



MEMORANDUM

To: The Office of the Montana Secretary of State
From: The Office of the Montana Attorney General
Date: September 24, 2025
Re: Legal sufficiency review of Proposed Ballot Measure No. 3

Ballot Measure No. 3, a constitutional initiative, proposes an amendment to Article VII, section 8 of the Montana Constitution. The proposed ballot measure would require elections for Montana supreme court justices and district court judge be conducted through non-partisan elections.

The Attorney General determines Ballot Measure No. 3 is legally sufficient pursuant to Mont. Code Ann. § 13-27-226(1)–(2).

The Attorney General determines the sponsor's proposed statement of purpose and implication fails to comply with Mont. Code Ann. § 13-27-212(1). Pursuant to Mont. Code Ann. § 13-27-226(3)(c), the Attorney General attaches a revised statement of purpose and implication to address this issue.

The Attorney General determines the sponsor's proposed yes and no statement comply with Mont. Code Ann. § 13-27-213.

The budget director determined that Ballot Measure No. 3 will not affect the State's revenues, expenditures, and fiscal liabilities. The Attorney General, therefore, does not include a statement of fiscal impact.

Finally, pursuant to Mont. Code Ann. § 13-27-226(5), the Attorney General determines Ballot Measure No. 3 does not conflict with any other currently proposed ballot measure.

DEPARTMENT OF JUSTICE

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Ballot Measure No. 3 is legally sufficient.

“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.” Mont. Const. art. XIV, § 11. “The plain language of the provision conveys an anticipatory, pre-election purpose—to ensure that constitutional ballot issues are prepared and submitted so they ‘can be voted upon’ separately.” *Monforton v. Knudsen*, 2023 MT 179, ¶ 10, 413 Mont. 367, 539 P.3d 1078.

“The separate-vote requirement has two well-recognized objectives. The first is to avoid voter confusion and deceit of the public by ensuring proposals are not misleading or the effects of which are concealed or not readily understandable. The second is to avoid ‘logrolling’ or combining unrelated amendments into a single measure which might not otherwise command majority support. By combining unrelated amendments, approval of the measure may be secured by different groups, each of which will support the entire proposal in order to secure some part, even though not approving all parts of a multifarious amendment.” *Monforton*, ¶ 10.

Ballot Measure No. 3 passes this test. Ballot Measure No. 3 amends a single section of the Montana Constitution with a single change—namely imposing a new constitutional requirement that the elections referenced in Article VII, section 8, be non-partisan elections.

Statement of Purpose and Implication

“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). “A statement of purpose and implication may not exceed 135 words.” Mont. Code Ann. § 13-27-212(2).

While not every detail of an initiative can be explained in a 135-word statement, the statement of purpose and implication must, nevertheless, allow a voter to cast an intelligent and informed ballot. *Montanans Against Tax Hikes v. State*, 2018 MT 201 ¶¶ 7, 15, 392 Mont. 344, 423 P.3d 1078.

Ballot Measure No.3 sponsor’s proposed 53-word statement reads:

This constitutional initiative would require that Montana Supreme Court and district court elections remain nonpartisan. Since 1935, state law has required that these elections be held without political party affiliation. This amendment would add that rule to the Montana

Constitution, so it could only be changed by another constitutional amendment approved by voters.

The Attorney General submits a new statement of purpose and implication to improve readability, explain that Ballot Measure No. 3 imposes a new constitutional requirement, and the practical implication to voters on seeing a non-partisan ballot versus a partisan ballot.

CI-XX, if passed, mandates Montana supreme court and district court elections be non-partisan. A non-partisan election prohibits labeling candidates on the ballot according to the political party the candidate aligns with including labels like independent.

Conflict with Other Proposed Ballot Measures

“The attorney general shall determine if the proposal conflicts with one or more issues that may appear on the ballot at the same election for the purposes of 13-27-501(2)(h) and shall forward the attorney general's written determination to the secretary of state.”

Proposed Ballot Measures Nos. 5 & 6 also amend Article VII to impose a new constitutional requirement that Montana supreme court justices and district court judges stand for election in non-partisan races. Both of those ballot measures impose this new requirement on all judicial races, not just supreme court and district court elections. Ballot Measure No. 6 goes further and requires all new courts to be elected, rather than appointed, and that those elections be non-partisan. Both Ballot Measures Nos. 5 & 6 amend the constitution by creating a new Article VII, section 12. All to say, Ballot Measure No. 3 would still be given full effect if either of those measures passed because supreme court and district court elections would be non-partisan races.

Sincerely,



Brent Mead
Deputy Solicitor General