impact; its "fiscal note" never legally existed.

TEI recognizes that fiscal information helps voters make informed decisions, and TEI does not object to the fiscal note's substance. But deadlines exist for a reason. Agencies must act within the authority the Legislature conferred, and that authority ends when the statute says it does. The deadlines in § 13-27-218(5), MCA, provide predictability in the initiative process. If a proponent missed a deadline by six days, the Attorney General would no doubt assert that the lapse carried legal consequences. The same standard should apply to the State.

If the Court declines to strike the fiscal statement, it should order the Attorney General to revise the statement to match the fiscal note's language estimating litigation costs from $50,000 to $500,000 "if litigation were to occur." The Attorney General ignored the range,

instead stating that BI-4 would "cost taxpayers up to $500,000 to litigate in court—if challenged." By quoting only the highest number, the fiscal statement provides an incomplete picture. The only accurate presentation is the full range OBPP identified.

III. This Court should strike the Statement of Material Harm because it inaccurately characterizes BI-4.

The Attorney General's statement of material harm misreads BI-4. He claims the measure "restricts, if not outright eliminates, the ability of artificial persons to participate on legislative and regulatory matters affecting them" and "revokes this right" for businesses to "appear before state and local bodies on legislative and regulatory matters." (Ex. 2 at 4.) These claims are contradicted by BI-4's text, and the statement should be stricken.

BI-4 specifically defines "election activity" and "ballot issue activity" as "paying, contributing, or expending money or anything of value to support or oppose a candidate, a political party, or a political committee," or a ballot issue or initiative. BI-4, §§ 8(6)(c), (e). Nothing limits testimony before legislative or regulatory bodies, rulemaking participation, or traditional lobbying that does not involve campaign spending. Nor does BI-4 prevent artificial persons from petitioning the

government for redress. The suggestion that corporations could forfeit their charters merely for appearing before government bodies or advocating on legislation is unsupported.

The Attorney General further overstates the implications of the forfeiture provisions in §§ 8(4)(d) and (5). (Ex. 2 at 5.) Those provisions apply only when an artificial person acts ultra vires by spending money or anything of value on election or ballot-issue activity. Forfeiture of charter privileges is a traditional consequence for failing to act within state-provided grants. *See, e.g., State ex re. Rankin v. Martin*, 68 Mont. 392, 396-97, 219 P. 632 (1923). Further, BI-4 expressly contemplates possible reinstatement, confirming that forfeiture is a correctable consequence, subject to legislative process. *See* BI-4, § 8(4)(d). BI-4 also exempts political committees created for campaign activity, allowing artificial persons that wish to spend in politics to do so through that established framework. See BI-4, § 8(4)(c). Far from imposing "material harm," BI-4 enforces the settled rule that artificial persons may exercise only those powers conferred by the people.

Justice Nelson's dissent in *Montanans Opposed to I-166 v. Bullock*, 2012 MT 168, ¶ 17, 365 Mont. 520, 285 P.3d 435, does not

support the Attorney General's claim that BI-4 will disadvantage Montana corporations. Justice Nelson warned against a measure that restricted only the rights of Montana corporations while leaving others free to act. BI-4 does not do that: it redefines the powers the State grants and applies the same limitation to all entities operating in Montana. That evenhanded rule does not create the kind of competitive disparity Justice Nelson described.

IV. This Court should order an expedited response.

Challenges to the Attorney General's legal-sufficiency determinations take precedence over other matters. Section 13-27-605(3)(c), MCA. If this Court determines that a response is appropriate, TEI asks that the Court order an expedited response.

The Attorney General has already impeded BI-4's progress by delaying the legal sufficiency review for nearly a week until OBPP submitted its inoperative fiscal note, rather than starting when OBPP's deadline expired. These agency delays have consumed valuable time and, with each additional week lost, the timeframe for petition approval, signature collection, and ballot qualification grows smaller.

Expedition is therefore not a matter of convenience but of necessity. Due to governmental delay, time is running against the people's constitutional right to place their measure before the voters. Prompt briefing will prevent further prejudice and allow for timely resolution.

CONCLUSION

Montanans have a fundamental right to amend their Constitution. *MACo*, ¶ 25. The Attorney General has adopted an overbroad application of the separate-vote requirement that encumbers that right. BI-4 presents a single, coherent amendment to Montana's Constitution. This Court should reverse the Attorney General's legal-sufficiency determination on an expedited schedule.

Respectfully submitted this 3rd day of November 2025.

/s/ *Matthew T. Cochenour*
MATTHEW T. COCHENOUR
Attorney for Transparent
Election Initiative

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 excluding caption, tables, certificates, and signature blocks is 3,976 as calculated by Microsoft Word.

Dated this 3rd day of November 2025.

/s/ *Matthew T. Cochenour*
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